



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

香港特別行政區
成立二十五周年

《基本法》 法律論壇匯編

The Proceedings of HKSAR
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本固枝榮

Stability to Prosperity



香港特別行政區成立二十五周年
《基本法》法律論壇匯編

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前言


2022 年是香港特別行政區成立和《中華人民共和國香港特別行政區基本法》實施 25 周年。《基本法》第五條規定「香港特別行政區不實行社會主義制度和政策，保持原有的資本主義制度和生活方式，五十年不變」。25 年來，香港特區在國家支持下，一直善用「一國兩制」的優勢，發展成世界領先的國際金融及貿易中心，更是全球最大的離岸人民幣中心。香港特區沿用國際商業社會熟悉的普通法，聯通內地與世界，發展成亞太區國際法律及爭議解決服務中心。「一國兩制」作為香港回歸後保持繁榮穩定的最佳制度安排，必須長期堅持，¹不會以 50 年為限。律政司於 2022 年 5 月一連三日舉行了三場法律論壇，與國內、本港及海外關心香港特區憲制秩序和「一國兩制」發展的法律界及社會各界翹楚，一同回顧過去、前瞻未來，並蓄勢待發，踏上「由治及興」的新征程。其中 5 月 27 日舉行的《基本法》法律論壇題為「本固枝榮」。論壇講辭及現場討論現彙編及翻譯成書，希望能和更多關心香港特區、關心「一國兩制」的人士分享講者的真知灼見。

「本固枝榮」，以自然界的現象作比喻，說的是常識，也是道理。香港回歸祖國是中華人民共和國不可分離的部分，是一個享有高度自治權的地方行政區域。香港重新納入國家治理體系，建立起以「一國兩制」方針為根本的特別行政區憲制秩序。「一國」既是根，根深才能葉茂；「一國」也是本，本固才能枝榮，這是顯而易見的道理。我們應該自覺尊

1 習近平：高舉中國特色社會主義偉大旗幟 為全面建設社會主義現代化國家而團結奮鬥——在中國共產黨第二十次全國代表大會上的報告，2022年10月16日。

重和維護國家的根本制度，「一國」原則越堅固，「兩制」優勢越彰顯，「兩制」從來離不開「一國」。

正如國家主席習近平所說：「『一國兩制』是一個完整的體系」。²要「全面準確、堅定不移貫徹『一國兩制』、港人治港……，高度自治的方針，……，堅持和完善『一國兩制』制度體系……。」³我們必須不斷學習、落實、推廣《憲法》、《基本法》和其他在香港特區實施的全國性法律。作為全國唯一的普通法司法管轄區，我們亦必須持續不懈推廣發展香港特區的普通法和法律服務，彰顯「一國兩制」的優勢，這是我們每一個香港法律工作者的使命、責任和光榮！

最後，我特別在此感謝香港城市大學出版社為本書提供專業的編輯及翻譯服務，讓律政司能夠順利出版這本匯編，見證香港特區走過的25年。



香港特別行政區律政司司長
林定國 SBS SC JP



2 2022年7月1日，國家主席習近平在慶祝香港回歸祖國25周年大會暨香港特別行政區第六屆政府就職典禮上的講話。

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開幕式致辭



林鄭月娥 大紫荊勳賢 GBS JP

中華人民共和國香港特別行政區時任行政長官

劉光源特派員（中華人民共和國外交部駐香港特別行政區特派員公署特派員）、王兆兵少將（中國人民解放軍駐香港部隊副政治委員）、關清華局長（中央人民政府駐香港特別行政區維護國家安全公署局長）、張舉能法官（終審法院首席法官）、梁君彥主席（立法會主席）、各位嘉賓、各位同事、各位朋友：

早上好！歡迎大家到現場出席或通過網上參與今天由香港特別行政區（特區）政府律政司舉辦的《基本法》法律論壇——本固枝榮，作為我們同慶香港回歸祖國 25 周年的重點活動之一。

《基本法》在香港特區已經實施了四分之一個世紀，繼 2020 年律政司就《基本法》的實施成功舉行了「追本溯源」高峰論壇後，這次論壇採用「本固枝榮」作為主題，我認為非常適切。誠如國家主席習近平在 2017 年 7 月視察香港時發表的重要講話中強調：「『一國』是根，根深才能葉茂；『一國』是本，本固才能枝榮。」香港作為國家不可分離的部分，「一國」毫無疑問是核心主幹，同時也是保證「兩制」能夠持續壯大發展的大前提。

我在上世紀 80 年代加入政府，曾在不同崗位參與籌備香港特區成立的工作，自 1997 年後又見證了香港特區多方面的成長與發展。事實上，香港特區自成立以來，總體大致順暢，雖然曾經歷風浪，但在中央的全面支持，以及公務員同事和社會大眾的共同努力下，香港一直砥礪前行、乘風破浪，發揮「一國兩制」的獨特優勢，保持香港長期繁榮穩定，成績斐然。


過去五年，香港經歷了回歸以來最嚴峻的挑戰，國家安全受到威脅，香港前景岌岌可危，「一國」的根基、底線受



到嚴重衝擊。面對如此局面，作為特區行政長官，我比任何時候都更明白「沒有國，哪有家」的體會，更堅定相信唯有根據《憲法》和《基本法》辦事，依靠中央，維護國家安全，才能確保香港的繁榮穩定。

各位朋友，我在 2020 年 6 月特區政府主辦的《基本法》頒布 30 周年網上論壇中說，要認識《基本法》，必須回到「一國兩制」的初心。當年鄧小平先生提出「一國兩制」的構想，是在維護國家統一和領土完整、保持香港繁榮穩定的前提下，考慮到香港的歷史和現實情況，最大程度地保留了香港的特色和優勢，讓香港市民的原有生活方式維持不變。這個初心從來沒有改變，也是中央一直以來對香港特區各項方針政策的根本宗旨。兩年前的「修例風波」，就讓我們深刻和沉痛地體會到任何偏離「一國兩制」初心的行為，必會帶來災難性的後果。

這次論壇會討論中央如何藉着頒布落實《香港國安法》和完善香港特區選舉制度這兩大舉措，鞏固特區的憲制秩序，讓「一國兩制」回到正軌。完善選舉制度後的首輪三場選舉已經順利完成，是特區落實「愛國者治港」原則的重要里程碑。此外，今次論壇還會探討《基本法》的解釋與實踐，以及普通法制度和《基本法》如何促進香港的自由經濟。我們非常榮幸邀得多位重量級的國內外和本地嘉賓，就上述題目分享他們的精闢見解，大家將必獲益良多，我也在此衷心感謝各位講者的鼎力支持。

我深信各位能夠通過這次論壇，更深入認識《基本法》和「一國兩制」，貫徹「本固枝榮」。謝謝大家。



王靈桂

國務院港澳事務辦公室副主任

尊敬的林鄭月娥行政長官、各位嘉賓、各位朋友：

今年是香港回歸祖國 25 周年暨香港《基本法》實施 25 周年，律政司隆重舉辦《基本法》法律論壇，探討《基本法》實施中的重要問題，以及制定《香港國安法》、完善香港特區選舉制度的重大實踐，具有十分重要的意義。我謹代表國務院港澳事務辦公室和夏寶龍副主席，對本次論壇的舉辦表示熱烈祝賀！

上世紀 80 年代初，鄧小平先生創造性地提出了「一國兩制」的科學構想，並首先將之運用於解決香港、澳門回歸祖國的問題。根據《憲法》制定的《中華人民共和國香港特別行政區基本法》，規定了在香港特別行政區實行的制度和政策，把中央政府對香港的各項方針政策以法律形式規定下來，為「一國兩制」在香港特別行政區的實踐提供了法律保障，奠定了香港繁榮穩定的基石。

香港回歸祖國後，重新納入國家治理體系，中央依照《憲法》和《基本法》對香港實行管治，與之相應的特別行政區制度和體制得以確立。25 年來，中央始終堅持「一國兩制」方針，嚴格按照《憲法》和《基本法》辦事，支持香港特別行政區政府依法施政，香港經濟穩定增長、民生持續改善，文化、體育、社會保障等事業不斷邁上新台階，香港和祖國內地的聯繫交往日益密切，「一國兩制」實踐取得了舉世公認的成功。實踐充分證明，「一國兩制」是處理歷史遺留的香港問題、澳門問題的最佳解決方案，也是香港和澳門回歸後保持長期繁榮穩定的最佳制度安排，是行得通、辦得到、得人心的。堅持「一國兩制」方針，深入推進「一國兩制」實踐，符合港澳居民利益，符合國家根本利益，符合全國人民共同願望。




「一國兩制」實踐取得巨大成功的同時也遇到了一些新情況。2019年6月，香港爆發「修例風波」，「一國兩制」在香港的實踐遭遇前所未有的挑戰。面對嚴峻的局勢，中央始終堅守「一國兩制」初心，全面準確、堅定不移貫徹「一國兩制」方針，堅持和完善「一國兩制」制度體系，健全中央依照《憲法》和《基本法》對特別行政區行使全面管治權的制度，完善特別行政區從《憲法》和《基本法》實施相關的制度和機制，維護國家主權、安全、發展利益。制定出台《香港國安法》，建立健全維護國家安全的執行機制，築牢了特別行政區維護國家安全的法律制度屏障。完善香港特別行政區選舉制度，修補選舉制度存在的漏洞和缺陷，全面落實「愛國者治港」原則，為香港的民主健康發展打下了堅實基礎。同時，還在憲制層面進一步明確香港特別行政區公職人員參選、任職和就職宣誓等制度，支持特別行政區完善公職人員宣誓效忠制度。這些重大舉措和制度安排，正是新時代堅持和完善「一國兩制」制度體系的生動實踐和最新發展，對於確保「一國兩制」實踐始終沿着正確軌道行穩致

遠、確保香港長期繁榮穩定和長治久安，具有重要而深遠的影響。當前，「一國兩制」實踐邁入新階段，無論是香港特別行政區政府還是社會各界人士，更有條件集中精力抓經濟、謀發展、破解住房難和其他突出的民生問題，推動香港融入粵港澳大灣區建設，融入國家發展大局，提升香港的國際競爭力，開啟良政善治。

各位嘉賓、各位朋友，「一國兩制」是中國共產黨百年奮鬥歷史的重要篇章。中國共產黨十九屆六中全會作出《關於黨的百年奮鬥重大成就和歷史經驗的決議》，「一國兩制」作為重要內容寫入其中，不僅充分肯定了「一國兩制」實踐的歷史性成就，更彰顯了中央繼續全面準確、堅定不移貫徹「一國兩制」方針的信心和決心。

隨着《香港國安法》深入實施，選舉制度修改完善，三場重要選舉成功舉行，「愛國者治港」原則得到落實，香港氣象煥然一新。未來五年，是香港從由亂到治走向由治及興的關鍵時期。中央人民政府將一如既往堅定支持行政長官和新一屆特區政府依法施政。由治及興，是更艱苦的過程和工作。天地立心，非暢快一人；萬世太平，需能者捨身。我們相信，香港特別行政區政府一定能夠團結帶領香港社會各界砥礪前行，繼續發揚「獅子山」精神，同舟共濟，乘勢而上，開創香港政治安全、經濟繁榮、社會安定的新局面！我們相信，有包括七百四十多萬香港同胞在內的全體中國人民的共同努力，中華民族偉大復興的光明前景必將無比輝煌！

最後，我再次預祝本次論壇成果豐碩，取得圓滿成功，謝謝大家！



陳冬

中央人民政府駐香港特別行政區
聯絡辦公室副主任

尊敬的林鄭月娥行政長官，各位嘉賓，女士們、先生們、朋友們，大家上午好！

很高興通過視頻參加《基本法》實施 25 周年法律論壇。這讓我們有機會一起回顧歷史、總結經驗、展望未來。受駱惠寧主任委託，我僅代表中央人民政府駐香港特別行政區聯絡辦公室，對論壇的舉辦表示熱烈的祝賀！

兩年前，律政司舉辦了以「追本溯源」為主題的法律論壇，今天又圍繞「本固枝榮」這個主題進一步深入研討。論壇抓住了《基本法》實施的核心要義，準確把握了「一國」與「兩制」的內在關係，很有意義。

習近平總書記在慶祝香港回歸祖國 20 周年大會上的講話指出，「一國」是根，根深才能葉茂；「一國」是本，本固才能枝榮。**全面準確落實《基本法》，必須堅守「一國」原則。**《憲法》和《基本法》共同構成特別行政區的憲制基礎，《憲法》是國家的根本大法，《基本法》是根據《憲法》制定的。《基本法》序言開宗明義，香港自古以來就是中國的領土。第一條和第十二條是《基本法》的根本條款，明確規定，香港特別行政區是中華人民共和國不可分離的部分，是中華人民共和國的一個享有高度自治權的地方行政區域，直轄於中央人民政府。回歸 25 年來，《基本法》的貫徹實施維護了國家主權、安全、發展利益，維護了中央對香港的全面管治權。中央依法管理特別行政區外交、國防等事務，依法行使《基本法》解釋權和重大事項決定權，先後任命了六任行政長官，行使對特區立法、預決算、法官任免等的備案權，依法決定特別行政區實行的制度，支持特別行政區政府依法施政。針對一個時期「反中亂港」活動猖獗，嚴重挑戰「一國」底線的嚴峻局面，中央審時度勢、果斷出手，依照


《憲法》和《基本法》，制定實施《香港國安法》，完善香港選舉制度，明確公職人員參選、任職和就職宣誓等法定要求和條件，落實「愛國者治港」的原則。通過一系列標本兼治的舉措，推動香港局勢實現由亂到治的重大轉折，牢牢守住了「一國」底線，確保「一國兩制」實踐始終沿着正確方向前進。

全面準確落實《基本法》，必須充分發揮「兩制」的優勢。習近平總書記指出，在「一國」的基礎之上，「兩制」關係應該也完全可以做到和諧相處、相互促進。《基本法》第二條規定，全國人民代表大會授權香港特別行政區依據本法實行高度自治。《基本法》第三章從第二十四條至第四十一條都是保障權利自由的條款，只有第四十二條是關於遵守法律的義務規定，香港居民依照《基本法》享有前所未有的廣泛權利和自由。《基本法》第五章明確規定，香港保持國際金融中心地位，自行制定貨幣金融政策；保持自由港地位，實行自由貿易政策，為單獨關稅地區；保持國際和區域航空中心地位，等等。這一切都賦予了香港背靠祖國、面向世界的廣闊發展空間。25年來，香港經濟保持平穩發展，各項社會事業邁上新台階。本地生產總值從1997年的1.37萬億港元增至2021年的2.86萬億港元，增長了一倍多，人均收入位居世界前列。香港是全球最具競爭力的經濟體之一。根據全球金融中心指數排名，香港位居全球第三；根據世界貿易組織統計，香港是全球第六大的貿易實體。香港整體法治水準在139個國家、地區中排名保持前列，持續獲評為全球最廉潔的地方之一。毫無疑問，「一國兩制」在香港的實踐是成功的，取得的成就是有目共睹的。面向未來，「一帶一路」倡議、粵港澳大灣區建設、「十四五規劃」和2035年遠景目標綱要等，為香港提供了重大發展機遇。



我們相信，香港只要堅守「一國」之本，善用「兩制」之利，更好融入國家發展大局，就一定能有效應對各種風險挑戰，續寫「一國兩制」實踐的新篇章。

習近平總書記強調，中央貫徹「一國兩制」方針，堅持兩點：一是堅定不移，不會變、不動搖；二是全面準確，確保「一國兩制」在香港的實踐不走樣、不變形。回歸 25 年的實踐充分證明，《基本法》是符合國家利益和香港實際，能夠為「一國兩制」提供制度保障的一部好法律。「法與時轉則治，治與世宜則有功」。我們要始終堅定制度自信，完善特別行政區同《憲法》和《基本法》實施相關的制度和機制，堅定維護《憲法》和《基本法》確定的憲制秩序，持續加強《憲法》和《基本法》教育，推動「一國兩制」實踐行穩致遠。

預祝此次論壇取得圓滿成功！謝謝大家！

主題演講

「一國兩制」政策的發展與未來



沈春耀

全國人大常委會香港特別行政區
基本法委員會主任

尊敬的林鄭月娥行政長官、鄭若驊司長、尊敬的各位嘉賓、朋友們大家好。很榮幸受主辦方的邀請，在香港特別行政區成立 25 周年法律論壇上作演講。對於「一國兩制」事業來說，2022 年是一個具有重要標誌性意義的年份。

首先，是香港回歸祖國及香港特別行政區成立 25 周年，是「一國兩制」由國家方針政策付諸具體實踐，香港特別行政區《基本法》正式施行的第 25 個年頭。其次，2022 年也是鄧小平同志首次公開提出「一國兩制」偉大構想 40 周年，是國家現行《憲法》公布施行，並在《憲法》中創設特別行政區制度 40 周年。主辦方選擇在這個時間節點舉辦法律論壇，大家在一起感悟「一國兩制」方針的精神實質，體會「一國兩制」實踐的偉大意義。這對於促進香港社會的《憲法》和《基本法》教育、國情教育、增強香港同胞的國家意識和愛國精神具有積極的意義，有利於在新時代更好地推動「一國兩制」實踐，沿着正確的方向前進。

2021 年是中國共產黨成立 100 周年。「一國兩制」是中國共產黨百年奮鬥光輝歷史的重要篇章。黨的十九屆六中全會通過《中共中央關於黨的百年奮鬥重大成就和歷史經驗的決議》，充分肯定了「一國兩制」方針及其實踐的歷史功績，得出的重要結論就是「一國兩制」實踐取得舉世公認的成功。同時，《決議》強調「必須全面準確、堅定不移、貫徹『一國兩制』方針，堅持和完善『一國兩制』制度體系」。全面準確、堅定不移、貫徹「一國兩制」方針、堅持和完善「一國兩制」制度體系，這就為新時代確保香港長治久安和繁榮穩定，推進香港「一國兩制」實踐行穩致遠，提供了根本遵循和行動指引。

我們必須正確把握「全面準確」和「堅定不移」、「堅持」和「完善」這兩個「辯證關係」，將其中的深刻內涵和實踐要求貫徹落實體現到香港特別行政區治理的全過程和各方面。

第一個「辯證關係」是貫徹「一國兩制」方針，既要「全面準確」又要「堅定不移」。一直以來，香港社會和海內外各界都很關注「一國兩制」的實踐走向，常常有人提出「一國兩制」今後是否會有變化、會有什麼變化。黨的十八大以來，習近平主席多次強調，中央貫徹「一國兩制」方針堅持兩點，一是堅定不移、不會變、不動搖。二是全面準確，確保「一國兩制」在香港的實踐不變形、不走樣，始終沿着正確方向前進。理解好、把握好「堅定不移」與「全面準確」之間的內在辯證的關係，對於新時代推進「一國兩制」事業具有重要意義。

第一，「一國兩制」是處理歷史遺留的香港問題的最佳解決方案，也是香港回歸後保持長期繁榮穩定的最佳制度安排。「一國兩制」25年來的成功實踐充分說明，這一個偉大構想及其制度方案是完全行得通、辦得到、得人心的。堅定不移地貫徹「一國兩制」方針，深入推進「一國兩制」事業，符合香港居民利益，符合國家根本利益，符合全國人民共同願望。我們要增強對「一國兩制」的制度自信和實踐自覺，只要是實踐證明是成功的東西、有益的東西，我們都要堅定不移地貫徹下去，傳承發揚。無論遇到什麼樣的困難和挑戰，對「一國兩制」方針的信心和決心都絕不動搖，對推進「一國兩制」事業的信心和決心都絕不動搖。

第二，堅定不移貫徹「一國兩制」方針，確保「一國兩制」實踐行穩致遠，必須做到「全面準確」。對「一

國兩制」方針的理解和把握，應當是全面的，而不是片面的；應當是準確的，而不是曲解的。一旦在認識與實踐中出現了偏差，就要及時矯正。習近平主席曾指出，對香港來說，應該關心的不是「一國兩制」方針會不會變的問題，而是怎樣全面準確地把「一國兩制」方針貫徹落實好。貫徹「一國兩制」方針，必須準確把握「一國」和「兩制」的關係，正確處理中央和特別行政區的關係，維護《憲法》和《基本法》確立的特別行政區憲制秩序，維護國家主權、安全、發展利益，保持香港的長期繁榮穩定。要把堅持「一國」原則和尊重「兩制」差異，維護中央對特別行政區全面管治權和保障特別行政區高度自治權，發揮祖國內地堅強後盾作用和提高特別行政區自身競爭力結合起來，任何時候都不能偏廢，都不能割裂開來、對立起來。我們絕不能允許任何危害國家主權安全、挑戰中央權力和《基本法》權威，利用香港對內地進行滲透破壞的活動。貫徹「一國兩制」方針，只有做到全面準確、堅定不移才能夠持久，「一國兩制」事業才能走得穩、走得好、走得遠。

「一國兩制」實踐在香港已經走過了 25 年，紀念香港特別行政區成立 25 周年，人們回顧歷史自然會想到今天、想到未來、想到再過 25 年會怎麼樣。鄧小平同志當年曾經多次明確回答過，充滿了對「一國兩制」未來的信心。他說，「為了實現我們的發展目標，要更加開放。既然這樣，怎麼會改變對香港的政策呢？實際上，50 年只是一個形象的講法，50 年後也不會變。前 50 年是不能變，50 年之後是不需要變。」只要我們對「一國兩制」堅信而篤行，「一國兩制」的生命力和優越性就會持續地、充分地顯現出來，「一國兩制」就具有持久的生命力和獨特的優越性。實踐是檢驗真理的唯一標準。「一國兩制」未來會怎麼樣，關鍵是要看

實踐經驗、實踐效果。如果「一國兩制」實踐表明它是成功的、是有效的、是得人心的，「一國兩制」事業就一定會行穩致遠。

第二個「辯證關係」是對於已實行的「一國兩制」制度體系，既要一以貫之「堅持」，又要與時俱進「完善」。「一國兩制」是黨領導人民實現祖國和平統一的一項重要制度，是中國特色社會主義的一個偉大創舉。經過二十多年的實踐，我們在「一國兩制」方面，從國家層面到特別行政區層面，已經形成了一整套制度體系。黨的十九屆四中全會、六中全會都對堅持和完善「一國兩制」制度體系提出了明確要求。堅持和完善「一國兩制」制度體系，為新時代特別行政區制度建設和發展確定了重要原則。我們要理解好、把握好「堅持」與「完善」之間內在的辯證關係。

第一，一以貫之「堅持」「一國兩制」制度體系，是深入推進「一國兩制」事業的必然要求。「一國兩制」作為黨和國家的大政方針，必須通過具體的制度體系、制度安排、制度規則呈現出來，落到實處。這主要是通過《憲法》、《基本法》和一系列的法律、法規來實現的。《憲法》是國家根本大法，是全國各族人民共同意志的體現，是特別行政區制度的法律淵源。《基本法》是根據《憲法》制定的基本法律，規定了在特別行政區實行的制度和政策，是「一國兩制」方針的法律化、制度化，為「一國兩制」在特別行政區的實踐提供了法律制度保障和支撐。在《憲法》和《基本法》的憲制基礎上，形成和實行了「一國兩制」制度體系。黨的十九大確立的「十四個堅持」的基本方略，黨的十九屆四中全會概括的「十三個堅持」的顯著優勢，都將堅持「一國兩制」列入其中，必須長期堅持。全面準確、堅定不移貫徹「一國兩制」方針，必須有可靠管用、行之有效的制

度體系作保障、作依託。堅持依法治港，自覺維護《憲法》和《香港基本法》共同構成的香港特別行政區憲制基礎。自覺維護《憲法》和《香港基本法》確立的香港特別行政區憲制秩序和法治秩序，在法制軌道上推進「一國兩制」實踐行穩致遠。

第二，與時俱進地完善「一國兩制」制度體系，是確保「一國兩制」實踐行穩致遠的必然要求。形勢在發展、時代在前進，「一國兩制」也不是一成不變的。正如習近平主席所指出的，「一國兩制」的制度體系也要在實踐中不斷加以完善。沒有堅持「一國兩制」就會失去正確方向。沒有完善，「一國兩制」就會失去生機活力。二者相輔相成、不可或缺。堅持並不意味着固守僵化、一成不變、一勞永逸。任何制度體系和法律規範，如果只是簡單機械地堅持，沒有與時俱進的完善，將會難以發揮其持久的功效，即使想堅持，也難以長久地堅持下去。「一國兩制」是一項前無古人的開創性事業，需要在實踐中探索前進，也必然在實踐中，遇到一些可以預料和難以預料的新情況、新問題甚至風險挑戰。國家層面也好，特別行政區層面也好，都需要在制度建設和制度發展方面作出積極應對、與時俱進，適應新形勢、化解新矛盾、解決新問題、實現新發展。

各位嘉賓朋友們，香港回歸祖國以來，黨和國家堅定貫徹「一國兩制」、「港人治港」、高度自治的方針，堅持依法治港，運用法治思維和法治方式處理香港事務，嚴格依照《憲法》和《基本法》辦事。25年來，針對香港「一國兩制」實踐中出現的新情況、新問題，全國人大及其常委會依據《憲法》、香港《基本法》和有關法律，採用制定法律、修改法律、解釋法律、作出決定、將有關全國性法律列入香港

《基本法》附件三等多種方式，堅決維護國家主權、安全、發展利益，保持香港長期繁榮穩定。

過去一個時期，受各種內外複雜因素影響，「反中亂港」活動猖獗，香港局勢一度出現嚴峻局面。特別是 2019 年發生修例風波後的一段時間裏，「反中亂港」勢力蓄意破壞香港社會秩序，一些外國和境外勢力肆意干涉中國內政，通過各種方式插手香港內部事務並進行滲透、搗亂。這些行為和活動嚴重挑戰「一國兩制」原則底線，嚴重損害法治權威，嚴重危害國家主權、安全、發展利益，必須採取有力措施，依法予以防範、制止和懲治。貫徹黨中央重大決策部署，全國人大及其常委會根據《憲法》和《香港基本法》出台了一系列重大舉措，作出了新的制度安排。

一是通過「決定＋立法」的方式，建立健全香港特別行政區維護國家安全的法律制度和執行機制。香港《基本法》第二十三條明確規定，香港特別行政區應自行立法，禁止危害國家安全的有關行為和活動。然而，由於「反中亂港」勢力和外部敵對勢力的極力阻撓干擾，第二十三條立法一直沒有完成。香港特別行政區維護國家安全的制度機制存在明顯不設防問題。香港特區國家安全面臨迫在眉睫的重大風險。鑒於這種情況，2020 年 5 月 28 日，十三屆全國人大第三次會議作出全國人民代表大會關於《建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》。6 月 30 日全國人大常委會根據全國人大上述決定的授權，制定了《中華人民共和國香港特別行政區維護國家安全法》，並決定將其列入《香港基本法》附件三，在香港特別行政區公布實施《香港國安決定》和《香港國安法》彌補了香港特別行政區維護國家安全制度機制中存在的漏洞和缺陷，有效

地打擊和震懾了香港特別行政區內危害國家安全的違法犯罪活動，一舉扭轉了香港亂局，使香港社會重回正軌。


《香港國安決定》和《香港國安法》的實施標誌着香港實現了由亂及治的重大轉折，也為香港今後由治及興奠定了堅實的法治基礎。

二是通過「決定＋修法」的方式，落實「愛國者治港」原則，完善香港特別行政區選舉制度。一直以來，「反中亂港」勢力通過香港特別行政區選舉平台和立法會議事平台，或者利用立法會議員等公職人員身份，癱瘓立法會運作，阻撓政府依法施政，妄圖奪取香港管治權。這表明，香港特別行政區選舉制度存在明顯的漏洞和缺陷，必須採取有力措施完善選舉制度，消除制度機制方面存在的隱患和風險。鑒於這種情況，2021年3月11日，十三屆全國人大四次會議作出了《全國人民代表大會關於完善香港特別行政區選舉制度的決定》；3月30日，全國人大常委會根據全國人大上述決定的授權，修訂了香港《基本法》附件一《香港特別行政區行政長官的產生辦法》和附件二《香港特別行政區立法會的產生辦法和表決程序》。全面貫徹和落實「愛國者治港」原則，形成了一套符合香港法律地位和實際情況的民主選舉制度，保障了香港特別行政區政權安全，確保香港管治權牢牢掌握在愛國愛港力量手中。

此外，全國人大常委會還先後就批准廣深港高鐵西九龍站設立口岸實施「一地兩檢」合作安排、香港特別行政區第六屆立法會繼續履行職責、香港特別行政區立法會議員資格問題等作出有關決定。

全國人大及其常委會近年來出台的有關決定和立法修法是全面準確，堅定不移貫徹「一國兩制」方針的重大舉措，

是根據《憲法》和《基本法》作出的具有重要憲制意義的制度安排，也是堅持和完善「一國兩制」制度體系的生動實踐和最新發展，具有重大制度創新意義，有力、有效地維護了國家主權、安全、發展利益，維護了香港的長治久安和繁榮穩定，也必將對香港「一國兩制」實踐，產生十分重大而深遠的影響。

各位嘉賓、朋友們。2022年下半年，中國共產黨第二十次全國代表大會將在北京召開，這是中國共產黨在進入全面建設社會主義現代化國家，向第二個百年奮鬥目標進軍新征程的重要時刻召開的一次十分重要的會議，是黨和國家政治生活中一件大事、盛事，也將給香港發展帶來新的機遇。在這裏，我衷心地希望並完全相信香港各界人士在愛國愛港偉大旗幟下，實現最廣泛的團結，把握新機遇，順勢而發、乘勢而上、齊心協力推動香港「一國兩制」實踐，沿着正確方向行穩致遠，為實現中華民族偉大復興作出自己獨特的貢獻。謝謝大家。

主題對談

暢談《基本法》實踐二十五周年
——與時並進

主題環節



鄭若驊 大紫荊勳賢 GBS SC JP
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各位嘉賓、各位朋友，大家早上好。1997年7月1日香港特別行政區成立，《中華人民共和國香港特別行政區基本法》生效，標誌着香港和平地脫離英國殖民統治，回歸祖國管治體系，成為中華人民共和國的一個特別行政區。國家通過《基本法》確立對香港的政策方針——「一個中國、兩種制度」，「港人治港」，高度自治。這是人類文明、智慧的表現，是一件很了不起的事。有鑑於社會上一直存在着對香港的憲制秩序一些不正確的理解，到2019年「修例風波」後，我和律政司的同事商量籌備出版一本書，目的是追溯香港回歸祖國這段重要歷史，通過梳理《基本法》的起草過程、條文的演變等，去呈現這部憲制性法律的背景、目的和起草者通過文字表達的意思。此外，我們也將回歸以來香港法院處理過的一些與《基本法》有關的案例匯集起來。希望這樣一本書可讓社會就《憲法》、《基本法》及其確立的香港特區憲制秩序有一個更準確更全面的理解。同時希望本書能夠成為學習《基本法》的一個基礎讀本，引發香港市民對《憲法》及《基本法》有更深入的學習與探索。

經過兩年多的工作，我很高興在這裏宣布《基本法起草材料及案例精選》這本書共兩冊的繁體中文版正式出版，並將於政府刊物銷售處及其他平台上架。英文版和簡體字版稍後會陸續出版發行。

由2020年開始本書的工作至今，我們團隊獲益不淺。我們發現很多現時就《基本法》的爭議，當年起草期間已討論過。

回歸以來，有部分香港人，包括一些法律界人士，錯誤地認為《憲法》不適用於香港特區，認為《憲法》不見於《基本法》附件三，不是香港特區法律一部分。我們在本書

指出，這個問題在《基本法》起草工作開始時，特別是《憲法》提及社會主義在實行資本主義特區是否有法律效力及如何適用，草委們其實曾經激烈討論過。草委會中央與香港特別行政區關係專題小組亦就此進行了研究。曾有建議在《基本法》中詳細列明《憲法》哪些條文適用於香港，哪些條文不適用於香港。亦有意見表示《基本法》是子法、《憲法》是母法，如在《基本法》中規定《憲法》哪些條文是否適用於香港，在法律倫理上、法律程序上都是說不過去，在世界憲法史上亦沒有先例，在技術上也有困難。1986年11月11日，該專題小組經過一輪討論及研究後，在工作報告中說明：「委員們認為，中國的憲法作為一個整體對香港特別行政區是有效的，但是由於國家對香港實行『一國兩制』的政策，憲法的某些具體條文不適用於香港，主要是指社會主義制度和政策的規定。」

除此之外，香港有些人錯誤地認為全國人大和全國人大常委的決定亦不適用於香港特區，或者是沒有約束力。其實大家只要緊記香港特區的「誕生」正正是基於全國人大1990年4月4日根據《憲法》第三十一條所作的決定，便能明白全國人大和全國人大常委就香港特區而作出的決定當然適用於香港並有效。

只要我們追本溯源，毋忘「一國兩制」的初心，對《基本法》的誤讀就會越來越少，對「一國兩制」的落實就會越來越順暢，而過去25年的挑戰有望成為香港特區成長過程中的歷練和養分。

本書第二冊收錄了199宗案例，橫跨1997年7月至2021年12月，可用作研究回歸25年來「一國兩制」遇到的各種挑戰的材料。

馬維騏案¹是對《基本法》延續香港特區法律和司法制度原則的挑戰。幾名犯了普通法串謀妨礙司法公正罪的被告，試圖以普通法罪行在 1997 年 7 月 1 日國家對香港恢復行使主權的同時，已經失效和終止運作，審訊不應繼續為由，以期能金蟬脫殼。被告的狡辯當然未能得逞。在判詞中陳兆愷法官（時任高等法院首席法官，現任終審法院非常任法官）指出，在解釋《基本法》時，必須知道《基本法》是中華人民共和國的全國性法律，更須牢記它的歷史、性質和目的。

判詞第 17 段說：「《基本法》的用意是明確的。香港的法律和法律制度不會有任何改變（違反《基本法》的除外）。這些就是我們社會的結構。連續性是穩定的關鍵。任何中斷都將是災難性的。即使是片刻的法律真空也可能導致混亂。除與《基本法》相抵觸的條文外，與法律和法律制度有關的其他條文都必須繼續有效。現行制度必須在 1997 年 7 月 1 日就已到位。這一定是《基本法》的用意。」

過去 25 年在「一國兩制」下人大釋法不斷被誤解被挑戰。《基本法》第一百五十八條起草過程經歷十稿，期間變化不少，亦引來很多不同意見。在處理《基本法》的起草材料時，我們發現以下討論，可能亦是《基本法》第一百五十八條的核心之一：

「現在香港法院可審理英國政府的行政行為，但目前的制度下所有案件的終審權都在英國，不在香港，故不致造成地區憲制與宗主國利益不一致的情況。但在 1997 年後，香港會設立終審法院，香港的司法制度與其主權國的司法制度分離，這是問題的核心。」

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

就第一百五十八條第一款而言，當年爭議人大常委應否擁有《基本法》的解釋權。其中，不少意見指出，《基本法》是全國人大制定及頒布的全國性法律，根據《憲法》第六十七條，解釋權自然在人大常委。另一方面，亦有意見認為，如中央對《基本法》擁有解釋權，港人會視之為內地干預香港的司法獨立，影響香港人心等。但同時亦有草委明確指出《基本法》不是一個純粹地方性法律，它規定了許多中央與香港特區關係的內容，如果完全由一個地方法院在審理案件中對它進行無限制解釋，不但影響香港，而且可能影響全國，是欠妥的。

最終，《基本法》第一百五十八條第一款規定全國人大常委擁有《基本法》的解釋權。這完全符合香港特區的憲制地位，更與全國人大常委按《憲法》解釋法律的權力及全國人大按《憲法》監督《憲法》的實施的權力一致，體現了中國人民代表大會制的政治制度下全國人大是國家最高權力機關。

至於香港法院的解釋權，第二款規定全國人大常委授權香港法院自行解釋自治範圍內的條款。這也正正體現了高度自治的原則，然而在討論時提到涉及中央管轄事務的案件的關注，第一百五十八條也自然需要有第三款來處理涉及國防外交事務等的爭議。

有關《基本法》第一百五十八條第三款的解釋機制的立法原意和相關的考慮，相信一會兒我們與基本法起草委員會委員譚惠珠大律師交流，一定有很多寶貴的回憶可與我們分享，亦讓我們能正確理解第一百五十八條的原意及目的。

本書第一冊收錄了回歸 25 年以來出現過的五次人大釋法。牽涉的《基本法》條文包括第十三條、第十九條、第二十二條、第二十四條、第一百零四條等。其中 2011 年 8 月人大常委關於第十三條第一款和第十九條的解釋，是首宗由

終審法院在**剛果（金）案**²中依據《基本法》第一百五十八條第三款的規定提請人大常委釋法的案件。**剛果（金）案**的基本問題是，國家在1997年7月1日恢復對香港行使主權後，香港特區法院是否可以依循一個容許商業例外的國家豁免原則，以至不符合中國在與外國關係上一貫採用的絕對豁免原則。終審法院多數判決的臨時命令裁定國家豁免政策是外交事務，香港特區作為中華人民共和國內的一個地方行政區，不可以採用一個和國家豁免政策不同的豁免原則。在這種情況下，多數判決確認提請人大常委釋法是責任，而臨時命令的裁定最終亦得以確立。

「人權自由」是另一個過去25年不斷被人關注的議題。由回歸之初的**國旗案**³以言論自由挑戰「一國」的主權權威及「兩制」的憲制事實和新秩序，至近年**周諾恆、黃之鋒**⁴的案件，被告皆以行使《基本法》賦予的示威遊行自由為名，挑戰香港特區因保護社會公共秩序、保護他人的權利和自由訂立的法例和法庭判處的刑罰。香港法院在案件判詞中均明確指出，《基本法》的相關權利並非絕對，且為了公共秩序和保護他人的權利和自由，可以對行使這些權利施以合法的限制。一旦示威者牽涉暴力或威脅使用暴力，便是越過了受憲制保護的和平示威的界線，進入非法活動的領域，可受到法律制裁和限制。

在**高鐵一地兩檢案**⁵，法院面對新挑戰的回應和對《基本法》條文的解讀，足以影響香港這一制是封閉還是開放，是

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

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

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

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

向前進步還是故步自封；與國家的關係是疏離還是融合。當然，有關的立法工作亦必須合法合憲。有市民就《廣深港高鐵（一地兩檢）條例》向法院申請司法覆核，理由是該新法例不符合《基本法》。該申請被高等法院原訟法庭駁回。申請人提出上訴，同樣被上訴法庭駁回。

上訴法庭裁定，「一地兩檢」是《基本法》頒布時並未料及的新事物，法庭在決定該條例是否合憲時，必須視《基本法》為具生命力的文書，即在「一國兩制」原則下維持香港的制度並非意味着原地踏步。反之，香港的制度可以並應當在《基本法》的框架下持續發展，以配合時代所需及社會情況，而某些需要及情況亦非起草人所能預期。

上訴法庭第 69 段指出：「……在內地與香港各自的制度下，在交匯處的主題事項須符合《基本法》，這點不言而喻。至於是否符合《基本法》的問題，兩制的運作必須一致。兩制同屬一國和一個國家的憲制秩序，因此有如此要求。凡人大常委以通過決定的方式確認某項安排符合《基本法》，就內地法律而言，其決定即屬最終決定。這是香港法庭在處理合憲問題（即其一受挑戰事項在香港法律下是否違反《基本法》）時，所須充分承認和接受的重要事實。因此，對於法庭在詮釋《基本法》方面而言，人大常委在其決定中表達的權威意見極具信服力。」

全國人大常委的決定不單有信服力，在法律角度亦有約束力，人大常委的決定就內地法律和香港法律而言均是最終的決定，這點從《憲法》的條文和國家的政治制度均可以明確知悉。

剛才沈主任（全國人民代表大會常務委員會香港特別行政區基本法委員會主任沈春耀）提到在 2019 年之後制定了

《香港國安法》。在制定了國安法後，我們仍然聽到國際社會上有人指《香港國安法》破壞「一國兩制」，令特區失去高度自治。此等說法是完全錯誤的，在法律層面上站不住腳。

首先，國家安全直接關乎到全國人民及國家的整體利益，屬於中央事權，從來不屬於香港特區「一國兩制」下的自治範圍。《基本法》第二十三條屬於義務條款，不會改變國家安全立法完全是屬於中央事權這基本原則，亦不應被視為中央放棄在其認為有需要的情況下就維護國家安全立法的權利和責任。

第二，根據《憲法》，全國人大是國家最高權力機關，有權行使國家立法權，制定法律，亦有權有責監督《憲法》的實施。既然維護國家安全屬中央事權，全國人大在《憲法》下當然有權作出《528 決定》（《全國人民代表大會關於建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》）授權人大常委制定《香港國安法》。《基本法》第十八條指出可列於附件三之全國性法律，「限於有關國防、外交和其他按本法規定不屬於香港特別行政區自治範圍的法律」。因此，《香港國安法》可按《基本法》第十八條列入附件三，然後在香港特區公布實施。

由此可見，《香港國安法》是完全合法合憲的。

《香港國安法》指出《基本法》第一條和第十二條是該法的根本性條款，任何機構、組織和個人均不得違背這兩條條款，並重申了「一國兩制」的初心及《基本法》的原意，兩者有機結合讓「一國兩制」行穩致遠。

為了推廣社會對法治、《憲法》、《基本法》及國家安全的正確認識，律政司在過去兩年舉辦了很多不同的活動。

譬如在推展法治教育方面，律政司於 2020 年推出了「願景 2030 —— 聚焦法治」的十年計劃。在這項計劃下，我們製作了一系列「律政動畫廊」動畫短片為公眾提供基本法律知識，有為小學生而設的法律常識問答比賽、為中學生而設的工作坊、「明法·傳法」的活動、「法律之旅」，以及剛剛完成的「明法創未來」短片創作比賽。此外，律政司支持了基本法基金會於 2020 年 11 月推出的「法治及基本法網上教育資源中心」，為教師提供一系列以《憲法》、《基本法》和法治為主題的教材。

各位，喬曉陽主任在《基本法起草材料及案例精選》「前言」中提到，習近平主席明確指出，中央貫徹「一國兩制」方針堅持兩點：一是堅定不移，不會變、不動搖；二是全面準確落實，確保「一國兩制」在香港的實踐不走樣、不變形，始終沿着正確方向前進。


今天國家領導人的話，與三十多年前的領導人鄧小平先生的說法一致，是一脈相承的。1984 年鄧小平會見英國首相戴卓爾夫人時的談話中解釋了為什麼「一國兩制」五十年不變，五十年後也不變。

1987 年鄧小平會見了基本法草委，他再次說到「一國兩制」五十年不變，五十年後也不變。他說：「今天我想講講不變的問題。就是說，香港在 1997 年回到祖國以後五十年政策不變，包括我們寫的基本法，至少要管五十年。我還要說，五十年以後更沒有變的必要。香港的地位不變，香港的政策不變。……一個是政局穩定，一個是政策穩定，兩個穩定。不變也就穩定。如果到下一個五十年，這個政策見效，達到預期目標，就更沒有理由變了。所以我說，按照『一國兩制』的方針解決統一問題後，對香港、澳門、台灣

的政策五十年不變，五十年之後還會不變。當然，那時候我不在了，但是相信我們的接班人會懂得這個道理的。……」

今年3月9日，很多媒體報道，引述全國政協副主席、港澳辦主任夏寶龍指出，「一國兩制」五十年不變，而五十年後亦不需要變，並會行穩致遠，他亦強調在香港實施的普通法和法律制度也不會改變。夏寶龍先生的言論重申了習近平主席及中央人民政府各領導人一直明確支持和堅決在香港落實「一國兩制」。

初心不改，大道不移。可以肯定的是，只要毋忘「一國兩制」初心，牢固樹立「一國」意識，堅守「一國」原則，「一國兩制」是香港面向未來保持長期繁榮穩定的最好安排和最佳制度。故此，《基本法》下所說明的資本主義制度和生活方式，以至是香港的普通法制度，我深信也會一路運作下去，沒有改動的必要。

國家主席習近平在2017年慶祝香港回歸祖國20周年大會暨香港特別行政區第五屆政府就職典禮說：「《中華人民共和國憲法》和《香港特別行政區基本法》共同構成香港特別行政區的憲制基礎，是特別行政區制度的法律淵源。」可見《憲法》與《基本法》共同為「一國兩制」奠下基石，同時具體說明了國家對香港特區的基本方針政策和制度，並且為「一國兩制」的實踐提供了最佳的法律保障。要讓「一國兩制」行穩致遠，大家必須緊記「一國」既是根，根深才能葉茂，「一國」也是本，本固才能枝榮。只要繼續全面正確貫徹落實《基本法》，相信必能達到「一法頒行國本固 萬民歡慶共枝榮」。多謝各位！

對談環節

與談人



鄭若驊 大紫荊勳賢 GBS SC JP
時任律政司司長



譚惠珠 大紫荊勳賢 GBS JP
時任全國人大常委會香港特別行政區
基本法委員會副主任

鄭若驊：首先，我謹代表律政司多謝譚惠珠女士抽空出席跟我們暢談他們作為起草委員會時候的工作分享，剛才我所提及的都是我們從文字裏面所見到的，但是實際情況及討論過程是怎樣呢？現在我們有一位直接當事人可以跟我們分享一下親身的經歷。在《基本法》裏面，很多條文都是值得我們討論的，但礙於時間所限，我們可以集中討論一下我剛才所提及第一百五十八條。原因是第一百五十八條從文字看來，第一百五十八條的第一款和第二款都是比較容易理解的，因為憲制上當然是全國人民代表大會常務委員會擁有解釋權，而香港自治範圍亦都有香港法院，但是我們只是看到文字上的相關描述，而第一百五十八條的第三款其實是一個比較特別的安排，現在就請譚大律師跟我們分享一下。

譚惠珠：可以的，多謝司長。當時起草《基本法》的時候，我是在第一組中央地方關係專題小組及第二組政治體制小組一起參與工作。在早期於第一組工作的時候，已經遇到一個問題，就是「《憲法》是否適用於香港？」。剛才律政司司長的演辭已經分析得很清楚，當這個問題置於一旁時，我們便需要面對第二個問題，就是解釋權的問題。律政司司長剛才亦有清楚地描述，回歸前因為已有樞密院，因此它的功能就等同於香港的終審法庭，而並沒有解釋權和審判權分開的問題。

但是，在香港回歸之後這個情況出現了變化，《憲法》內的第六十七條第四項指出，法律的解釋權是屬於全國人民代表大會常務委員會，司長剛才已經介紹了這一點。那麼我們面對一個問題，就是回歸之後香港設有一個終審庭，究竟《基本法》最終的解釋權或者最高的解釋權是屬於哪一方呢？因為《憲法》是適用於香港的，順理成章地就以第一款解決這個問題，就是全國人民代表大會常務委員會擁有解

釋《基本法》的權利，原因是這是一個全國性法律，並不是香港本地法律。而第二方面，就是我們怎樣處理香港的終審權及於非高度自治範圍內的事宜，是否應該讓法院在授權之下得到一個闊、廣和靈活的解釋權。當中我們亦有擔心的考慮。第一點，我們不希望香港人誤解香港的終審權是被人大釋法所影響或干預。第二點，我們不希望大眾有錯覺認為終審法庭遷移至北京，原因是當時存在着這個錯誤的說法。

於是我們着手尋找世界上哪一個地方同一個載體，或者是一個國家、一個組織內以比較權威性的方法可以解決這個終審權，以及解釋權不是同一個地方的問題。最終，我們在歐洲共同體這個體系內找到一個合適的參考。眾所周知，歐洲共同體內參加的成員國家都會簽訂條約，其中有一項《羅馬條約》，就是在歐洲共同體的條約內，各國成員已經同意有關歐洲共同體的法律的解釋權是屬位於盧森堡的歐洲共同體法院。任何有關各國成員須共同遵守的歐盟法律，它的最終解釋權就是屬於這個法院。不論是在英國這個實行普通法的鼻祖，這個國家是實行司法解釋權，終審權就是在法庭手上。不論是實行英國的系統，抑或是《大陸法》的系統，例如意大利，它是《羅馬法》的鼻祖。而《大陸法》的解釋權就是立法解釋權了。當司法解釋權和立法解釋權之間有碰撞的時候，當時我們擔心這樣存在着一些矛盾或爭議。於是，我們觀察到歐洲共同體不論在英國或意大利審案時，在終審過程之前，若案件與歐洲共同體的法律有關的話，亦會把這一條相關的法律和條文帶到盧森堡的歐盟法庭並取得解釋，那麼歐盟法庭所作出的解釋，亦會一致應用於普通法管轄的國家及《大陸法》管轄的國家，而所有成員國都必須遵守，並且其解釋是有約束力的。

在 1972 年 1 月的時候，英國加入了歐盟體系，當英國本土法律與歐盟的條約互相抵觸時，歐盟條約的效力將凌駕於英國本土法律，這時英國便需要自行作出調整。這個安排讓我們理解到這個解決矛盾的方法是適合於法制上成熟先進的國家。因此，我們參考這個方法，就如《基本法》第一百五十八條第一款的解釋權是屬於常委會，這是《憲法》第六十七條規定。而我們的法院獲授權可以解釋《基本法》。至於涉及中央地方關係，或者中央管理事務的條款，相關條款的解釋將會影響案件的判決時，這時候香港法院便「應」，用的是「應」字，應該在終審法院判決前向全國人民代表大會常務委員會提請一個解釋，而香港法院亦應該依照全國人民代表大會常務委員會作出的一個解釋為案件判決，這個做法保持了對於《基本法》這個全國性法律的解釋是全國一致的。這亦表示並非把終審權力送給北京，因為就等同於英國及意大利所有歐洲成員國的終審權都是本土國家擁有的，而這個做法亦避免若果涉及中央地方關係，或者中央管理的事務的解釋時，引起與憲制相關的問題。總括來說，我們參考了歐盟在解決司法解釋權和立法解釋權、普通法以及《大陸法》之間所引起的矛盾，這不會影響終審權，亦可以把解釋權和審判權按這個方法來分開運作。這就是制定《基本法》第一百五十八條的背景。

鄭若驊：謝謝你的解釋。這非常重要。因為很多時候我們並不明白你剛才提及的兩個詞語，分別是立法解釋權，以及司法解釋權。這個工作層面上，在一個「一國兩制」，以及一個成文法國家下的一個普通法制度的地區，內裏應該是怎樣運作呢？這是一個前無古人，非常創新的想法，所以當時你們能夠想出這個方法來處理這個問題是真的很了不起。



譚惠珠：這是經過研究想出來的。

鄭若驊：亦有一些說法不斷說人大釋法會影響司法獨立，可以請你分享一下你的看法嗎？

譚惠珠：這個做法完全不影響司法獨立，因為它只是解釋一個條文，審判一宗案件時，法官或者法庭需要考慮的其他元素，人大常委都不需要考慮。就着剛才提及在英國方面，他們都不認為由盧森堡的法庭來解釋歐盟的一條法律時，是影響自己的終審權。因此，所有的成員國都照這個方法做，終審權在自己的國家。

鄭若驊：剛才提及我們撰寫書本時的第一件案件是馬維騏案件，這案件亦提及了香港的法律制度由 1997 年前一天以至到後一天的連續性的一點。在起草基本法的工作時，譚

大律師你們那時候，以及我從張勇先生那邊聽說，為了確保法律可以過渡，就着《基本法》第一百六十條，在 1997 年 2 月 23 日作出一個決定。其實這個第一百六十條決定是對香港的法律制度可以這樣延伸下去，我個人認為是十分重要的。而我明白當中亦涉及很多準備工作，可以請你跟我們分享一下制訂第一百六十條的決定之前的工作嗎？你們於當中參與了哪些工作？或者是怎樣進行的？

譚惠珠：好的。這一項亦是中央地方關係小組的工作。正如剛才司長提及，我們不容許存在法律真空的情況。1997 年 7 月 1 日零時的時候，香港特別行政區的法律需要即時生效，使到不影響權利和義務，以及不會引起不明朗的情況。那麼我們是怎樣把《基本法》第八條內所提及的原有法律可以順利及無縫隙銜接呢？於是，在 1993 年時設立了一個特別行政區的籌備委員會預備工作委員會。

由當時開始，內地的基本法起草委員會及預備工作委員會內的法律小組的成員，當時本人亦是其中之一，這時候已經開始審閱，使用「審閱」這個詞彙是比較貼切。審閱所有香港原有的法律是否與《基本法》相互抵觸？是否可以被採用為香港特別行政區的法律？這項工作是由 1993 年預備工作委員會內的兩年多的工作一直延續到在 1996 年香港特別行政區籌備委員會成立，前後大概是四年的工作，把所有當時的原有法律，包括附屬立法，以及包含附則和附件的亦會徹底地翻讀一遍。而我們小組裏面香港的成員亦有參與其中，並實行雙軌互不影響制度，我們給予意見，法律小組那邊整理作出報告。

而另一方面，秘書處負責另一個更巨大的工作，就是把香港所有法律的每一條都翻讀一遍。這項工作開首時主要排

除有殖民地統治性質，或是對主權有影響的、或不符合香港特別行政區新的地位的法律條文。然後到了籌委會工作的時候，便開始歸納有多少項法律條文需要處理。剛才司長提及人大常委會作出的決定，便把條文歸納了四種：第一種，完全不可以在香港採用的，包括本身法律包含有凌駕性，例如是我們的《人權條例》內第三及第四款，這些與《基本法》抵觸的便不可以繼續使用。第二種是包含了很多法律名詞，亦有大部分不能使用。第三種是能夠局部使用。而第四種決定就是若果在回歸之後，亦發現有其他的法律是不應該採用的，而這種情況便依照《基本法》內規定的程序來處理。於是，在籌委會的時候，就是把香港特別行政區籌備委員會預備工作委員會的工作及分析歸納為四類，然後作出了司長所提及的決定，整個過程是認真的。據我所知，他們研究的工作範圍不但很廣泛，而且十分深入。原因是我們一直都收到研究的報告。

鄭若驊：我現在看着書本內的第一百六十條決定，亦有記載到這個過程。例如第一段指出第一百六十條決定的第一點就是香港的原有法律，包括普通法等是採用香港的特區法律，這亦是填補了法律的真空期，因為時間點上對接了。第二點提及了於第一百六十條決定內的附件一，會把一些不會採用的法律條文亦記錄下來，因為這些條文是抵觸了《基本法》。而在附件二，就是部分條文抵觸《基本法》，而附件二亦指出了某一個法例的某一些條文抵觸《基本法》的話便不適用，所以當我們閱讀相關法律條文時於何時把它抽出來，這些原因亦是我們需要知道的。

第四點亦是相當重要的，「採用為香港特別行政區法律的原有法律，自 1997 年 7 月 1 日起在適用時應作出必要的變

更、適應、限制或例外，以符合中華人民共和國對香港恢復行使主權後香港的地位以及《基本法》的有關規定。」例如決定列舉的例子就是《新界土地豁免條例》，而後面亦有列出一些香港殖民地時期的用語。

現時香港政府亦努力地逐一修改這些條例。因為雖然我們可以適應，但我們亦不希望在閱讀香港的法例時，仍然會看到舊有的詞彙。而法律改革委員會的秘書處亦在推動這項工作，當然整個政府團隊亦一起進行。所以，我們希望在完成了第一百六十條決定內的其中一點，希望可以整理好。感謝你的分享。在我們看完第一百六十條決定後看到這本《基本法》後面有一些附件，我們就會看到附件一及附件二。當我們翻開《基本法》第四十五條和第六十八條，在描述制度內容之後並提及了附件一和附件二。第四十五條是關於行政長官的選舉安排，最終達至普選，並使用了附件一，而第六十八條是關於立法會選舉的。為什麼當時會選擇用一個特別的做法，在《基本法》條文內加入附件這個概念呢？

譚惠珠：其實在中國的法律內並沒有附件這個概念，直至現在都沒有，現在沒有一條全國性法律是有附件的，所以使用附件是一個突破的做法。而這個突破是如何發生的呢？剛才司長開宗明義提及《憲法》適用於香港這一個部分。因為當時有人提及可把《憲法》適用於香港的條文，以附件把它們列入《基本法》內，而其他的便不適用。這個想法在 1985 年的時候亦是有市場的，但這是錯誤的。司長亦提到，已經糾正過來，《憲法》對於香港來說是一個整體完全適用於香港，而經過第三十一條文提供了一個基礎並誕生《基本法》，這是一個母法及子法的關係。但是，由於當時提出了使用附件，便開始研究附件的作用。

關於《憲法》是否適用於香港這個問題，這個大原則解決了，便沒有使用附件的做法。其後，到了附件三，全國性法律是可以經過附件三引入香港公布或是立法實施，這時便使用上了附件，原因是從之前的討論理解到附件是可以靈活地使用。其後，我們的政制小組需要制訂行政長官及立法機關產生的辦法，這個大原則亦清楚地釐定了，我們需要循序漸進地按香港的實際情況，然後用一個例如行政長官得到一個廣泛代表性的提名，最終亦會達至行政長官是普選出來。而立法會議員最終亦達致是全部普選出來。

政制小組當時已經理解到在 50 年內，若在一開始人大已經決定第一任的行政長官及第一屆立法會產生的方法，由那時候的決定演變或是進化，又或是與時俱進地發展而達致普選，當中《基本法》的條文是會經過未能預計在何時及未知道多廣泛程度的修改。而修改條文是需要全國人大會議於 3 月時作出修改的，同時，於修改條文的過程當中有 2,798 位人大代表是可以提供意見的，這是為了希望有關香港的問題是由中央內既了解香港、又了解「一國兩制」如何保障運作的工作人員負責處理。這樣除了講求靈活性外，也更準確地符合「一國兩制」的需要。這樣就不需要經過全國人民大會對條文作出修改，亦不需要經過投票作出通過。這個權力交給了人大常委，這樣他們就可以把附件一及附件二在適當的時候，例如曾經運用過的五部曲來修改行政長官及立法會產生立法了。這使我們可以扎實地向着普選的目標前進。

去年 3 月，人大做了一個決定，亦是司長所提及的「完善香港選舉制度」的一個決定。這個決定是人大常委會作出關於附件一及附件二的修改。這一次修改的目的是為了強化「愛國者治港」，一個非常重要的核心元素，因此特意在人

大作一個決定，然後交給常委會作出修改，而過往的附件一及附件二，雖然在 2007 年至 2014 年期間作出了三次修正，但是這兩個附件並不會繼續使用，而是使用去年人大常委會所通過的附件。

回應司長剛才的發問，與時俱進，中央協助我們處理在香港發生的問題，我們亦有很多寶貴的意見給中央決定如何處理。若我們可以在一個需要的時間、需要的範圍及需要的核心內容作出處理，我們使用附件的方法，這樣就不用驚動全國人民代表大會 2,700 多個代表來投票決定，亦符合我們在時間上的需要了。


鄭若驊：所以，我認為這兩條條文的制定其實是運用了十分聰明的方法，你們的工作小組是看見了循序漸進的方式，一直通過用附件慢慢來落實，而落實的時期你們便建議運用人大常委所提議的安排。剛才，你提及的是正確的。例如附件一及附件二的三次修改都是在同一天的。第一個是於 1990 年 4 月 4 日由全國人大負責，其後兩次是於 2010 年及 2021 年由全國人大常委負責，這樣正好體現了一個政治制度的架構，亦是中央的事權，但在中央事權之下，我們亦要操作，如何操作呢？你們那時便想到了使用附件的方式，這個亦是破天荒以及富有創意的一個做法。我本人十分感謝你們這一方面的安排。

譚惠珠：多謝。

鄭若驊：另外，我亦希望在此為我們律政司撰寫的一本書籍宣傳一番。我估計我們的同事稍後將會為各位派發這本書籍。這是律政司第一次嘗試把一些起草材料及案例的精選放在一本書裏，希望使更多人可以看到及參與其中。若果當

中有任何地方需要更正，亦請各位多多指教，亦希望能得到各位提供意見。

譚惠珠：我們一定會拜讀，以及多謝你的團隊在香港回歸 25 周年送給我們一份很好的禮物，多謝你們。

鄭若驊：多謝，多謝譚惠珠大律師，多謝各位！

專題演講

《基本法》的解釋



烈顯倫法官

大紫荊勳賢 JP
終審法院前常任法官

《基本法》的恰當解釋乃植根於若干基本主張。

第一、《基本法》是中國在「一國兩制」原則下因應香港實際環境而制定的憲制性文書。

第二、直白的文字須按其字面意思理解，律師的職責不是對文字故弄玄虛。

第三、一旦出現關於《基本法》條文意思的真正爭議，應聚焦查究該條文的目的。一個好例子是第四十條下的片語「『新界』原居民的合法傳統權益」。這些「權益」是什麼？在一宗近期案例郭卓堅訴地政總署署長¹（「丁權」案）中，終審法院透過查探該條文的歷史背景以處理這項爭議。法院沒有引述外國案例，也沒有援引歐洲人權法學理論，只直截了當地採用以事實為基礎的方法處理涉案字詞。這種處理方法，即使是不完全熟悉英語的人也能理解。這可說是把「透明度」付諸實踐。

第四、外國案例往往無助闡明爭議點，反而令爭議點變得模糊，因為兩者不能類比。儘管所使用的字詞經翻譯後看似相同，但不同的社會和政治背景會對字詞的意思加添不同色彩。試問香港法庭有多認識歐盟各個成員國（例如斯洛伐克或比利時）的社會結構和價值觀？

第五、《基本法》所保障的權利——例如第二十七條所述的言論和示威自由——並非絕對。這些都必然受限於其他人所享有且同樣要受保護的權利。如何協調這些相衝突的權益，是社會問題而不是法律問題。這是明文法律無法解決的問題。解決這個問題涉及實際地權衡相稱性，當中須考慮

1 (2021) 24 HKCFAR 349.

法庭力不能及的多個因素。令人遺憾的是，香港的上訴級法庭已將之提升至意識形態的層面，造成法律上的扭曲。

在方國珊²一案中，終審法院對下級法院造成困惑而並非給予實際指引。

案中一名區議員（被告人）被控以兩度在立法會會議廳公眾席上展示具煽動性的標語，從而在立法會小組委員會會議中引起騷亂，觸犯立法會規則。該案的案情不受爭議。被告人經原審後被判有罪，並且被判以社會服務令。她上訴至原訟法庭，而她的代表大律師質疑相關規則是否合憲，並引用被告人根據《基本法》及《香港人權法案條例》享有的個人權利，即言論和表達自由。原訟法庭法官以斬釘截鐵、所有人都能理解的方式處理這點。

法官指出：「公眾人士無權在立法會大樓內示威，特別是當會議正在進行之時……本席認為上訴人所提及的權利未受侵犯。不論是《基本法》還是《人權法案》都沒有賦予公眾人士自由在立法會會議廳內行使這種權利，特別是當他們沒有絕對權利進入會議廳之時為然」。

這項法律陳述簡單清晰、完全合乎常理。然而，案件再上訴至終審法院時，此事被提升至超乎常理的層面，結果為下級法庭帶來隱患。終審法院沒有維持原訟法庭法官的處理方式從而提升法律的透明度，反而就一宗加拿大案例和多宗英國案例進行複雜分析，又討論抗議的「不同規模」及其「方式和形式」，造成大量含糊之處。為了讓法律的紀律重新彰顯，終審法院實在有需要重新審視方國珊一案。

2 香港特別行政區 訴 方國珊 (2017) 20 HKCFAR 425.

第六、最後，讓我談談大律師在這些案件中的角色。大律師不時被提醒早在接近 20 年前開始推行的民事司法制度改革，特別是《高等法院規則》第 1A 號命令，其中訂明律師在民事訴訟中達致相稱和公平的責任。然而，律師沒有履行該責任，反而多番濫用司法覆核程序，把《基本法》用作削弱行政機關的大殺傷力武器。在多宗案件中，法官對大律師採取了卑躬屈膝的態度，沒有宣示法院行使獨立審判權的憲制角色，也沒有運用其裁判權化解真正的爭議。在一宗案件中，法庭更曾為「未有全面地處理大律師所提出的所有辯據」而道歉。

法律的紀律

法庭判案書並非天馬行空，法庭亦不需要逐字逐句地處理大律師所拋出的爭論點，它是一個講求紀律的作業。法庭並非像街市般簡單。判案書可說是建構於紀律，**以補救辦法為焦點的邏輯思辯**。在香港，還必須在「一國兩制」總體原則下運作。這意味着一位法官在裁決中使用的字詞必須受限於這個紀律結構，其他一切均屬無關宏旨和多餘的。這即是說判辭一般都應該是簡明及扼要的，如以英文表達的判辭，不但應易於翻譯成中文，還應小心留意香港法庭在「一國兩制」原則下運作的獨特地位。一旦放棄依循有紀律結構帶來的後果之一，就是判決不但會變得冗長和複雜得令人費解，更會容許意識形態湧現。

原訴程序

每項涉及與訟方的法庭程序都有一份原訴程序文件。在特別訴訟中（例如受爭議的選舉或公司清盤），該文件稱為呈請。在刑事法律程序中，該文件稱為控罪書或公訴書。在

民事訴訟中，該文件稱為令狀。而在司法覆核程序中，該文件是一份法定的表格 86A，屬於原訴傳票，我將於稍後再作討論。原訴程序文件述明與訟各方之間的實質爭議，從而界定爭議的範圍。

受爭議的事項

任何真正的爭議，都應能以清楚精準的字詞簡述。令人遺憾的是，過去二十多年來，這項簡單的準則漸被遺忘，法律的紀律亦漸被侵蝕。法律界出現了一種新文化，以大律師的辯據為主、真正的爭議為副；以保障人權為名，把《基本法》轉化成以削弱政府權威為目標的大殺傷力武器。隨着司法審判過程不再奉行基本結構和紀律的缺失，判案書難免變得過份冗長和極為複雜，充斥着與真正的爭議無關的案例提述、個人見解和沉悶陳述。

複雜性扼殺透明度

然而，由於判辭過於複雜和冗長，以致沒有記者能加以分析和評論，因此普羅大眾未能察覺這一點，這隱患沒有被暴露出來。於是複雜性扼殺了透明度。與此同時，公眾繼續對法律的**神秘感**心存畏懼，而司法機構則沉浸在迴避否認的氛圍中。

單方面申請

司法覆核程序的架構由兩項法例條文建立：《高等法院條例》第 21K 條及《高等法院規則》第 53 號命令。這實際上是構成這種法律程序的法典。相關規則已透過毫不含糊的文字述明。若然嚴守紀律，理應甚少需要訴諸本地或海外案例。

以《高等法院條例》第 21K(3) 條為例：

除非已按照法院規則取得原訟法庭的許可，否則不得提出申請司法覆核，而除非法院認為申請人與申請所關乎的事宜有充分利害關係，否則不得批予提出該項申請的許可。

訂立這項條文的理由十分充分，與權力分立有關。法院不獲賦權決定香港特別行政區的政策，因為那是政府行政機關和立法機關的領域。因此，當有人想質疑行政長官或其他高官就某些在管治香港過程中所作的行為或決定時，須通過這項法律所設立的屏障。

這道屏障的一個重要部分是第 53 號命令第 3(2) 條規則，它規定許可申請須單方面提出。「單方面」意指有關事宜只在申請人與法官之間處理，不涉及其他人。除非法官批出許可，否則建議答辯人不用被牽涉其中。由於是單方面提出的申請，申請人便有責任坦率地披露一切資料，申請人倘若知道任何對申請不利的事情，也必須如實向法官披露。

處理單方面申請的法官收到申請人呈交的文件後，須審閱該些文件並作出裁決：參閱第 53 號命令第 3(3) 條規則。在這方面，申請人須通過指定門檻。首先，沒有延誤提出申請：第 53 號命令第 4(1) 條規則規定申請須從速提出，並無論如何均須在申請理由首次出現之日起計三個月內提出。第二，「除非法庭認為申請人在申請所關乎的事宜中有足夠權益，否則不得批予許可」：參閱第 53 號命令第 3(7) 條規則及《高等法院條例》第 21K(3) 條。

申請人獲批許可後，須呈交表格 86A 作為原訴傳票，而該傳票必須於許可獲批予後 14 天內送達所有直接受影響的人：參閱第 53 號命令第 5(5) 條規則。

只有當表格 86A 送達指認答辯人後，各方才會正式成為訴訟人，並會在庭上首次就表格 86A 所述事宜進行爭辯。

「合併」聆訊

這項參照英格蘭制度而採用的程序一直遭到嚴重誤解，更製造了不少禍端。這項程序並非讓處理單方面申請的法官用來推搪責任的方程式，情況恰恰相反。

如法官收到申請人所呈交的文件後，即使他認為應以緊急方式批予濟助，也不能在沒有聆聽建議答辯人的陳詞下合法地立即批予濟助。舉例說，若然申請人沒有坦率地披露一切資料或曾作出失實陳述，那怎樣辦？因此，法官會指定較早的聆訊日期，並知會建議答辯人有關申請和邀請他們出庭。倘若申請人確已履行所有法定要求，而且該人的個案有充分理據支持，法官便可即場批予濟助。這變相把表格 86（許可申請）視為原訴程序文件，而答辯人則放棄正式送達原訴程序文件的要求。

這項程序的原意是為了有需要向申請人提供緊急濟助的特殊案件，但在香港卻完全被扭曲。

以一宗近期案例 *Tam Sze Leung 及其他 3 人 訴 警務處處長*（HCAL 191/2021）為例：該案申請人於去年 2 月向法院呈交表格 86，尋求許可開展司法覆核程序。處理單方面申請的法官下令進行合併聆訊。案件最終由原訟法庭高浩文法官於八個月後審理。在他席前是多名年資有深有淺的大律師和事務律師。高浩文法官如此描述案中的單方面許可申請：「在本案中，表格 86 長達六十多頁，所載的盡是密密麻麻的敘述和辯據……」。

原本應該只有一張 A4 紙的法定表格多了六十多頁。

高浩文法官因此評論如下：「就司法覆核程序而言，司法覆核理據本應簡潔，但近期興起了一種冗長化和複雜化的文化，這往往令案情精要被蒙蔽而非闡明。」

高浩文法官的評語是「令案情精要被蒙蔽而非闡明」。縱使司法覆核許可申請人有責任坦率地披露一切資料，然而 *Tam Sze Leung* 一案中的申請人面對處理單方面申請的法官仍公然濫用法庭程序。為何法庭不第一時間駁回該申請？

上下顛倒的程序

誠然，這類「合併」聆訊本質上有荒謬之處。法官唯一要考慮的，是申請人提出以支持其訴求的案情是否可予爭辯。若然沒有，三言兩語便可處理這點。既然如此，又怎能容許與案雙方一連數天在庭上辯論不休、不斷提出論據和反論據，但最終法官也只能斷定案情根本無可爭辯？若然法官要花上數天詳細考量大律師的辯據，這豈不自然地表示案中有可爭辯的地方？如此，為何不一開始便批予許可開展法律程序？答案當然是：從一開始，案件已沒有絲毫可爭辯之處。

如此公然濫用法庭程序的案件為數不少，但礙於時間限制，我只揀選了以下一例，以闡釋法庭如何被人知情地利用為政治平台：梁麗幗訴政務司司長及其他人（HCAL 31/2015）。

梁麗幗一案

全國人民代表大會常務委員會（下稱「人大常委會」）於 2014 年 8 月 31 日就選舉來屆行政長官（於 2017 年就任）

的過程作出決定（一般稱為「831 決定」）。政府隨後展開公眾諮詢，然後於 2015 年 4 月 22 日發表諮詢報告。

梁麗幗申請許可開展司法覆核程序，質疑多名政府高級官員（包括行政長官）就諮詢公眾作出的決定及其後發表報告的決定。她要求法庭頒令撤銷整個程序。

該項申請本質上極其荒謬。司法覆核所針對的，是對申請人的權益造成真正影響的決定或行動。梁麗幗所提出的事項根本不屬於司法覆核的範疇。處理單方面申請的法官理應即時察覺這點。單憑該理由，梁麗幗的申請便理應立即被撤銷。

再者，處理單方面申請的法官收到相關文件時，便理應注意到下列顯然易見的問題：

「梁麗幗是誰？公眾諮詢和諮詢報告影響她的哪些個人利益？誰人委派她代表社會開展這項法律程序？這申請是否真誠地提出？抑或背後有不為人知的政治目的？」

處理單方面申請的法官沒有提出上述任何問題，而且沒有負責任地於當時對該項申請作出裁決，反而下令進行「合併」聆訊，結果導致一場幾近鬧劇的法律程序及一份長達二十一頁的判案書。

擬提出的申請理據

簡單看看梁麗幗擬提出的申請理據，陰暗色彩更加濃厚。撇除冗詞贅語後，其申請理據是：人大常委會在作出「831 決定」，勾劃出藉普選辦法選出行政長官的程序時，超越了其權力範圍。因此，該論點指出，2015 年 4 月 22 日的



報告既然採納了該辦法，也同樣蒙上不合法的「污點」。這是梁麗幗擬提出司法覆核申請的首兩項理據。

在原訟法庭區慶祥法官的判案書中，各項論據和反論據佔去了不少篇幅。它們可歸納成一個令人震驚的論點：「831 決定」不應完全被理解和採納為對香港特別行政區具有約束力；「831 決定」其中一部分不合法；香港法庭應如此裁定。換言之，一個地方行政區的法庭應行使司法管轄權，裁定人大常委會作為國家主權機關就香港特別行政區的憲制安排而作出的行為是否合法。這是何等自大的妄想！進行這種爭辯等同於參與這場弄虛作假的遊戲。這項申請顯然被隱藏的政治目的玷污，而法官認真地處理相關爭辯，不但助長這種濫用法律程序的惡行，更變相容許法庭被用作譁眾取寵的政治平台。從這角度看，即使許可申請最終被撤銷，梁麗幗可說是成功了。但事情未有隨此告終。

擬修訂的申請理據

梁麗幗的代表大律師可能察覺梁麗幗欠缺充分利害關係以提出質疑，因此提議修改表格 86，加入以下的新理據：2015 年 4 月 22 日的報告侵犯了她根據《基本法》第二十六條依法享有的選舉權和被選舉權。同樣地，該報告被指侵犯了梁麗幗根據《人權法案》第二十一條享有的參與政事等權利。法官把這些在擬修訂理據三及四中提出的權利稱為「相關權利」。

這只令情況更加荒謬。試問進行公眾諮詢和發表報告如何能侵犯梁麗幗的任何個人權利？

單方面聆訊的範圍

區慶祥法官把他的決定稱為「判案書」，但它什麼也沒有「裁決」。開展司法覆核程序的許可並無批出，亦沒有政府官員被加入為司法覆核程序的一方。法官本人也承認這點，在判案書第七段表示：「這是許可申請，因此法庭所要考慮的是擬提出的司法覆核是否可合理地予以爭辯且帶有實際的成功機會……」

法官所說的是「**擬提出的司法覆核**」。既然如此，他在聆訊中又擔當什麼角色？試問在尚未開展且在獲批許可前根本無法開展的「擬提出的」法律程序中如何作出裁決？

沉淪至更荒誕的世界

我們大概會認為不可能找到一宗較梁麗嫻一案更糟的案件吧。令人遺憾地，事實並非如此。

羅綺媚 訴 行政長官及其他人 (HCAL 151/2022; 2022 年 3 月 30 日)

2022 年 2 月，為了應對席捲全港的第五波疫情，政府制定規例，限制市民進入人們通常聚集的地方。沒有疫苗通行證的人士不准進入該些地方。當時全球各地都採取類似的措施。可想而知，對沒有接種疫苗的人士來說，這些措施造成了或多或少的不便。

一名市民羅綺媚自行呈交表格 86，申請許可開展司法覆核程序，以期質疑上述規例是否合法。她表示已申請法律援

助，正等候回覆。她又說她的申請涉及「極度複雜的法律概念和程序」，而「我將要委聘資深的代表律師，但條件是法律援助署批准我的申請」。她要求獲給予更長時間「存檔更多文件」。

換句話說，她不諱言自己沒有實質案情，但期望獲批法律援助後律師會為她建構案情。她不要求進行口頭聆訊。

為了維持法律的紀律，處理單方面申請的法官應怎樣做？當然是撤銷該申請。

後續事件

其後發生的事情其實是如此：首先，即使申請人不反對法官純粹以書面形式處理申請，法官仍「邀請」指認答辯人由大律師代表面見法官。法官繼而召開「指示會議」，並要求指認答辯人的代表大律師提供「初步回應」，又向申請人「批予許可」以提交「對初步回應的答覆」。這些步驟無一能在《高等法院規則》中找到，全都是法官的創作。

在判案書第二段，法官借他人的喉舌，對政府應對疫情的手法作出尖酸批評：他指政府的對策「不合邏輯或常理、往往自相矛盾、欠缺同理心和對人的諒解、與本地個人和商界現實脫節……無視對連貫一致的長遠政策和應變計劃的需求等等。」這與法官要裁決的事項毫無關係，但對傳媒來說是理想不過的「新聞稿」，也自然被報道成司法界狠批政府的抗疫手法。該位法官似乎沒有留意終審法院前首席法官於 2020 年 5 月 25 日發表的聲明，當中述明法官「如無必要，務須避免在公開場合——包括在判決中——對社會上備受爭議的事情表達任何意見……」。

紀律結構一旦被打破，隨之而來的必然是虛妄與破碎，意識形態亦隨之湧現。

在上述判案書「無法識別任何覆核理據」的標題下，法官首先表示：「這點早有定論：支持法庭推翻行政權力的行使的理據如有充分基礎，只用短短數段便應能清楚簡潔地述出……」（第 48 段）

而在該案中，法官指出申請人沒有任何實質覆核理據，「只能提出籠統的投訴」（第 51 段）。

既然如此，還有什麼要說？只須表示申請必須被撤銷，毋須再多言。

但法官沒有這樣做。他繼而撰寫了三十一段長長的段落，處理他所指的「申請人依據她**可能**倚仗的基本權利而有意提出的質疑……」「**是否有理由成立**」。

法官問「**是否有理由成立**」，但實情顯然是沒有。

法官說「**有意提出的質疑**」。但那是什麼？

至於申請人「**可能倚仗**」的權利。那又是什麼呢？

這些都是電影情節，不應在法庭內出現。

法官沒有批予許可，因此羅綺媚無法對相關規例提出憲制上的質疑。但法官運用斯特拉斯堡歐洲人權法院發展，並經由終審法院在案例**希慎興業有限公司訴城市規劃委員會**³中完善的原則，對相關規例進行全面壓力測試。法官稱該些規例為「**受質疑的措施**」。

3 (2016) 19 HKCFAR 372.


法官說「受質疑的措施」。被誰質疑？肯定不是申請人。指認答辯人的代表大律師？這真是荒謬。抑還是法官本人？

結果，整宗案件淪為不折不扣的鬧劇。

按照法律紀律的要求，法官只須用兩個短句作出裁決：「該許可申請沒有提出任何要透過司法覆核程序給予濟助的事宜，故被撤銷。」

總結

法庭並非在與世隔絕的密室中運作。法庭的一舉一動都會產生連鎖效應。一旦司法機關失去紀律，整個社會架構便會變得脆弱，受過教育的人會以為「公民抗命」沒有問題、佔據中環 79 日不會帶來不良後果。

中央政府於去年 12 月發表白皮書，清楚指出「一國兩制」原則於 2047 年後繼續在香港適用的方針堅定不移。法治是香港這一制的核心所在。試問香港司法機關有否做好本分，謹慎、積極和有效地落實「一國兩制」原則？法院所實行的制度又是否與目標相符？

主旨演講暨座談會

國安法加完善選舉制度的組合拳
——固本培元

主持人



朱國斌

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譚耀宗 大紫荊勳賢 GBS JP
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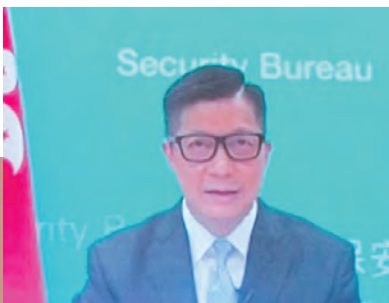
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基本法委員會委員



鄧炳強 PDSM JP
保安局局長



朱國斌：尊敬的講者、各位嘉賓、各位線上聽眾，早上好。感謝律政司邀請我主持這個環節。本環節由主旨演講和座談會組成。主旨演講的題目是「國安法加完善選舉制度組合拳——固本培元」。在本環節裏，各位講者將會討論如何實踐「愛國者治港的原則」、完善《基本法》、維護國家安全的體制，鞏固「一國」之本，使「一國兩制」行穩致遠。本環節主旨演講人是全國港澳研究會會長鄧中華先生。鄧中華博士是資優外交官出身，早年就參與香港主權交接相關事宜，後來加入香港澳門管理團隊並出任重要領導職務。鄧中華博士在 2018 到 2022 年 3 月份出任國務院港澳辦公室副主任。我們有請鄧先生。

鄧中華：尊敬的林鄭月娥行政長官、各位嘉賓、各位朋友，大家上午好。很高興受邀參加由律政司主辦的香港《基本法》法律論壇。首先，我代表全國政協副主席國務院港澳事務辦公室主任夏寶龍，並代表全國港澳研究會對論壇舉辦表示熱烈的祝賀。

「一國兩制」是中國共產黨百年奮鬥、光輝歷史的重要篇章，是中國特色社會主義的一個偉大創舉。《基本法》是「一國兩制」方針的法律化、制度化。回歸以來，「一國兩制」和《基本法》的實踐取得舉世公認的成功。作為一個新事物，「一國兩制」在實踐過程中難免出現一些新情況、新問題。中央審時度勢，與時俱進，堅持和完善「一國兩制」制度體系，堅持依法治港，運用《憲法》和《基本法》賦予的權力制定《香港國安法》，完善香港選舉制度，確保「一國兩制」始終沿着正確方向行穩致遠。下面我談三點看法，與大家進行交流。

一、《基本法》是「一國兩制」方針的法律化、制度化。回歸以來，「一國兩制」和《基本法》實踐取得舉世公認的成功，理論和實踐不斷發展

上世紀 80 年代初，鄧小平先生站在歷史和全局的高度，以中國共產黨人的宏偉氣魄和非凡膽識，創造性地提出了「一國兩制」的科學構想，並首先應用於解決香港問題。經過幾年艱苦的努力，1984 年中英兩國簽訂了關於香港問題的《中英聯合聲明》，確認中國於 1997 年 7 月 1 日恢復對香港行使主權。1985 年 4 月，全國人民代表大會設立香港特別行政區基本法起草委員會，在內地和香港各界人士共同努力和廣大香港同胞積極參與下，歷時四年零八個月，完成了《基本法》這部「具有歷史意義和國際意義的法律」。1990 年 4 月 4 日，第七屆全國人民代表大會第三次會議，根據《憲法》規定，審議通過了《中華人民共和國香港特別行政區基本法》，實現了「一國兩制」方針的法律化、制度化。這部憲制性法律把國家對香港的基本方針政策和特別行政區制度確定下來。

1997 年 7 月 1 日，香港回歸祖國，洗刷了百年民族恥辱，香港《基本法》正式實施。25 年來，中央始終堅持「一國兩制」、「港人治港」、高度自治的方針，嚴格依照《憲法》和《基本法》辦事，是「一國兩制」和《基本法》的堅定守護者，是香港特別行政區各項事業全面進步的積極支持者，是香港同胞合法權益的忠實維護者。在香港《基本法》的保障下，香港保持原有資本主義社會、經濟制度不變、生活方式不變、法律基本不變。香港特別行政區依照《基本法》的規定，實行高度自治，享有行政管理權、立法權、獨立的司

法權和終審權。香港《基本法》確立的特別行政區行政主導的政治體制有效運行，香港居民依法享有的權利和自由得到充分保障，經濟穩定增長、教育、醫療衛生、文化、體育、社會保障等社會事業不斷邁上新台階。香港走上了通往祖國內地優勢互補、共同發展的寬廣道路。「一國兩制」實踐取得舉世公認的成功。

中國共產黨的十八大以來，中央從國家發展大局和中華民族偉大復興的高度看待港澳工作。面對「一國兩制」實踐中出現的新情況、新問題，堅守「一國兩制」初心，果斷出手採取了一系列標本兼治的重大舉措，在確保「一國兩制」航船沿着正確方向前進的同時，豐富和發展了「一國兩制」和《基本法》的理論和實踐。「一國兩制」方針的強大適應性和生命力，在香港的治理實踐中已經並將不斷顯現。在此，我願與在座的各位朋友一起簡要回顧和總結。**在重大理論方面：**一是始終準確把握「一國」和「兩制」的關係，強調在處理「一國」和「兩制」關係時，「一國」是實行「兩制」的前提和基礎，「兩制」重塑和派生於「一國」，並統一於「一國」。二是《憲法》和《基本法》共同構成特別行政區的憲制基礎。《憲法》是國家的根本大法，具有最高法律地位和法律效力，是「一國兩制」在國家法治中的最高體現，《基本法》是根據《憲法》制定的、規定特別行政區制度和政策的基本法律。三是正確處理中央全面管治權與特別行政區高度自治權的關係，中央全面管治權是特別行政區高度自治權的前提和基礎，中央全面管治權既包括中央直接行使的權力，也包括授權特別行政區，依法實行高度自治，對於特別行政區的高度自治權，中央具有監督權力。**在重大實踐方面：**一是促進特別行政區融入國家發展大局，把發揮祖國內地堅強後盾作用和提高特別行政區自身競爭力

結合起來，高質量建設了粵港澳大灣區。二是完善特別行政區與《憲法》和《基本法》實施相關的制度和機制，建立健全特別行政區維護國家安全的法律制度和執行機制，制定《香港國安法》，落實「愛國者治港」、「愛國者治澳」原則，完善香港選舉制度。需要強調的一點是，重大理論引領和指導重大實踐，重大實踐又進一步豐富和發展重大理論。

二、全面準確、堅定不移，貫徹「一國兩制」方針，堅持和完善「一國兩制」制度體系、推動「一國兩制」實踐重回正軌

香港回歸以來，一個是《基本法》第二十三條立法遲遲未立的問題，一個是香港政治不斷發展的問題。這兩個問題一直是困擾香港社會的制度性難題，也是《基本法》實施面臨的兩大難題。這兩個問題相互交織、相互影響。在「修例風波」中進一步激化，「港獨」猖獗、「黑暴」肆虐、「攪炒」盛行，社會秩序和公共安全遭到嚴重破壞，特別是一些外國和境外勢力公然干預香港事務，妄圖將香港變成向內地滲透的「橋頭堡」，顛覆中國共產黨領導和我國社會主義制度。我國國家安全特別是香港特別行政區的政治安全受到了嚴重威脅，香港出現回歸以來最為嚴峻的局面。正是在這樣的背景下，中央果斷採取制定《香港國安法》和完善香港選舉制度等一系列重大舉措。全面準確認識《香港國安法》加完善香港選舉制度這套組合拳，要切實把握好以下三點：

一是堅持總體國家安全觀，切實履行憲制責任。習近平主席強調，「國家安全是安邦定國的重要基石」。維護國家安全是國家的頭等大事。黨的十八大以來，中國共產黨順應時代發展，系統回答了中國特色社會主義進入新時代，如何既解決好大國發展過程中面臨的共性問題，同時又處理

好中華民族偉大復興關鍵階段面臨的特殊安全問題這個重大時代課題；創造性地提出了總體國家安全觀的概念，強調總體國家安全觀就是以人民安全為宗旨、以政治安全為根本、以經濟安全為基礎、以軍事、文化社會安全為保障、以促進國際安全為依託，走出一條中國特色國家安全道路。總體國家安全觀強調大安全理念，涵蓋政治、軍事、國土、經濟、金融、文化、社會、科技、網絡等諸多領域，並隨着社會發展不斷動態調整。其中，政治安全是總體國家安全觀所有要素的核心，維護國家安全首先要確保政治安全。政治安全的核心是政權安全和制度安全。我國是中國共產黨領導的社會主義國家，維護政治安全最根本的就是維護中國共產黨的領導地位和執政地位，維護中國特色社會主義制度。《憲法》第五十二條、第五十四條規定，中國公民有維護國家統一、維護國家安全的義務。《國家安全法》第十一條、第四十條進一步明確港澳同胞應當維護國家主權、安全和領土完整，履行維護國家安全的責任。香港《基本法》和《香港國安法》還指明中央政府對特別行政區有關的國家安全事務負有根本責任，香港特別行政區負有維護國家安全的憲制責任。因此，在香港特別行政區維護國家安全，必須堅持總體國家安全觀、確保政治安全和制度安全、切實維護《憲法》和《基本法》確定的特別行政區憲制秩序、尊重和維護中國共產黨的領導地位和執政地位、尊重和維護內地和香港實行的兩種不同的社會制度。

二是全面落實「愛國者治港」原則，畫出最大同心圓。「愛國者治港」是「一國兩制」的核心要義，是事關國家主權、安全、發展利益，事關香港長期繁榮穩定的根本原則。習近平主席強調，「要確保『一國兩制』實踐行穩致遠，必須始終堅持『愛國者治港』」。作為中華人民共和國的一

個特別行政區，香港的管治權必須掌握在愛國者手中。愛國者的標準是客觀的、清晰的。夏寶龍副主席在 2021 年 2 月 22 日全國港澳研究會舉辦的專題研討會上明確指出，愛國者就是要真心維護國家主權、安全、發展利益，尊重和維護國家的根本制度和特別行政區的憲制秩序，全力維護香港的繁榮穩定。進入香港特別行政區政權架構的人士必須是堅定的愛國者，而且還要德才兼備，有管治才幹。完善後的新選舉制度，通過重新構建選舉委員會、調整候選人提名機制、更好發揮選舉委員會整體作用和完善候選人資格審查制度等，做到堅決把「反中亂港」勢力排除在特別行政區政權機關之外，確實保證經由選舉擔任的特別行政區重要公職的人士都是堅定愛國者。實踐證明，堅持「愛國者治港」原則是解決香港社會深層次矛盾和問題、確保香港繁榮穩定並在民族復興偉業中發揮自身獨特優勢的根本前提，堅持「愛國者治港」的原則，能夠在「一國兩制」制度體系下尋求最大公約數，畫出最大同心圓。

三是堅持《憲法》原則，在《憲法》和《基本法》框架下完善「一國兩制」制度體系。《憲法》是國家的根本法，在全國範圍內具有最高法律地位和效力。《憲法》是特別行政區設立的憲制依據，是《基本法》的立法依據和效力來源，更為《基本法》適用和解釋提供了根本遵循。「一國兩制」事業建基於《憲法》，源自於《憲法》。根據《憲法》的規定，全國人民代表大會是我國的最高權力機關，行使國家的主決權。香港回歸以來，全國人大及其常委會為構建「一國兩制」制度體系作出過數十項決定、決議和法律解釋，專門制定了多部重要的法律，例如通過全國人大常委會的多次立法解釋，闡明《基本法》條款的含義，穩妥解決了特別行政區政治發展、居留權、行政長官任期、任職宣誓及

國家豁免等重大問題，解疑釋惑，定分止爭。再如，通過全國人大常委會的專門授權，有效解決了內地與特別行政區之間「一地兩檢」等管轄權問題，促進了人員交流、經貿往來和共同發展。可以說「一國兩制」事業從偉大構想到生動實踐，再到各方面制度機制的構建完善，都是通過人民代表大會制度實現的。全國人大及其常委會通過的《香港國安法》決定和《香港國安法》，以及有關完善香港選舉制度的決定和修改香港《基本法》附件一和附件二，更是進一步完善了「一國兩制」制度體系，為「一國兩制」提供了更加有力的憲制支撐和保障。

三、繼續發揮「一國兩制」治理優勢，抓住機遇，迎接挑戰，確保「一國兩制」實踐始終沿着正確方向，行穩致遠

《香港國安法》和完善香港選舉制度是全面準確、堅定不移貫徹「一國兩制」方針的重大舉措，是根據《憲法》和《基本法》作出的最重要憲制意義的制度安排，更是「一國兩制」實踐發展的重要里程碑。它猶如「車之兩輪」、「鳥之雙翼」，完善了跟《憲法》和《基本法》實施相關的制度和機制，確保香港《基本法》的各項規定得到全面落實，維護了香港《基本法》的完整性、權威性，確保了香港局勢實現由亂到治的重大轉折，開啟了香港社會由治及興的歷史新階段。隨着《香港國安法》的有效執行和新選舉制度付諸實踐，越來越多賢能、愛國者將進入特別行政區管治架構。一支愛國愛港、擔當作為、精誠團結、為民服務的愛國者治港隊伍初步形成，但與此同時，香港特別行政區維護國家安全的形勢依然嚴峻複雜，香港社會發展仍面臨提高政府治理效能、增強發展競爭力、破解經濟民生深層次問題等一系列重大考驗，機遇和挑戰並存。

面對機遇和挑戰，我們要繼續嚴格依照《憲法》和《基本法》辦事，堅持依法治港，鞏固《憲法》和《基本法》共同構成的特別行政區憲制基礎，維護《憲法》和《基本法》確定的特別行政區憲制秩序，確保「一國兩制」方針不會變、不動搖，確保「一國兩制」實踐不走樣、不變形，始終沿着正確方向前進。

面對機遇和挑戰，我們要繼續堅定落實總體國家安全觀，有效執行《香港國安法》，積極履行《基本法》第二十三條立法的憲制責任，完善相關法律，依照《憲法》和《基本法》繼續塑造政治安全的香港，消除可能危害國家安全的各種風險和隱患，築牢香港特別行政區維護國家安全的根基和防線。

面對機遇和挑戰，我們要繼續完善跟《憲法》和《基本法》實施相關的制度和機制，以強大的法律武器和勇於開拓的創新精神，繼續去解決「一國兩制」實踐和《基本法》實施過程中遇到的新情況、新問題，攻堅克難，砥礪前行。

面對機遇和挑戰，我們要繼續全面貫徹落實「愛國者治港」原則，確保香港特別行政區政權牢牢掌握在愛國愛港人士手中，推動香港實現良政善治。着力於發展經濟、改善民生、化解深層次矛盾，實實在在提高香港市民的獲得感、幸福感。

各位嘉賓、各位朋友，2021年11月11日，中國共產黨十九屆六中全會通過的《關於黨的百年奮鬥重大成就和歷史經驗的決議》，首次將在港澳堅持和完善「一國兩制」作為黨百年奮鬥重大成就和歷史經驗的重要組成部分載入黨的決議。香港回歸祖國25年不平凡的歷程，充分證明實行「一國兩制」有利於維護國家根本利益、有利於維護香港根本利

益、有利於維護廣大香港同胞根本利益。站在新的歷史起點上，我們堅信新選舉制度選出的愛國者治港隊伍一定能夠團結帶領香港社會各界人士並肩奮鬥，共同譜寫好中華民族偉大復興的「香港篇」。

我的發言到此結束，請三位點評嘉賓指正。最後，我代表全國港澳研究會祝論壇取得圓滿成功，祝各位嘉賓身體健康、萬事如意。謝謝大家。

朱國斌：大家也知道全國人大及其常委會分別在 2020 年及 2021 年以「決定加立法」、「決定加修法」的方式為香港特區完成國家安全立法和完善選舉制度。剛才鄧主任用了一個詞叫「標本兼治」，我覺得這個詞概括得比較準確。這兩部法律對為香港特區未來 25 年的管治起到最為關鍵的作用。所以，下面這一節我們將圍繞這兩個法律展開討論。首先，我們有請全國人大常委會委員譚耀宗先生。譚先生曾經擔任香港《基本法》起草委員會委員，並曾任行政會議議員、立法會議員，並長期出任香港政治團體「民建聯」的主席，是一位經驗豐富的政治家。譚先生。

譚耀宗：多謝朱教授。大會希望我講述一下簡報中這三點的內容，因為本人亦有出席人大常委會會議，所以我有親身經歷。那麼我就憑着我的記憶跟各位分享一下，我想在三個方面講述一下。第一點，全國人大常委會制定《香港國安法》及「完善選舉制度的決定」的時候所依循的重要原則。第二點，《香港國安法》以及完善選舉制度的立法方式。第三點，今後在中央的大力支持下，我們如何同啟香港的新篇。

首先講述一下，第一點是全國人大常委會制定的《香港國安法》及「完善選舉制度的決定」所依循的原則。



我自己的體會是有三點的，這三點都是有一個最重要的原則，以及兩個法例都是前後貫通、都是一致的。第一點就是維護國家安全，第二點是完善和準確落實「一國兩制」，以及第三點是堅持依法治港。有關《香港國安法》的重要原則，我認為最權威的是當時我們在全國人大的全體會議中，即是在 2020 年 3 月舉行的全體會議，當時由常委會的副委員長王晨先生在全體會議中發言，他說：「香港特區事務是中國的內政，不受外部勢力干涉。必須堅決反對任何外國及其組織或者個人以任何方式干預香港事務。堅決防範和遏制外部勢力干預香港事務和進行分裂、顛覆、滲透、破壞活動。對於任何外國制定、實施干預香港事務的有關立法、行政或者其他措施，我們將採取一切必要措施予以反制。」這點是說得十分清楚的。第二點，他強調在立法過程中會切實保障香港居民的合法權益，以及尊重和保障人權。而有關「完善選舉制度的決定」的重要原則，王晨強調了兩點：第

一點是要發展符合香港實際情況、體現社會整體利益的民主選舉制度；第二點是要提高香港特別行政區的治理效能，依據這些重要的原則進行立法的工作。

《香港國安法》和「完善選舉制度的決定」的立法方式存在不同的地方。《香港國安法》是採取「決定加立法」的方式，而完善選舉制度是採取「決定加本地修法」的方式。稍後我們會分析兩種方式的不同之處。

《香港國安法》的立法方式，第一步是由全國人民代表大會根據《憲法》和《基本法》的有關規定，作出《關於建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》，同時授權全國人大常委會制定相關法律。其實這一點我們當時在作為《基本法》起草委員討論第二十三條時已經談論過，原因是大家認為維護國家安全是必須的，這個範疇是一定要有的。大家可能會問如果我們當時起草《基本法》時將維護國家安全的條文也寫進去不就一勞永逸了嗎？這說法其實是對的，但當時在起草《基本法》的時候存在不同的意見。最後的決定有部分原因是尊重了香港方面的意見，決定在香港特區成立之後由香港特區自行進行有關立法。但是誰知過了 23 年也未能成功立法。最後到了 2019 年出了大事情便由全國人大常委會出手。這個做法是完全符合《憲法》和《基本法》，而且其實我們當時起草《基本法》的過程中亦曾考慮過。第二步是根據《憲法》制定法律後，將它列入《基本法》附件三，那便可以直接由香港特別行政區在當地公布實施。

當時，我亦有參與立法時的討論。我十分佩服內地的起草工作，能夠在短時間內制定了一條維護國家安全的法律以及其執行機制。若是只有法律而沒有執行機制，效果便不相

同了。回想在北京進行會議時，我們特地邀請了剛才進行發言的鄧中華副主任跟我們列席的代表一同討論了兩個多小時，其後我們亦找李飛主任再討論，原因是我們希望這條法律制訂了之後，可以順利地執行下去。後來經過討論和了解之後，我們認為這個法律做得很好。大家可以見到自從訂立了這個法律後，香港的整個情況產生了變化，由亂到治，很多事情都有了法律依據，令香港可以恢復穩定。

而「完善選舉制度的決定」跟剛才所談及的維護國家安全法的立法是不同的。這個決定是通過人大代表的全體會議作出的決定，並授權人大常委會修改了《基本法》附件一和附件二，但不牽涉《基本法》的正文。今天上午亦有提及修改附件一和附件二。這是當時我們起草《基本法》時安排的。原因是我們認為改制方面的事情，我們不可以一次性將 50 年的安排都寫進去，這樣亦容許我們根據社會情況的變化循序漸進，所以特別寫清楚容許有些事情於 2007 年香港特區成立十年時可以作出檢討，若果需要改變的時候，有什麼程序的要求。所以，在這次作出改變時，實際上修改了《基本法》附件一和附件二便可以，並不需要修改《基本法》的正文。這些安排亦是我們當年起草《基本法》的時候已有所準備。這裏分了兩個步驟，即附件一及附件二的修訂，修訂後便於本地立法機關香港立法會進行本地立法。香港的立法會亦很配合，他們於 2021 年 4 月 14 日進行條例草案的首讀及二讀，於 5 月 27 日三讀通過了條例草案，使「完善選舉制度」能夠在本地落實並實施。

談及了這兩個法律之後，我想簡單地說一下**在中央支持下，香港未來應該要怎樣**。訂立了這兩個法律之後，事實上令香港可以穩定下來，香港亦在選舉方面得到了保障。所

以我們希望今後能一起努力，為香港未來同啟新的篇章。多謝朱教授。

朱國斌：謝謝譚先生。譚先生概括了這兩部法律的立法原則和立法特點，還透露了立法過程的部分細節，這對我們學習研究兩部法律有很重要的意義。下一位講者是全國人大代表陳曼琪議員。陳議員是一位註冊律師，同時是港區人大代表、全國湖南省政協委員、立法會議員，還有香港選舉委員會第五界別委員。陳議員還擔任多項社會公職。請陳議員。

陳曼琪：多謝主持，亦非常多謝大家。我今天跟大家分享的題目是從本人作為一位執業律師、立法會議員和全國人大代表，並曾擔任四屆區議員的角度探討及分析完善選舉制度如何進一步促進香港政治體制的廣泛代表性、包容性，體現均衡參與及公平競爭的原則，對立法會的運作及政府依法施政產生的正面影響。亦歡迎在座各位前輩及專家作出指正。

本人的經歷讓我認為完善選舉制度令香港的政治體制在正確的憲制及法治秩序裏面運行。資格審查委員會確保我們參政和議政的人都是愛國者，確保落實「愛國者治港」。重要的是令不同的階層、不同的黨派從政者，甚至政府的行政和立法關係都有着共同的政治秩序、意識形態、核心價值及擁有穩固的互信，當存在分歧時，大家都可以以大局為重，令政治的生活可以在合憲和合法的框架裏更加多元化，具有廣泛性，和而不同，求同存異。「制度穩則香港穩，制度強則香港盛。」

香港曾經歷由亂到治，由治及興。香港更加需要以愛國者為大原則的政治體制，這樣香港才可以在「一國兩制」之

下合乎香港的實際情況，發展具有香港特色的民主道路，穩中求進。「完善選舉的制度」進一步推進我們香港政治制度的廣泛性、包容性、代表性，體現均衡參與及公平競爭的原則。本人建議有以下四點：第一，強調維護《憲法》的權威。第二，立法會議員及選委會的成員要有大局觀、國家觀和世界觀。第三，培養及發掘更多的「愛國者治港」人才。第四，特區政府亦要令政治體制與時並進，準確地反映和吸納民意，講求平衡之道。對於強調維護《憲法》的權威，鞏固落實「愛國者治港」的原則，本人有以下數點建議：第一，提升香港基本法推廣督導委員會的職能，改名為「憲法和基本法推廣督導委員會」，設立《憲法》和《基本法》推廣專員一職。二，根據《香港國安法》第六條擴大公職人員參選或就職時，應當依法宣誓擁護《中華人民共和國香港特別行政區基本法》，效忠中華人民共和國香港特別行政區的適用範圍。第三，根據《香港國安法》第七條，香港特區切實執行《香港國安法》，盡早完成《基本法》第二十三條本地立法，以及完善現有維護國家安全的本地法律。第四，盡快完成本地法律的去殖民化，刪除「女皇陛下」等殖民地詞彙。第五，根據《香港國安法》第九條及第十條，香港特區政府及社會各界不僅要不斷深入推進《基本法》的教育，還要推進源頭，即《憲法》、《基本法》、《香港國安法》、愛國中華文化及法治的教育，令「愛國者治港」和「愛國愛港」不只是口號，而是每一個香港人與生俱來的基因。

立法會議員及選委會的成員是香港政治體制的重要組成部分，香港立法會議員需要有大局觀、國家觀和世界觀。重要的是講求平衡之道，防兩極化、防分化，亦需要接地氣，準確地把握民情，就着民生議題促進跨界別的合作，以香港整體的利益為依歸，令香港的政治體制能夠反映香港的社會、

政治、經濟、民生的實際情況，亦需要把握我們國家最新的發展及政策，時刻以「『一國兩制』行穩致遠」為履職的根本責任，令香港能夠聚焦發展，解決民生問題，繼續發揮香港作為國際大都會的獨特優勢，令香港繼續保持繁榮穩定。

選委會的個人成員和團體機構需善用選委會新職能持續服務社會，而不僅是在競選的時候才發揮作用，亦需要反映民意，使選委會更加能夠成為香港社會的縮影，更宏觀地反映香港整體的利益。在「愛國者治港」的共同基礎下，我們既有包容性和協同作用，充分發揮、堅持「一國」的原則，亦尊重「兩制」差異，把中央全面管治權和特區的高度自治權有機地結合起來。

而香港的政治體制本身亦需要不斷提升自身的建設能力，本人建議建設多渠道，長期培訓和發掘更多愛國愛港的參政、議政人才，為選委會不斷地輸送人才。本人亦鼓勵和希望能夠推動設立各種民間的愛國者研究中心，設立不同年齡層培養愛國者階梯，善用中小學團體例如制服團體、升旗隊及設立青年愛國者智庫，為愛國者治港提供不同階層、不同類型、不同專長的人才。另外，為吸引更多視「愛國者治港」為終身奮鬥目標的有志之士，要建設「愛國者治港」的人才旋轉門，為他們提供進出政府、議會各類非官方諮詢機構以至研究中心的職位和機會。

香港特區政府有責任令政治體制與時並進，準確反映和吸納民意，以民為本，亦要講求平衡之道。我認為香港特區政府在「行政主導；行政、立法、互相制衡、互相配合；司法和終審權獨立」的原則底下需要換位思考，善用選委會由下而上多吸納不同階層的意見，以協助政府有更大的同理心。我認為這一屆政府或「愛國者治港」擁有同理心是十

分重要的，因為這樣便能夠接地氣，時刻有危機感，亦有底線思維，有微觀、又有大局觀、國家觀和國際觀。公務員學院需要提供課程和實習機會，讓公務員能夠與選委和社會各界有更多的互動交流，培養公務員接地氣、懂民情，把握社會、政治、經濟、民生的情況、發展和變化。

政府的管治班子需要推動香港政治體制的廣泛代表性、包容性、均衡參與和公平競爭，亦需要團結香港，凝聚所有力量解決香港深層次問題，帶領香港融入國家發展大局，保持香港繼續長期繁榮穩定，令「一國兩制」行穩致遠。

最後，香港的政治體制必須落實「愛國者治港」的大原則，健全香港的憲制及法治秩序，更好地落實中央全面管治權和香港特區的高度自治權。最後很重要的是剛才很多領導、前輩和專家提及的確保政治安全、政權安全和制度安全。「愛國者治港」是我們香港七百多萬人的最大公約數，團結一切可以團結的力量，在「一國兩制」之下使香港的政制和民主發展道路更加符合我們香港實際的情況，決不把西方的民主形式硬套在香港特區，並時刻以維護國家主權、安全、發展利益和香港長期繁榮穩定為我們香港發展民主的目標，提高香港特區管治效能，達致良政善治，亦令到「一國兩制」行穩致遠，我們香港人能夠安居樂業。多謝大家。

朱國斌：謝謝陳議員有建設性而且聲情並茂的分享。下一位講者是全國人大代表黃玉山教授。黃教授現時為港區全國人大代表和全國人大常委會基本法委員會委員，並擔任香港特別行政區多個委員會的主席和委員。作為社會活動家，黃教授還擔任了眾多的社會公職，黃教授長期在香港高校教學、科研並承擔行政工作，曾經出任兩間大學的副校長和校長。有請黃教授。

黃玉山：謝謝主持人。各位朋友，剛才聆聽了鄧中華副主任的講話，大家獲益良多。我想在此分享一下我對於「愛國者治港」的看法。在 2021 年 3 月 11 日全國人大四次會議高票通過了關於「完善選舉制度的決定」。這一個是繼實施《香港國安法》之後中央亦是根據《憲法》和《基本法》進一步完善香港選舉制度，包括行政長官和立法會產生辦法，是從制度上和機制上確保「愛國者治港」的原則，確保「愛國者治港」作為主體的一個港人治港的方針能夠得到全面的貫徹，從而保證了「一國兩制」能夠行穩致遠。

各位知道在 2019 年「修例風波」之後，香港的極端反對派聯同「反中亂港」的外部勢力公然宣揚鼓吹「港獨」，並且利用香港立法會和區議會的選舉平台，利用他們作為一個公職人員的身份肆無忌憚地從事各種違法的「反中亂港」活動。種種跡象表明了香港原來的選舉制度存在明顯的漏洞和缺陷。因此，必須在法律上和體制上規定「愛國者治港」這個原則，才可以杜絕這些「反中亂港」分子進入管治隊伍。

「愛國者治港」並不是一個新近提出來的一個原則。大家都知道早於 1980 年代中英談判的時期，已故領導人鄧小平先生多次闡明「愛國者治港」這個原則及其重要性。我還記得在 1984 年 6 月 22 日鄧小平先生接見香港工商界訪京團的時候說：「港人治港有個界線和標準，就是必須由以愛國者為主體的港人來治理香港。未來香港特區政府主要成分是愛國者……愛國者的標準是，尊重自己的民族，誠心誠意擁護祖國恢復行使對香港的主權，不損害香港的繁榮和穩定。」這是很明確的定義的。

1997 年英國終止對香港的管治，我們香港是主權回歸、治權恢復。根據《基本法》和「一國兩制」的方針，就是由

香港人來治理香港。但是，回歸之後的香港是祖國神聖領土的一部分，所以香港管治者除了要貫徹「一國兩制」，保持香港繁榮穩定之外，在各種施政領域裏面還需維護國家的主權、安全和發展利益。剛才鄧中華副主任亦說了維護國家安全是香港的憲制責任。所以假若我們的管治者不是愛國者，就不可能履行以上的責任，不可能完成以上的任務。而治港的愛國者既是香港人，同時亦是認同國家、尊重民族、努力維護國家主權、安全和發展利益的中國人。除了服務香港以外，治港的愛國者在意義上、在政治倫理上還包含了對國家的忠誠和擁護。

2019年各種「反中亂港」現象就帶給我們非常好的反面教材，證明「愛國者治港」是必須的，是不可或缺的。這亦是鄧小平先生所說的「港人治港」是有一個界線，亦有一個標準。縱觀世界任何一個國家，熱愛自己的國家和效忠祖國都是各級公務員必須遵守的一個基本政治倫理要求，我們必須有這一項要求，這不是香港獨有的，而是放諸四海而皆準。這次「完善選舉制度的決定」有效地保證了今後的選舉制度會更加完善，亦堵塞了有關的漏洞和缺陷，是貫徹「一國兩制」路程中的一個重要里程碑，莊重地宣告今後就是「愛國者治港」、「反中亂港者」出局這種嶄新政治局面。這亦清晰地建立了新的政治規則以及法律規範，令特區政府能夠真正承擔起維護國家主權、安全、發展利益的重擔，令香港能夠更加順暢地融入國家發展大局。

隨着《香港國安法》和完善選舉制度的全面落實之後，我們社會上有些人在擔心這個舉措是否表示中央對香港政策有所收緊呢？有些人擔心二十多年後當中國發展成為新時代社會主義現代化強國的時候，是否還需要「一國兩制」呢？我個人認為「一國兩制」是中央政府和領導人經過深思熟慮謀

劃出來的構想，亦是幾經挑戰及實踐取得的成果。過去三十多年，中國多位領導人不斷地公開表明「一國兩制」的政策是肯定的，是需要堅持的。從歷史觀點來看，「一國兩制」是新生事物，是史無前例的，但是它擁有強大生命力。習近平總書記在 2017 年 10 月 8 日黨的十九大報告內闡述我們國家的「十四個堅持」的基本方略，其中第 12 個基本方略就是「一國兩制」，即是說「一國兩制」是國家的方略之一。他是這樣說的：「堅持『一國兩制』和推進祖國統一。保持香港、澳門長期繁榮穩定，實現祖國完全統一，是實現中華民族偉大復興的必然要求。必須把維護中央對香港、澳門特別行政區全面管治權和保障特別行政區高度自治權有機結合起來，確保『一國兩制』方針不會變、不動搖，確保『一國兩制』實踐不變形、不走樣。」這是一個很重大的決定和承諾。

我認為落實《香港國安法》及完善選舉制度不僅不會削弱「一國兩制」，相反就好像習主席所說，將特別行政區的全面管治權和保障特別行政區的高度自治權兩者有機結合起來。現在落實《香港國安法》和「完善選舉制度」就只會使「一國兩制」更加穩固，更加完備。個人認為中國是一個文明的古國，亦是一個具有中國特色社會主義的大國。只有我們這類國家才有這種寬宏的胸懷和氣度，擁有這種高瞻遠矚的智慧和眼光來實現「一國兩制」，創造和實踐了一個國家兩種制度，創造性地解決歷史遺留下來的問題，回應了人類社會和平發展的期待，亦豐富了人類文明的內涵。「一國兩制」的成功落實和將來發展，我認為是中國共產黨和中國政府對人類政治文明史的一個重要貢獻。而我們各位能夠身處其中實在是應該感到驕傲和光榮的。因此，我有信心「一國兩制」必定能夠行穩致遠，對於「一國兩制」的將來是抱有信心的。多謝。

朱國斌：謝謝黃教授分享關於「愛國者治港」的政治法律意涵和制度建設意義的深刻認識，非常的有啟發意義。謝謝。最後一位同樣是重量級講者，他就是保安局局長鄧炳強先生。他將會進行線上演講。鄧先生於 1980 年代加入香港警隊，先後就任督察、高級警務處長、行動處處長、警務處副處長、警務處處長，於去年 6 月就任保安局局長。歡迎鄧先生。

鄧炳強：多謝朱教授。尊敬的鄧中華先生、譚耀宗先生、譚惠珠女士、律政司司長鄭若驊女士、各位朋友，大家好。今天我很高興能夠獲邀出席由律政司主辦的《基本法》法律論壇，與在座各位分享香港特區在完善維護國家安全的法律方面的經驗。

《香港國安法》的實施，讓香港由亂變治，令香港從動蕩、暴亂的環境康復過來。通過回顧《香港國安法》的實踐經驗與分析特區的國家安全形勢的變化，我希望能夠讓大家理解到《香港國安法》作為讓「一國兩制」行穩致遠的組合拳的重要組成部分，是如何能達到本固枝榮及固本培元的效果。

《香港國安法》是一套具針對性、到位，而且充分考慮了香港特區實際情況的法律。法律是在 2019 年「黑暴」肆虐的背景之下訂立的。當時，暴徒肆無忌憚地破壞政府建築物、商店、鐵路及其他公共設施，縱火、強闖及破壞立法會，肆意毆打執法人員和持不同意見的人。外部勢力試圖通過滲透，在香港搞「顏色革命」，並透過代理人從事危害國家安全的活動，包括企圖影響選舉結果，以及顛覆國家的政權，香港面對前所未有的國家安全威脅，香港的繁榮安定岌岌可危。

在這個背景下，《香港國安法》針對性地就當時最嚴重和最迫切的四類危害國家安全的行為和活動訂定罪行和罰則——包括分裂國家、顛覆國家政權、恐怖活動及勾結外國或者境外勢力危害國家安全，為執法行動定下法律基礎；又設立維護國家安全的相關機構，並訂明它們的職責，包括香港特區的國安委、警務處的國家安全處、律政司的維護國家安全檢控科，及中央人民政府的駐港國家安全公署等。

此外，《香港國安法》亦特別訂明對個人權利和自由的保障，又體現重要法治原則，例如無罪推定、一罪不能兩審、保障公平審訊等。

除罪行條文及執行機制外，法律更特別着重防範危害國家安全的有關行為：《香港國安法》訂明了維護國家主權、統一和領土完整是包括香港人在內的全中國人民的共同義務，亦訂明香港特區應開展國家安全教育和對學校、社會團體、媒體、網絡等加強宣傳、指導、監督和管理的責任。這對全面準確貫徹「一國兩制」、「港人治港」、高度自治的方針，保持香港特區的繁榮穩定極為重要。

當然，除了《香港國安法》外，特區政府亦透過激活現有法例，全面制止和懲治危害國家安全的行為和活動。過去兩年的執法行動亦已初見成效，包括引用了《刑事罪行條例》第九和第十條，積極打擊發表煽動言論和刊物，以及其他「軟對抗」的行為。行政長官會同行政會議亦行使了《公司（清盤及雜項條文）條例》下的相關權力，命令公司註冊處處長將帶來危害國家安全風險的機構從公司登記冊中剔除。

特區政府相關政策局及部門亦積極透過訂立其他的新法例、規例和機制，以更好地履行就維護國家安全的宣傳、指導、監督和管理的責任，包括：

第一，通過《電訊（登記用戶識別卡）規例》，落實預付儲值卡實名登記制度；

第二，透過實施《2021年電影檢查（修訂）條例》和更新的《有關電影檢查的檢查員指引》，把國家安全列入為電影檢查的考慮因素之一；

第三，透過《2021年個人資料（私隱）（修訂）條例》，針對未經資料當事人同意而公開其個人資料的惡意行為訂立新的「起底」罪行，又賦予私隱專員對「起底」罪行的刑事調查及檢控權；

第四，將危害國家安全的罪行納入《社會工作者註冊條例》，令被裁定犯了任何危害國家安全罪行的人士，不能擔任註冊社會工作者。

在有了上述的法律基礎的支持下，特區政府本着「有法必用、執法必嚴、違法必究」的原則，依法向危害國家安全分子採取執法行動。

自《香港國安法》生效後，截至目前，共 186 人因涉嫌從事危害國家安全的行為和活動而被警方拘捕，當中 115 人被檢控，另有五間公司因涉嫌干犯危害國家安全罪行被檢控。至於在法庭審訊方面，目前有八宗已完成審訊，涉及十個人的案件，所有被告皆已被定罪，目前最高判刑是監禁九年。

《香港國安法》的實施扭轉了特區自 2019 年開始的亂局，暴力行為大幅下降，鼓吹「港獨」的情況不斷減少。此外，眾多涉嫌危害國家安全的組織亦相繼自行解散或停止運作。上述的成果清楚證明《香港國安法》的實施已發揮相當成效。

雖然《香港國安法》確實起了震懾作用，但是危害國家安全分子絕對不會輕易收手，而是伺機而動。香港仍面對不少國家安全風險，包括：

第一，危害國家及香港安全的勢力持續以「軟對抗」手法宣揚反中央和特區政府資訊，鼓吹「港獨」；

第二，本土恐怖主義活動，例如 2021 年的「七一」刺警案和企圖於鐵路、法庭等公眾地方發動炸彈襲擊以圖達致政治目的「光城者」案件，均顯示本土恐怖主義分子已轉趨行動化；

第三，外部勢力利用香港「一國兩制」、高度自治的獨特環境，不斷干擾和抹黑特區事務，意圖危害國家安全；及

第四，逃到海外的危害國家安全分子勾結外部勢力，繼續從事危害國家安全的活動，例如要求外國實施所謂制裁，並企圖裏應外合，與一些想危害國家安全的本地媒體或組織連成一線，煽動仇恨。

就此，特區政府會繼續採取一系列策略，應對上述內部和外部的國安風險，其中特別包括：


第一，情報方面：我們會加強國家安全及反恐情報收集及分析，特別是網上資訊及反間諜情報，同時會加強與國家不同的組織及機構的信息和情報共享與交流；

第二，執法方面：包括繼續針對涉嫌危害國家安全的人和組織展開深入調查，特別是他們的財政來源、開支及與外部勢力的關係；並在各紀律部隊及各政策局及部門全面協作，共同維護國家安全；

第三，立法方面：包括完成《基本法》第二十三條立法，以及訂立網絡安全法例，以進一步完善國家安全的法律制度；

第四，宣傳教育方面：只有正確理解維護國家安全的重要性，才能確保香港繁榮穩定，特別是在加強青少年的國家安全意識方面，特區政府通過不同形式的比賽和活動，例如網上虛擬展覽等，推動全港中、小學的師生共同參與，並透過全民國家安全教育日的各類比賽及各項活動，讓國家安全教育植根校園及社會。保安局旗下的各紀律部隊亦會繼續透過其青少年團，協助青少年培養良好品格、正向思維和守法意識。

各位嘉賓，《香港國安法》讓香港由亂變治，特區政府會繼續努力不懈，做好維護國家安全的各項工作。憑藉大家的努力，我相信香港特區政府定能肩負起維護國家安全的責任，令「一國兩制」行穩致遠。多謝大家！

朱國斌：謝謝鄧局長的專業分享，讓我們對《香港國安法》在香港的實施有進一步的認識和期待。本節演講與座談會到此，感謝主講人，感謝四位和在網上分享的與談人。感謝線上的觀眾和在座各位，祝各位安好，謝謝大家。 

鞏固法治 同啟新篇

譚耀宗

- 一. 全國人大常委會制定《香港國安法》和「完善選舉制度的決定」時依循的重要原則
- 二. 《香港國安法》和「完善選舉制度的決定」的立法方式；
- 三. 在中央大力支持下，同啟香港新篇！

一. 全國人大常委會制定《香港國安法》和「完善選舉制度的決定」時依循的重要原則

眾所周知，全國人大常委會制定的《香港國安法》和「完善選舉制度的決定」是一套「組合拳」，兩者之間有着密切的關係，其中所依循的重要原則中有很多是一致的、是互聯互通的。當然，《香港國安法》和「完善選舉制度的決定」亦各自其具體側重、和有其獨特着力點。

三個重要原則是高度一致的，前後貫通的。

1. 維護國家安全、
2. 完善和準確落實「一國兩制」、以及
3. 堅持依法治港等

《香港國安法》的重要原則

在《香港國安法》草案說明中全國人大常務委員會副委員長王晨在全國人大會議中強調了：

1. 「香港特區事務是中國的內政，不受任何外部勢力干涉。必須堅決反對任何外國及其組織或者個人以任何方式干預香港事務，堅決防範和遏制外部勢力干預香港事務和進行分裂、顛覆、滲透、破壞活動。對於任何外國制定、實施干預香港事務的有關立法、行政或者其他措施，我們將採取一切必要措施予以反制。」

2. 《香港國安法》也特別強調了切實保障香港居民合法權益，尊重和保障人權。「依法有效防範、制止和懲治危害國家安全的極少數違法犯罪行為，是為了更好地保障香港絕大多數居民的生命財產安全，更好地保障基本權利和自由。任何維護國家安全的工作和執法，都必須嚴格依照法律規定、符合法定職權、遵循法定程序，不得侵犯香港居民、法人和其他組織的合法權益。」

「完善選舉制度的決定」的重要原則

在「完善選舉制度的決定」草案說明中，全國人大常務委員會副委員長王晨在全國人大會議中強調了：

1. 要發展符合香港實際情況、體現社會整體利益的民主選舉制度。「依法保障香港同胞廣泛的、均衡的政治參與，依法保障香港永久性居民依法享有的選舉權和被選舉權，團結一切可以團結的力量，廣泛凝聚香港社會正能量。」以及，
2. 要提高香港特別行政區治理效能。「要健全行政長官對中央人民政府負責的制度，維護行政主導的香港特別行政區治理架構和運行機制，支持行政長官和行政機關、立法機關、司法機關依法行使職權、履行職責，確保香港特別行政區政治體制和治理體制機制順暢、有效運行。」

二. 《香港國安法》和「完善選舉制度的決定」的立法方式

全國人大常委會從國家層面建立健全香港特區維護國家安全的法律制度和完善選舉制度時在很大程度上兼顧了香港特區和內地法律制度的不同，因而分別採取了「決定+立法」或「決定+本地修法」等方式。

《香港國安法》的立法方式

《香港國安法》採取的是「決定+立法」，然後在香港公佈實施的方式：

第一步，由全國人民代表大會根據憲法和香港基本法的有關規定，作出《關於建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》，同時授權全國人大常委會就建立健全香港特別行政區維護國家安全的法律制度和執行機制制定相關法律；

第二步，全國人大常委會根據憲法、香港基本法和全國人大有關決定的授權，結合香港特別行政區具體情況，制定相關法律並決定將相關法律列入香港基本法附件三，由香港特別行政區在當地公佈實施。

「完善選舉制度的決定」的立法方式

「完善選舉制度的決定」採取的是「決定+本地修法」的推進方式：

香港以往實行的選舉制度，是根據香港基本法、全國人大常委會有關解釋和決定，以及香港本地有關法律規定確定的。香港基本法第45條、第68條等作出了原則性規定，基本法附件一和附件二以及有關修正案作出了具體明確的規定。

在綜合分析和全面評估的基礎上，中央從國家層面修改完善香港選舉制度，主要是修改香港特區行政長官和立法會議員的產生辦法；同時，考慮到保持香港相關制度的連續性和穩定性，本次完善只是修改了基本法附件一和附件二，不涉及修改基本法的正文。

第一步，全國人民代表大會根據憲法和香港基本法、香港國安法的有關規定，作出關於完善香港特別行政區選舉制度的決定，明確修改完善香港特別行政區選舉制度應當遵循的基本原則和修改完善的核心要素內容，並授權全國人民代表大會常務委員會根據本決定修改香港基本法附件一和附件二。

第二步，全國人大常委會根據憲法、香港基本法、香港國安法和全國人大有關決定，修訂香港基本法附件一《香港特別行政區行政長官的產生辦法》和附件二《香港特別行政區立法會的產生辦法和表決程序》。

第三步，在國家層面完成對附件一和附件二的修訂後，香港特區政府將據此對本地有關法律作出相應修改，當中包括修訂8項主體法例及24項附屬法例，並於4月13日將條例草案刊憲。

4月14日立法會進行條例草案的首讀及二讀。

4月27日立法會以40票贊成、2票反對，三讀通過了條例草案

三. 在中央大力支持下，同啟香港新篇！

「一國」是「兩制」的前提和基礎。從回歸二十五年以來所總結的寶貴經驗中我們可以清晰看到，中央大力支持是香港良政善治、「一國兩制」行穩致遠的最根本保證。

制定《香港國安法》和「完善選舉制度的決定」是中央堅定落實「一國兩制」初心的重要舉措，標誌着香港特色的民主制度從此正式展開了新征程，全體香港市民對香港邁向「由治及興」充滿着熱切的期盼。

第六任行政長官選舉是香港特區在《香港國安法》和完善選舉制度下一次重要的民主選舉，整場選舉依法依規、公平公開公正。在選舉期間，我們清晰地看到香港社會氣氛團結和諧、眾志成城、萬眾一心。良政善治的香港非常值得大家期待。

（一）「強化政府治理能力，團結一致為民解困」

- 為滿足市民期待、更好迎接挑戰，需要進一步革新、優化治理能力，打造忠誠、高效、貼地的施政團隊。
- 以結果為目標，樹立敢於做事的新風，提升公務員團隊文化；以市民利益為依歸，發揮各界力量，積極為市民解決問題。

（二）「精簡程序多管齊下 提供更多安居之所」

- 打通土地、規劃、建造、配套各個環節，善用政府、機構、民間各方力量。
- 以進一步提速、提效、提量為目標，加快造地建屋的速度，縮短公屋輪候時間。
- 令市民有更優質的居住環境，讓更多市民置業圓夢，保民生安定，促百業興旺。

（三）「全面提升競爭實力，創造持續發展空間」

- 香港要發揮好「八大中心」角色，以創新驅動發展，壯大實體經濟根基，主動發掘大灣區的機遇，並配合國內國際雙循環格局，做好國家與世界各國互動互通的橋樑。
- 四個傳統中心：國際金融中心、國際航運中心、國際商貿中心，以及亞太區國際法律及解決爭議服務中心。
- 四個新興中心：國際航空樞紐、國際創新科技中心、中外文化藝術交流中心，以及區域知識產權貿易中心。

（四）「同建關愛共融社會，增加青年人上流機會」

- 市民的福祉是社會發展的關鍵目標。政府施政要以民為本。
- 教育、社福、醫療等各個制度互相配合，建構有利環境，使市民獲得保障，同時提升個人能力，發揮所長。

結語：團結同心 實現新的歷史篇章！

開啟新篇章，就是要廣泛凝聚社會共識，積極發揮民間力量，團結一致、攜手合作，共同為香港創造最大的社會價值。

在中央支持下，只要「我和我們」同心共濟、
一起努力，定能夠「同為香港開新篇」！

座談會 1

香港蓬勃發展的資本主義制度
——《基本法》第五章

主持人



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梁定邦：多謝司儀。歡迎各位來到今日下午的第一個座談會。這個座談會的主題是「香港蓬勃發展的資本主義制度——《基本法》第五章」。希望今日討論的主題能引起各位的興趣。大家都知道在《基本法》的第五條內清楚列明香港不實行社會主義制度，而是實行資本主義制度及原有的生活方式。今天早上大家都已經聽到了，其實這不僅是 50 年的時間，如若行之有效的話，50 年後也沒有問題。在這個情況下，我們需要考慮的是在資本主義內，《基本法》於各個環節都在扶持我們現有的制度，包括法律制度那方面。而《基本法》第五章內十分重要的一點是專門講述經濟方面的。各位可以看到在經濟的環節內，《基本法》是如何扶持和推進香港作為一個國際金融中心、國際貿易中心、航運中心，以及保護這幾個中心和運作的各個環節及範疇內應有的權利，以及如何令它們發揮它們的義務。

另一方面，各位亦不要忘記《基本法》的第七章內有很重要的一點，就是香港本身是受到中央和《基本法》授權，可以在經濟的範疇內與其他地區締結國際的協議，這方面亦是非常重要的。因此，我們是國際貿易組織（WTO）的一個當然成員。香港亦在很多國際經濟範疇內具有舉足輕重的地位，包括金融範疇。稍後我們亦會討論這一點。首先，有請史美倫女士為我們進行演講。

史美倫：各位午安！首先，我衷心感謝律政司邀請我今天在這裏發言。當我們聚首一堂慶祝香港特別行政區成立 25 周年之際，我們也很高興能借此機會總結香港作為一個城市和一個金融和法律體系在過去 25 年來取得的成就，同時展望我們在未來可以共同抓住的機遇。每段歷史時期都帶來足以塑造和定義未來的事情、資訊和創意，過去 25 年也不例外。

回望過去 25 年，香港先後經歷了 1997 年的亞洲金融危機、2008 年重塑全球金融格局的雷曼兄弟危機、徹底改變人類生活方式的高速互聯網和科技的快速發展，以及 2019 冠狀病毒病的爆發，事件之多，不亞於過往。香港這座城市多年來也經歷了不折不扣的歷史性轉變，從製造業基地發展為擁有充滿活力、深度和流動性的資本市場的國際金融中心。直至 2021 年底，香港的股票市場總市值已達到 5.4 萬億美元，較 1997 年底的 4,130 億美元增長了足足 13 倍。香港已成為全球領先的集資中心之一，現時香港市場上有大約 2,500 家上市公司，當中接近 200 家是國際公司。香港市場也日趨活躍，證券市場的日均成交額從 1997 年的 150 億港元倍增至 2021 年的 1,660 億港元。香港目前是全球首屈一指的亞洲資產和財富管理中心；根據證券及期貨事務監察委員會的統計數字，截至 2020 年底，香港的資產管理規模達 4.5 萬億美元。此外，按 2021 年的資產管理規模和集資額計算，香港是亞洲區內最大的對沖基金基地和第二大的私募基金中心。

在 2021 年全球金融中心指數報告中，香港在全球 116 個金融中心名列第三，僅次於紐約和倫敦。此外，根據美國菲沙研究所的評估，香港是全球最自由的經濟體。香港憑藉健全的法律制度及堅定保持貿易和資本流動的自由度，過去十年來一直獲冠以最自由經濟體的美譽，而香港作為備受國際尊崇的金融中心，也意味着我們過去 25 年在國家的發展歷程中發揮了獨一無二的作用。香港擔當着超級聯繫人的獨特角色，支持國家金融市場的發展。香港現已成為全球最大的離岸人民幣業務中心，截至去年 9 月底，存款總額達 8,550 億元人民幣；而作為離岸人民幣交易、結算和清算中心，香港處理了全球離岸人民幣付款交易的大約 75%。

股票方面，自 1993 年第一家 H 股公司上市以來，香港交易所（港交所）作為中國的離岸金融中心一直發揮了關鍵作用。在過去的八年裏，港交所率先推出徹底改變了全球市場的「互聯互通」機制，為國家與世界之間的雙向資本流動提供可靠和高效的通道，並繼續支持國家開放金融市場。

去年，隨着港交所推出 MSCI 中國 A50 互聯互通指數期貨作為香港首項亞洲衍生產品，港交所現時擁有全球最具競爭力的離岸中國亞洲產品生態系統，為環球投資者提供獨特和多樣化的國家市場准入方式。過去 20 年間的另一個趨勢，是亞洲創新領域的增長。近年來，我們目睹了不折不扣的科技革命，一些世界領先的科技集團和新經濟公司在亞洲（特別是中國）誕生。我們 2018 年進行的上市規則改革使香港成為了新一代企業的首要集資中心，至今已有接近 200 家新經濟公司在香港上市，集資總額超過 8,400 億港元。這批上市佔去了同期香港首次公開招股集資額接近 65%，也佔去了同期本地市場總市值的 20% 以上。

我們的上市改革改變了本地市場的基因，更促使香港成為亞洲最大和世界第二大的生物科技集資中心。但我們並無自滿，我們不斷尋找方法提高本地市場的競爭力，以期豐富生態系統和吸引優質的新經濟公司來港上市。讓我舉幾個近期的例子。今年年初，我們推出了專以特殊目的收購公司為對象的新上市機制，市場反應非常積極。今年 3 月，我們迎來第一家特殊目的收購公司在香港市場上市。我們還精簡了海外公司在港上市的程序。我們快將宣布更多強化和改革市場的措施。

我們過往所走過的歷程、現在所珍惜的地位，以及所期待的未來，都以《基本法》為核心。在《基本法》的框架下，

香港的法律制度和「一國兩制」是公開、透明和扎根於規則的。我們的法律制度確保合約和具約束力的協議得到履行，有助增強企業和投資者對香港作為金融中心的信心。《基本法》保障信息和資本的自由流動，而這支持香港作為全世界最大的外國直接投資來源之一及全球各地公司的首要集資場所的地位。

有了《基本法》，加上香港的穩固基礎設施、與國際接軌的監管制度、全球化的生態系統、透明的市場和強大的人才庫，香港實在擁有許多具吸引力的特質，令這座城市坐享貫通中外的國際金融中心這獨特地位。而最重要的是，這些核心特質至今仍完好無缺。過去 25 年，香港取得了巨大進步，實力不斷增強；有賴香港金融市場在順境和逆境下展現的韌性和適應力，香港得以持續發展。

對於香港的未來，我深感樂觀。在我們身處的時代，世界各地需要更多而不是更少的聯繫。香港連同港交所可以擔任東方與西方之間的促進者、橋樑和超級聯繫人的重要角色。中國與國際市場之間的跨境資本流動與日俱增、日趨成熟，為香港帶來了龐大機遇。作為國家首屈一指的離岸融資中心，同時作為全球主要的資產配置和離岸風險管理中心，香港定將繼續在開創中國與世界各地的相互市場准入或資本互流方面發揮關鍵作用。

可持續金融的發展締造了另一良機，讓香港在連接資本與機會方面發揮作用。據估計，全球每年需要投放 9.2 萬億美元來實現「淨零」目標，而這表示亞洲和世界各地對綠色金融的需求將日漸殷切，從中產生的機遇亦會十分龐大。港交所作為監管機構、運營者和上市公司，發揮着巨大的作用，我們也正盡力推動變革，協助香港成為區內的可持續金

融中心。作為監管機構，我們透過關於環境、社會及管治（ESG）披露和終止由單一性別成員組成董事會的規則，帶頭推動負責任的企業治理、提升各界對 ESG 的認知及推動 ESG 的最佳實踐。作為市場運營者，港交所在推動綠色和可再生領域的增長和發展方面發揮着主導作用，於 2021 年促成了 95 個綠色、社會和可持續債券上市，集資共超過 2,826 億港元。作為上市公司，我們與全球合作夥伴和格拉斯哥淨零金融聯盟攜手承諾最遲於 2050 年實現「淨零」，而透過轄下的慈善機構——香港交易所慈善基金，我們積極走進社區，支持弱勢群體，並且撥出資源推進環境和氣候相關事業。

此外，隨着亞洲的創新引擎繼續高速運轉，香港在連接資本與機會，以及為新一代企業提供資金方面擔當着令人振奮的重要角色。我們在大灣區內的獨特地位讓我們有機會促進區內公司與國際投資者的連繫，而大灣區本身擁有 8,600 萬人口，經濟規模與韓國看齊，並且是全球第二大創新科技聚集地。

總括而言，香港本身既是備受尊重的國際市場，也是連接東方與西方和促進中外資本、機遇和思想交流的重要紐帶。這個獨特角色建基於廣獲信賴和透明度高的法律制度，對於把香港建設成為首要的國際金融中心起了重要的作用。而今時今日，香港的角色可說是比以往任何時候都更加重要。

展望未來，《基本法》將會繼續是香港法律制度的支柱，鞏固香港在金融市場的實力和塑造香港市場的成就，而港交所的一切工作都會繼續體現廣獲信賴的香港法律制度和正當程序的特徵。從帶動市場變革到加強監管指導，我們將與所

有持份者攜手確保透明度、可預測性和問責制，讓香港市場受益。我相信，透過所有持份者、管治機構、企業、社區和個人的相互聯繫和通力合作，我們定能建立更繁榮的香港，讓這座城市繼續發揮作為世界首要金融中心之一的影響力。謝謝各位。

梁定邦：多謝史美倫女士。大家都聽到我們的香港交易所擔當着十分重要的義務，亦可以看到法制的重要性。現在，有請陳德霖先生為我們繼續講解香港金融中心的重要性。有請，Norman。

陳德霖：多謝 Tony，亦多謝律政司司長邀請本人參加今天有重大意義的會議。《基本法》第一百零九條訂明香港特別行政區政府應「提供適當的經濟和法律環境，以保持香港的國際金融中心地位。」這條文充分地表明中央對香港作為國際金融中心的地位的重視，以及要求特區政府需要保持這個地位。各位亦明白一個地方當然不可以僅是依靠一條本地的法例，不論是《憲法》或普通法律，就能變成一個國際金融中心，以及持續保持到這個地位。本人會利用十分鐘時間探討以下三個題目。第一，香港作為國際金融中心究竟存在什麼優勢？第二，往後香港金融中心發展的前景是如何？第三，香港將來面對什麼挑戰？

關於第一個題目，成為亞洲首屈一指的國際金融中心需要有什麼條件？金融中心其實是透過不同的市場、一些渠道擔當儲蓄及投資之間的橋樑。全世界有很多金融中心，有些甚至比香港更大。但是，有資格成為或稱為國際金融中心的只有數個地方，而香港是其中一個。其實，國際金融中心與一些大型的金融中心的分別不在於規模，而是國際金融中心是有能力除了在本土的金融中介活動中擔當一個角

色之外，亦有能力在附近區內或國際的資金流通上擔當一個重要角色。

要成為國際金融中心有很多先決條件，大家亦明白。最常提及的包括優良的金融市場、高度專業的人才、健全的監管、適合營商的法律和司法制度等。但是，其實很多人忽略了促使香港成為亞洲首屈一指的國際金融中心的三項十分獨特的優勢。第一，國際金融中心必須要接近和熟悉儲蓄來源（sources of savings），以及它投資所在的市場（investment market）。而香港與新加坡、東京、倫敦、紐約這些國際金融中心相比下，地理上沒有一個地方比香港更接近中國市場，同時我們屬於同一個國家，用同一種語言，沒有其他金融中心比香港更加了解內地市場，這是第一點。第二，雖然內地的本土金融中心，如深圳、北京和上海，它們都是規模很大和十分活躍，但是內地的資本管理措施令這些地方在融通跨境資本流通方面的吸引力不及香港。第三，稍後座談會亦會探討，香港是全世界唯一一個實行雙語法律制度的普通法司法管轄區，中英文同時擁有同等的地位，這一點令香港在引導資金流入和流出中國內地方面有着重大的優勢和吸引力。我可以提供數字方面的數據：在過去數十年，中國經濟起飛、騰飛的時候，香港同時發展成為國際金融中心。金融服務業總體（即銀行、證券、理財各方面加起來）於1997年在中國的國內生產總值（GDP），香港的貢獻是10.2%，並於2009年升至16.2%。在2019年，香港在國內生產總值（GDP）貢獻了23.3%。由此證明金融服務業在香港的經濟增長方面所佔的比例是越來越重的。

第二個題目是香港作為金融中心的發展前路有什麼機遇呢？我在此提出三點。第一點，中國是世界第二大經濟體，而且增長的勢頭持續，單是一年的經濟增長的增量

(increment) 大約是 1.9 萬至 2 萬億美元。這個數字是什麼概念呢？是比意大利、澳洲或者加拿大整個國家的國內生產總值還要多。在這個巨大經濟增長的引擎帶動下，融通資金進出內地的需求和機會將會持續增加。第二個機遇是中國新的雙循環經濟增長模式，在任何情況下都是需要一個高效、可靠和安全的管道，把內循環和外循環連接起來。基於剛才提及的優勢，沒有其他金融中心比香港更適合擔任這個角色。第三點，香港在粵港澳大灣區的未來發展擁有更加明顯的機遇，資本管理的措施雖然可以令中國大陸較少受到外部因素影響，但同時亦會令跨境資金的流動率不變。在落實國家改革開放的政策過程中，香港和內地的資本市場已經建立了互聯互通的橋樑。除了在股票市場內設有滬港通、深港通和債券通，最近亦推出了大灣區的個人理財通的試點計劃。我們必須根據實際運作的經驗進一步擴大深化這數項試點計劃。另外，我認為大灣區內應該進一步開放區內企業層面的資金流動，可以考慮通過資本通的試驗計劃形式，並利用最新的區塊鏈技術，確保通過這個計劃籌集的資金留在大灣區而不會轉移到中國的其他地區。

最後，我們談論一下未來的挑戰。世事往往並非一帆風順，定會出現一些挑戰，我提出三點挑戰。第一點，中美之間的地緣政治緊張關係有可能進一步惡化，或會影響到香港現時作為國際金融中心的運作。因此，我們要保持警覺和靈活性來應對有機會出現的變化。第二點，《基本法》第一百一十二條確立香港不實行外匯管制政策，以及港幣自由流通及自由兌換。這條文為在香港的資本自由流動的港元的可兌換性提供了憲制保障，是香港作為國際金融中心的基石。但是，據我所知，其他國際金融中心或地區並沒有任何法律或《憲法》的明文規定貨幣的自由流動及可兌換性，這是香

港獨有的，這亦意味着在極端情況或作為防範金融體系崩潰的最後一道防線，其他國家或國際金融中心可以在必要的情況下實施外匯管制。但香港受到《基本法》的制約，所以我們必須時刻保持警惕，確保我們的金融和貨幣體系穩健，並且有足夠的資源能應對可能出現的衝擊。最後一點，談到資源方面，外匯基金是保障香港金融體系穩定的最後一道防線。早前有說法指外匯基金的總值多於 40,000 億港元，代表香港政府的儲備過多，要求政府還富於民。今日不是探究外匯基金資產負債表構成的適當場合，但我想說政府近期為應對疫情，以及推出大量支援經濟和就業的措施，令香港出現巨額赤字，加速了財政儲備的減少。這樣充分證明了我們必須擁有足夠的儲備應付不時之需。更重要的是外匯基金是守護香港金融穩定的最後一道防線。當然，40,000 億港元是一個不少的數目，但若類似 2008 年的全球金融危機再次重臨，40,000 億港元會否是太大或太多的數目？據資料提供，2008 年外匯基金為香港銀行提供百分百存款保障，當時銀行體系總存款是 67,000 億港元，這項特殊的保障從 2008 年 10 月開始一直持續到 2010 年年底。我們很幸運，既穩定了銀行體系，亦無需動用外匯基金一分一毫。如果香港再次面臨金融危機，政府再次推出類似的存款保障，但現時銀行存款的總額已經從 67,000 億元上升到 15 萬億港元。若香港沒有一個充裕的外匯基金作為後盾，到時候我們又可否跟以往一樣安度難關呢？

最後我作出以下總結：香港背靠祖國，機遇無限，但同時我們亦面對不穩定和複雜的世界局勢，所以我們一定要居安思危，作好準備，不可掉以輕心。這樣，「一國兩制」才可以行穩致遠。多謝。

梁定邦：多謝，Norman。剛才 Norman 跟我們說，我們應該居安思危。他的一番話亦帶出了一個十分重要的意義，就是「一國兩制」對於我們整體的金融中心是十分重要的。就好像今天早上黃玉山教授提及「一國兩制」在世界上的經濟政治歷史裏是非常偉大的一個構思，為我們帶來非常大的機遇。

下一位講者是 Ashok Kothari 先生。Ashok 是一位私募股權專家。因此，他將從自己的角度談談「一國兩制」。有請 Ashok。

Ashok S. Kothari：謝謝 Tony。身為一名長期的香港居民，我想借此機會感謝我的朋友 Tony，感謝他為香港和中國所做的一切。他多年來的無私服務，令我們所有人都受益匪淺。香港的種種優點顯而易見，剛才各位與談人都已討論過。我現在想談一談投資者決定在香港投資或透過香港投資時的心態。

首先，我們經常談及創新。談論「一國兩制」本身已是巨大的創新。然後，我們有《基本法》，它給我們一顆定心丸。我們已有一個架構，而且它行之有效。至於決策過程，這件事情非常重要，而且涉及一個不同的角度。我的工作經驗主要是為大型機構投資者管理資金，包括主權財富基金、大型保險公司、養老基金和捐贈基金。讓我們考慮一下他們如何看香港及他們的想法。我們都明白，中國是一個不容忽視的市場。但從更宏觀的角度看，中國不僅擁有最多人口，而且擁有最龐大的消費市場。它已經歷人們以最低價格首次購買電視、洗衣機、冰箱、空調和汽車的周期。他們現正步入第二個周期：致力追求質量。這意味着中國市場正在轉向質量更高、增值更多的產品和服務。整個世界都不能忽

視這個市場。機構內部都設有資產配置過程。這是什麼意思呢？人們普遍認同，在一個資產類別中購買什麼資產，並不像如何分配資產那樣重要。這意味着重要的並不是選擇購買哪種股票，而是與私募股權相比、與房地產相比、與固定收益相比，你在公開市場上投入多少，以期從這樣的組合中產生最大回報，而這是一個動態的過程。就讓我舉一個例子，讓你更易明白。我有一位來自美國加州的朋友 Phil，他曾修讀機械工程，然後進了法學院，是個非常聰明的人。他寫了一本影響深遠、關於資產配置的書，送了一本親筆簽名的初版給我。然後他給我一些指示，說：「你絕不能把這本書放在你的圖書室、辦公室或客廳；你必須把它放在床邊的桌子上。」我不太理解，於是問：「為什麼？」他回答說：「如果你睡不着，翻開我的書看兩三頁，馬上就會有幫助。」這就是資產配置。這是一門數學科學，是動態的。

世界上有許多大型機構投資者。投資其實是一種吸引觀眾的體育運動，因為每個人都知道對手的結果，而且競爭激烈。所以投資者是理性的，他們要做得和其他人一樣好，或者比其他人更好。所以他們設計這個資產配置模型時，不能忽視中國的消費市場。他們也不能不投資到中國的科技公司，因為中國去年批出的專利比任何其他國家都要多。這就是「錯失恐懼症」（FOMO，全稱 fear of missing out）的科學性。這對投資者來說是重要的動力。因此，當機構投資者看到其他投資者正在投資時，他們就會記起曾經錯過澳門的機會。大約 20 年前，當澳門發出博彩牌照時，西方投資者認為澳門只是一個非常遙遠的小地方，根本無法與拉斯維加斯甚至大西洋城相比。最終，澳門變得比這兩個城市的總和還要大，而投資者都錯過了投資到澳門的機會。他們不會重

蹈覆轍。因此，中國消費者和中國科技是現今所有資產配置模型的核心所在。

人們考慮投資到中國時，自然也會想到香港。香港的專業人士大多都能說普通話、粵語和英語。我們也有行之有效、悠久的普通法制度傳統。我們有證監會，它是領導者之一——可以說不僅在合規方面，還有在環境、社會及管治（ESG）方面。香港交易所方面，我們的港交所是最早要求上市公司就 ESG 提交報告的證券交易所之一。因此，香港有不少發展都處於世界領先地位。我們也有資本和信息流動的自由。我們有硬貨幣。對有意投資於中國的人來說，駐足香港是合乎邏輯的做法，是容易作出的決定。同樣，對有意走出去的國內企業來說，香港是合理不過的踏腳石。我們有自由流動的資本、可自由兌換的硬貨幣，這些都讓人們感到安心，而且有充分儲備作為後盾。因此，人們不用擔心香港的貨幣或它的可兌換性。

考慮到所有風險和所有機遇後，中國提供着龐大的機遇，香港也是理想的駐足點。因此，我很有信心香港會繼續蓬勃發展。這要歸功於我們的監管機構，它們時刻為投資者着想，提出有效的新架構、進行高效的合規工作和維持公平的競爭環境，對投資者的需求反應積極。我認為香港的前途無可限量；這是經過深思熟慮後達致的觀點，而不只是主觀感受。我確信香港在首次公開招股、外來及對外投資的交易量方面都會屢創紀錄，並定會在中國的國際發展道路上發揮重要作用。謝謝各位。

梁定邦：非常感謝你。謝謝你，Ashok。你剛才的談話再次顯示了「一國兩制」的重要性。

下一位與談人是商務部研究院區域經濟合作研究中心張建平主任。有請張主任。

張建平：好的，謝謝主持人。非常榮幸能夠參加今天這樣的一個論壇。我個人認為「一國兩制」在過去 25 年來實際上是有用地保證了中國國家的統一和完整，而且保證了中國的國家利益。這個制度的優勢是非常顯著的。我看到了通過「一國兩制」和香港《基本法》的落實，保障了中國的國家安全和長治久安，防止了這個國家的分裂，體現了東方智慧和包容發展。可能在有些西方人的邏輯當中，他會覺得這個「一國兩制」，這兩種制度怎麼會在一起，並且能夠共同地支持香港和內地的合作與發展。但是過去 25 年，基於香港《基本法》的保障，也包括我們對香港《基本法》繼續進行完善，時間證明了香港《基本法》使得香港能夠克服各種困難、各種衝擊，保持了穩定發展的狀態。在中國，有一句大家都很熟悉的話，就是「穩定是壓倒一切的」。香港的穩定是為了香港持續繁榮發展的一個重要保障，所以在「一國兩制」的框架之下，內地和香港的優勢是能夠互補的，通過兩地之間的合作和互動，也正在為國家的高質量發展不斷作出新的貢獻。

在「十四五」期間，中國正在實施創新驅動的發展戰略，以及雙循環的戰略。在這個過程當中，香港的作用和角色仍然是非常關鍵的。下面我會結合粵港澳大灣區的管治權規劃的落實，還有國家對粵港澳大灣區未來發展的方向，也包括新的「十四五規劃」所要求的發展方向，來談一下香港未來在《基本法》的支持下的發展前景和發展機遇。

粵港澳大灣區目前已經成為中國市場化、國際化、發展最快的一個區域，而且市場機制也是最好、開放程度最高的



一個區域經濟的增長極。這個地區已經變成了中國創新發展的一個領頭羊，也變成了在全球發展過程當中非常有競爭力的一個載體，一個世界級的城市群。所以粵港澳大灣區的提出，也意味着中國正在參與國際競爭的過程當中，例如世界第一大經濟體美國，他們有紐約的金融灣區，有三藩市這個科技灣區，日本也有東京這樣的綜合性灣區，涵蓋了金融和科技這種良好的發展。未來中國如果要有一個能參與世界級灣區競爭的區域，那麼包括香港在內的粵港澳大灣區在其中便承載着非常重要的任務和責任。

首先，第一個方面就是未來粵港澳大灣區將會變成一個世界級的城市群，它也會成為全球基礎設施互聯互通，特別是海陸空交通運輸的一個重要樞紐。實際上，現在我們香港也好，深圳也好，廣州也好，目前已經在亞太地區互聯互通，還有在全球的無論是空運還是航運領域，香港現有的地位已經非常突出。我看到國家的「十四五規劃」已經賦予了香港在航運方面一個新的角色，那就是增加一個樞紐，就是

未來香港要成為中國的國際航空運輸的樞紐。未來我們可以看到香港的國際航空運輸，特別是國際中轉業務將會得到大量的發展。我過去也參與過關於如何提升香港航運業發展的一個研究。在比較的過程當中，大約十年前，我注意到香港在航空貨運的國際中轉業務這方面，它的比例是低於新加坡的，但是通過粵港澳大灣區的發展，還有國家賦予香港這樣的一個新角色，我們期待未來香港在高附加值的國際航空中轉業務這方面能夠獲得新的突破。

國家目前也把深港河套納入了粵港澳重大合作平台建設。其實現在海南自貿港的建設，在中國新一輪的改革開放進程當中，已經成為一個新的開放平台。這個三萬多平方公里的自貿港，未來是面向全世界開放的。對於香港而言，我覺得未來香港和海南自貿港的建設相互對接，優勢互補，其實是有利於香港拓展自己的發展空間和業務空間，在「做大市場蛋糕」的過程當中，香港的優勢是可以發揮得更為充分。比如說我注意到香港有一位年輕的經濟學家，他的基地是在香港的，但是他的學術平台已經延伸到了海南大學，整體都在開放，還有中國的國際化，這個領域當中影響力也在不斷地提升。

第二方面我想談一下在國家開放發展過程當中，粵港澳大灣區對於國家高質量建設一帶一路，還有對接國際經貿規則這方面，香港的作用是越來越大的。作為一個高度國際化的區域，實際上香港和粵港澳大灣區在中國的國際貿易，還有在中國對外投資及把資本引進來方面，都發揮着非常重要的樞紐的作用。我也注意到香港在推動兩岸四地貿易投資相互連通、共同發揮我們的優勢方面，它的角色現在依然是非常關鍵的。在國家的「十四五規劃」當中，我們已經明確地提出要支持香港提升它的國際金融、航運和貿易中心的地

位，為香港增添很多新的中心和樞紐的職能。這也意味着未來香港在高質量建設一帶一路的進程當中，它超級連絡人的角色會進一步強化，還有香港作為一帶一路建設的排頭兵和先鋒隊，這樣的角色也會進一步得到強化。

第三方面就是在打造全球的創新創業的高地，對標美國的三藩市灣，還有對標東京灣，能夠讓香港和大灣區的其他城市共同合作打造全球的科技創新平台。那麼，香港的優勢是體現在研發、科技、創意、設計這些領域。我們也看到香港的優勢和深圳、廣州各大灣區製造基地的優勢相結合。而我們現在已經打造出了全球，應該說最具競爭力的無人機的細分產業。我也聽說現在在粵港澳大灣區，香港和內地合作，共同研發打造無人船產品和相關的產業發展。其實，未來在粵港澳大灣區圍繞着新一代的資訊技術、雲計算大平台、雲計算大數據，也包括生物醫藥產業，還有新能源產業。我們未來在科技創新這個領域當中所面臨的創新任務是非常多的。國家在「十四五規劃」當中，把香港確立為未來的國際創新科技中心，以及區域智慧財產權的貿易中心，通過強化知識財產權的保護，期望粵港澳大灣區成為在全球主要的科技灣區競爭過程當中的一個佼佼者。這些發展將會為香港帶來更高的附加值，也會為內地跨越中等收入陷阱、走向創新驅動的發展道路帶來新的動力。

第四方面，我想強調就是香港服務業的優勢。香港的服務業佔 GDP 的 95%，包括對接粵港澳大灣區的現代製造業服務，也包括粵港澳大灣區的消費升級服務，因此在生產性的服務業，還有生活類的服務業方面，都具備着巨大的發展潛力和商機。尤其是粵港澳大灣區未來將加快製造業的轉型升級，通過在戰略性新興產業，還有在高新技術產業方面的發展，積極參與國際競爭。香港的金融服務、專業服務、物

流服務，還有商務服務，它的高效系統和綜合實際上很大程度上能夠滿足粵港澳大灣區未來的發展需要，也會給香港未來創造新的增值空間。

第五方面涉及到金融中心的建設。在「十四五」期間，為了強化香港作為全球國際金融中心的角色，國家為香港增添了全球離岸人民幣業務樞紐國際資產管理中心及風險管理中心這個新角色。我注意到現在香港作為全球最大的人民幣離岸交易中心，即使是在目前人民幣國際化正在起步階段，香港這個業務已經提供了巨大的市場空間。我們可以展望未來中國整個經濟規模將不斷放大。2021年，中國的經濟總量已經達到18萬億美金左右，佔美國的80%，而且中國的經濟總量和歐洲的經濟總量已經是基本相當。歐洲現在有多個國際金融中心，包括盧森堡、法蘭克福、巴黎、蘇黎世等。對於中國而言，這麼龐大的經濟體量，在未來可以有多個金融中心，就是未來中國的經濟總量，按照很多國際機構的預測也會超過美國，變成全球最大的經濟體。在這個過程中，客觀上，中國也需要有國際級的金融中心，來與中國這個最大的經濟體相匹配。同時，人民幣的國際化水平會進一步提升。在最近這兩年當中，中國的金融業已經基本上在自由貿易試驗區先行先試，在銀行、證券、保險、基金等各個細分行業，目前都已經取消了外資的股比限制。同時，我們也在通過改革對外資，就是既要擴大准入，同時也要轉營，讓更多的外資、金融機構能夠在內地龐大的金融市場當中獲得新的市場空間。所以，在競爭發展的過程當中，我非常期待香港和粵港澳大灣區能夠結合起來，因為大家也知道深圳有VC和PE這個非常好的金融業態。在廣州，我們也集聚了大量的金融機構總部，所以未來粵港澳大灣區這樣集合性的一個金融中心，是非常有希望成為未來中國在全球的重要

金融中心，並且能夠在人民幣國際化的進程當中，打造出更大的市場空間，使得香港獲得高附加值的產業。

最後一點，我想說的是未來我們的粵港澳大灣區致力於打造一個優質的生活圈，要建成綠色宜居、宜業、宜遊的世界級城市群。在這個過程當中，文化創意產業會得到大發展，文化產業和旅遊產業的相結合，可讓我們建設一個文化的灣區、藝術的灣區、健康的灣區。「十四五規劃」當中，國家已經明確香港要建設中外文化藝術的交流中心，我也非常期待，比如說未來香港能夠集合兩岸四地優秀的藝術人才，能夠打造出世界級的中國的音樂劇的這個精品，能夠傳唱全世界，就像現在有些發達國家在這個細分行業當中所擁有的地位，未來大灣區也有這樣的條件。當然，文化旅遊產業的大結合，也會為香港帶來新的增長空間。中國現在整個大市場已經處於一個全球第二大消費市場的位置，商品消費目前和美國已經基本差不多，但是服務消費市場和美國的差距還是比較大的。未來，整個消費大市場發展的過程當中，無論是旅遊產業，還是文化產業、健康、醫藥產業，都會得到大的發展。我也非常期待香港在其中能夠找到自己的增值空間和發展空間，在推動香港繁榮發展的過程當中，更加深度融入國家高質量發展的進程當中，讓中國未來在全球的競爭力能夠得到不斷的提升。我就講到這裏，謝謝。

梁定邦：謝謝張主任。我們現在馬上要進入討論環節。我想請教你一個問題。國家已經參加了這個「區域全面經濟夥伴協定」(RCEP)，你認為如果香港能參加的話，能不能加強你剛才所說的「我們的優勢」呢？

張建平：好的。目前香港雖然沒有加入到 RCEP，但是香港已經和東盟簽訂這個自由貿易協定。香港和內地之間也

有一個 CEPA，而且 CEPA 已經經歷了十多個版本的更新。RCEP 是代表了 21 世紀的貿易投資規則體系，在未來，它的相互貿易自由化程度將達到 90% 左右。在服務業的開放方面，六年之後將會在服務貿易領域所有的經濟體推動負面清單的承諾、出價和管理模式，所以 RCEP 20 個章節的規則不僅涉及到了傳統的貨物貿易、服務貿易、投資，還有經濟合作、貿易便利化，也涉及電子商務、知識財產權、政府採購、競爭政策等新的議題，所以我們很期待這個大市場未來將會為中國的雙循環提供重要的新動力。在這個過程當中，因為香港正好是在 RCEP 這個全球最大的一體化市場的核心位置，而且香港的高度開放，以及香港作為自由港，其貿易投資的自由度非常高，創新能力也比較強。所以 RCEP 作為巨型貿易協定會產生巨大的貿易創造效應、投資增加效應、GDP 的增長效應，那就意味着在 RCEP 未來區域內，我們相互貿易和相互投資規模不斷放大的過程當中，香港的關鍵角色也會進一步提升，並會獲得很多寶貴的附加值，這是我的看法。

梁定邦：謝謝張主任。我們會努力爭取參加 RCEP。我們還有五分半鐘。Norman，請問如果你能提出一項建議來改善你所提出的情況，你會希望香港或中央政府做什麼？

陳德霖：你不介意的話，我想提出兩點。談到大灣區，我完全同意張主任的觀點。我對大灣區非常樂觀，但我們必須牢記大灣區與其他各個宏偉的灣區之間的最大分別。東京、紐約和三藩市跟我們不同，它們各自同屬一國，沒有兩制。工廠生產、人員、資金和貨物的流動都是自由的，只受到交通基建限制。而我們有「一國兩制」和單獨的關稅地區。一切都要經過海關和衛生檢疫，而最重要的是金錢。如


果不允許金錢在香港和大灣區其他地方之間更自由地流動，這將是一大障礙。這樣是行不通的，必須切實允許資金准入。國家的開放是中央政府的政策。因此，我敦促當局以宏大的想法，大膽地前進，在試驗的基礎上允許資本、資金在香港與大灣區其他地方之間流動。這是我提出的第一點。

我們必須承擔風險，因為「一國兩制」是如此新穎。他們承擔了險峻的、極大的風險，最終它行之有效。但前進到下一個階段、下一個水平時，我們必須承擔更多風險，對嗎？我們可以在漸進的基礎上一步步地做。如果實際效果不似預期，我們總可進行微調和調整。這是我提出的第二點。我們正在進入數碼世界，而這與地緣政治、大灣區或任何地理考慮無關。我們正身處於數碼時代，因此，我敦促當局再次大膽地行動，向前邁進，激發和鼓勵創新、技術創新，特別是在數碼技術的設計和應用方面。同樣，我們創新的時候，必須承擔一些風險。我們不可能控制所有事情。進行之前，可以聘請麥肯錫製備一份 500 頁的諮詢報告。勇往直前、大膽嘗試。

梁定邦：Ashok，我們正邁向數碼經濟。如果有一件事你想做，那是什麼？

Ashok S. Kothari：我認為 Norman 說得很對，數碼化是前進的關鍵。在香港，顯而易見的事情之一是一切都運作得非常快、非常有效率，但開立銀行帳戶則不然。我建議香港金融管理局和其他主管當局與銀行攜手制訂效率更高、平衡的程序，為開立帳戶的過程設定時限。交易進行得很快、投資進行得很快、資金轉移也很快，但開立銀行帳戶

並不快。這並非香港的特色。我認為這個問題要得到正視和解決。

梁定邦：真的非常感謝你。我們衷心感謝一眾與談人，他們的發言甚具意義。謝謝。我還要感謝各位出席這個環節和耐心聆聽。我們已經超時，在此向 Arthur 和 Allan 致歉，希望你們像我一樣得到通融。謝謝各位。

座談會 2

為什麼普通法
對香港的自由經濟體舉足輕重？

主持人



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全國人大常委會

香港特別行政區基本法委員會委員



李國章：各位午安！正如各位都知道，《基本法》讓香港繼續實行普通法。如此，我們要提出的問題是：為何普通法對香港的自由經濟體如此重要？今天，我們很榮幸邀得四位非常傑出的嘉賓為我們解答這個問題。首先，我想邀請蘇紹聰博士發言。蘇博士曾任區域法院暫委法官及高等法院暫委司法常務官，亦曾擔任律師會理事、副會長和會長，現時獲廣東省高級人民法院委任為粵港澳大灣區跨境商事糾紛特邀調解員。有請蘇博士。

蘇紹聰：感謝李教授。首先，請容我向各位致歉，因為我要跳過原定的次序，率先發言，然後提早離開，以處理其他事情；希望你們不會介意。

李國章：絕不會介意。

蘇紹聰：好的。我們今天在此討論普通法在自由經濟體中的重要性。我曾嘗試在《基本法》中搜尋「自由經濟」一詞，發覺不少句子都有提及這詞，特別是在第五章，當中提及香港有責任保持國際金融中心地位。《基本法》第五章第一百一十條述及保障金融企業和金融市場的經營自由，而第一百一十二條述及資金的流動自由。

剛才 Norman 談到資金流動自由的重要性，然後第一百一十四條述及自由港，第一百一十五條則述及自由貿易和貨物的流動自由。更重要的是，跟在座各位一樣，我身為律師，經常與海外投資者和在香港做生意的外國人打交道，而他們都會告訴我們，要成為國際貿易中心或金融中心，至關重要的是貨物、資金和人員的流動性。這些人員包括：海外公司若然決定在香港設立辦事處，便要派主管人員和其他人才駐港。我的意思是，現時全世界都正在追求和爭奪人才，所以資金、貨物、人員及資訊的流動性均為重要。關於資



訊，現今我們身處數碼世界，如果沒有垂手可得的優質資訊，便會落後於人。因此，上述所有項目的自由流動都非常重要。

這些事項與普通法又有什麼關係？海外投資者經常前往世界各地，在世界各地投資，重視自己和赴港人才的個人權利，以及他們對財產、投資和金錢的權利。他們希望這些權利可獲得一個易於理解、為國際商界所熟悉、透明度高、務實及確定和貫徹一致的法律制度所保障。這些關鍵因素，是從我過去二三十年執業期間，與客戶打交道的經驗總結出來的。我認為這是所有海外投資者到某個司法管轄區投資、逗留和居住時都會關注的共同議題。

依我所見，普通法符合上述所有標準。我記得很久以前，一位法律教授曾對我說，「普通法」這個詞簡單不過，但包含了很多規範人們行為的原則。不過，歸根究底，普通法的歷史告訴我們，普通法是由於人們前往不同地方從商而

發展起來。各位都知道，多個世紀前，於英格蘭，普通法原則是用作協助人們從商的。我還記得該位教授曾對我說過以下名句，他說，撇開種種複雜的法則，普通法的重要性在於：「使用普通的語言，向普通人表達普通的常理」。這就是普通法，因為我們需要的是易於理解、透明度高、務實、有效和能表達常理的法律原則。

所以我認為，根據現行的《基本法》第八條，普通法將繼續實施，而普通法實際上是法官訂立的法律。司法獨立受到第八十一及八十二條保障。這點很重要，因為我們需要獨立的法官，在不受無關宏旨的因素（法律或事實）干擾下作出充分理由支持的決定和判決，令民眾得知他們在法律下的情況。因此，我希望普通法到了 2047 年之後會繼續實施，也認為我們應盡最大努力，說服當局延續普通法制度。謝謝各位，我的發言至此結束；謝謝。

李國章：十分感謝蘇博士。下一位講者是陳兆愷法官。這位非常博學的法學家曾任終審法院常任法官；現為終審法院非常任法官。我認為陳法官所作的一大貢獻是在香港推行雙語法庭制度；因此，他獲香港城市大學和香港大學頒授榮譽學位。他亦是香港大律師公會的終身榮譽會員。有請陳法官。

陳兆愷：謝謝李教授。各位，我今天可選擇以粵語、普通話或英語發言；但既然有指我對雙語法律制度作出過一些貢獻，我想也許我應該使用中文。我本想使用普通話，但這樣我擔心我的發言會長達十分鐘以上，因為第一，各位可能不會完全明白我的講話；第二，這會需時五、六倍。因此，我別無選擇，只能使用粵語。我現在會轉用粵語，希望各位不會介意。謝謝。

李教授、各位，今天我很高興及很榮幸可以與大家分享「香港的普通法制度對發展自由經濟的作用和影響」這個題目。我預備了一份講稿，希望能在十分鐘內簡單地把重點分享給大家。

我們常聽說香港是一片福地。這些年來，香港作為一個國際商業、貿易和金融中心，它的成功因素有很多，包括先天的地理優勢，是內地面向世界的窗口，亦是外地進入中國市場的跳板。同時，香港不但具備身家優厚的後天優勢，基礎也十分穩固，擁有完善法律和獨立的司法制度，以及成熟的經濟體制。今早的環節已有其他講者提及了香港的金融經濟體制，我就不在此班門弄斧了。

成熟的經濟體制、完善的法律和獨立的司法制度是香港的成功支柱，而這兩項支柱是相輔相成、互相配合的，值得我們今天一起討論。

法律制度涵蓋已沿用了百多年的普通法制度，是一個獨立的司法制度。當然獨立的司法制度不是一朝一夕就能完成的事。在自由經濟體系方面，我們享有自由貿易、市場開放的政策。大家知道，1997年香港回歸，香港特別行政區成立，實行「一國兩制」，並擁有高度自治。回歸後，我們保留了什麼？這兩個最重要的基本制度也保留了，目的是繼續維持香港的繁榮穩定。

在《基本法》和《中英聯合聲明》中，我們發現當中保留了三個事項：第一是保留原有的資本主義社會經濟制度；第二是生活方式；第三是基本法律五十年不變。同時，我們亦發現當中有兩個保持，保持國際金融中心和自由港的地位。因此，在制定《基本法》和《中英聯合聲明》時已很清楚這些制度是必須保留、必須保持的，是一個長遠的計劃。

香港其實具備很多良好條件，剛才也有提到香港的「威水史」，在國際擁有良好聲譽。其他方面我就不多說了，我說說我認識的法治指標，亦即是「世界正義計劃」的法治指標。2021年，在《香港國安法》訂立後，香港的法治指標排行為第19位，挺不錯的，排名比美國高8名（第27位）；而香港的廉潔排名則是全世界第9名，是十分好的。

為什麼我們說香港的普通法制度及獨立司法制度對自由經濟體制是有利的？首先，我們探討一下自由經濟體制包含了什麼？我剛才說，這是相輔相成、互相配合的，所以我們需先了解自由經濟體制到底是什麼。當然包含資本主義特色、貿易自由原則和開放政策。那麼不是自己說是「自由」，便等同「自由」的，是需要符合若干規則與相關條件的，香港都符合這些條件。而自由貿易的原則呢？我不想班門弄斧，所以只說兩項，就是供求的原則（supply and demand）及市場主導，這兩個便是自由貿易原則中最重要。

但是，較早前說《基本法》和《中英聯合聲明》中亦提到自由經濟體制，其實有四個條件已是清楚寫明的，這四個聲明就是受到普通法和《基本法》的保障，到底是哪四個呢？

- （一）所有經濟、貿易和商業活動需自行決定和進行；
- （二）私人企業和財產，包括知識產權均受到法律保障；
- （三）金融活動，包括外匯、黃金、證券、期貨等市場是自由開放，資金進出自由，貨幣流通自由；
- （四）最後就是不受干預或規管。

當然，自由體制不是絕對自由的，就像人權一樣是沒有絕對的，是有限制的，在需要的時候是須受規管的。為什麼呢？那在什麼情況下才會出現規管？

因為經濟迅速發展，有新的轉變、新的貿易及經濟模式，如有任何不正當、不規律或不合法的活動，便會引起巨大的經濟風險，因此，必須通過立法規管，以杜絕不法商業活動。

以倫敦金買賣為例，很久以前，市民不清楚什麼是倫敦金買賣，如沒有規管，很多人便會蒙受重大損失；虛擬貨幣也一樣，如沒有規管，普羅大眾便沒有保障。時代轉變、模式亦轉變，我們是不可以落後的。

法律和司法制度對自由經濟極為重要，當中有兩個重要的層面。第一個層面是在經濟活動的過程中，如討論營商模式，以至在經濟貿易中產生的權利、義務和責任均需受到法律的保障。第二個層面，就是跟剛才談及的一樣，在必須要的情況下需要通過立法管制、規管。法庭的角色就是，如需要受到規管，這些規管必須要符合法治精神，不可以亂來，要合理，經得起法律的挑戰，從而獲得國際信心，營造良好的營商環境。

香港法律的司法制度，最主要的我先前已說過，普通法是保留下來的原有法律，同時亦保留了其司法制度。為免浪費大家時間，我也不多說了。現在，我分享一下獨立司法的制度。

《基本法》第二、十九（一）條說明，在審理案件時須公平、公正、無偏、無私、不受行政和立法機關或任何人士干

預的。第二是終審權，根據《基本法》而成立終審法院，民事和刑事案件第三審（終審）最終裁決都是在終審法院。除了涉及《基本法》的解釋權之外，終審法院亦必須受制於人大常委的解釋。

舉個例子，商業糾紛中如有爭執需面臨司法程序，最終只會在終審法院審理，而不會在人大或最高人民法院進行審理，這是十分重要的。因此，外商非常有信心及十分放心，如涉及訴訟是不會在北京進行的，只會在香港終審法院由張舉能首席法官、常任法官或非常任法官處理。

司法獨立並不是空口說白話，最重要的是法官和司法人員是依據《基本法》第八十八、八十九、九十二條委任及免職。委任是根據司法和專業才能，經獨立委員會推薦。李教授亦曾是獨立委員會成員之一，由特首正式任命。這是十分重要的，不受干預的，特首只可以任命、只可否決，不可推薦，不能隨意推薦任何人。而免職亦是不能隨便免去職務，只在無力履行其職務（即生病），或涉行為不檢（即犯罪）這兩個情況下，經過特定程序，在確立後才可免職。

就我個人經驗而言，打從 1980 年代起，我便出任法官，期間從未有人干擾過由我審理的案件；而從 1990 年代開始，我也有涉及委任和推薦法官，亦從沒受到任何人士干預，中央政府沒有，香港政府沒有，任何人都沒有。所以，以我親身第一手作證，香港司法是真的獨立的。

香港的普通法是如何有利於自由經濟發展？首先，我們重溫一下普通法中，法律原則的由來是什麼？不是誰在那裏說是「法律」，便是「法律」，而是需要基於特定條件的。在法庭內，由法官處理的案件，一定要經過法庭程序，公開審訊，根據事實證據和根據法律原則作出判決，並需要列出

理由。不是泛泛之談要讓人信服，才能成為法律的一部分，還要公之於世。法律原則便是基於以上條件以普通法為依據產生的。

今天，我想與各位討論一下，除了獨立的司法制度的重要性，令人們對香港有信心外，我個人覺得香港的普通法有七個特點，促使別人對這個自由經濟制度產生一個積極和正面的作用，有利營造一個良好的商業環境。

（一）案例法（Case Law）—— 遵循先例（Precedent），這是普通法最基本、最基礎的特點。案例法也不是隨便亂說的，首先必須是上訴法庭審案時作出的判決，而這個判決訂立了一些法律的原則。再者，對於下級法院將來處理類似案件是具有約束力的。其目的與作用是使法律原則具有確定性、清晰性、可預見性，同時減少很多訴訟或上訴，因而對貿易、經濟、商業活動的進行、發展、推廣以至糾紛解決是非常有用的，具有穩定性。

（二）靈活性 —— 普通法的靈活性亦十分重要。如案例法中的案例過於刻板，即使在判決時是正確的，但若在往後日子，社會已經轉變，新模式的出現，使其未能追上時代而變得不合時宜，那怎麼辦？普通法不是一成不變的，會隨時代步伐，重新審視過時的原則，並不是從前做錯了，而是因應社會需要而作出改變。這對營商是十分重要的。

（三）合約自由原則 —— 這亦是普通法的一個特色，對於營商亦十分重要。普通法（即法官、法庭）是十分尊重商業協議的。雙方有權在自由不受約束的情況下達成協議，着重公平公正、自由選擇交易對象、制定有關條款，如交貨期等，是與先前所說的 supply and demand 供求原則吻合，這才可達到公平的解決。所以，法庭尊重合約的精神對於自

由經濟體是極其重要的。如有需要，亦會作出適當的立法管制，譬如涉及消費者的，是必須立法的。

（四）接納商業現實 —— 除剛才所說的幾項事宜之外，普通法在這個制度內亦接納社會實際的、務實的商業現實、經濟狀況及發展步伐，為商業社會提供指引。譬如新的模式或網上購物等，若只依據舊有的法律，便不能解決有關糾紛。這種情況與稍早所說的不同，這個最主要是沒有一個案例是真空的，法庭在審理案件時需接受務實的商業現實，根據實際經驗、商業實況處理。

（五）商業法 —— 從歷史上來看，商業法很多是取材於商人的習慣慣例（*custom and practice*）而慢慢演變出來的。由商業習慣慢慢成為一個法律上的判例，然後再成為商業法的一個部分，最後成為國際的一個商業標準，有利於營商。

（六）國際聯繫 —— 剛才的環節也提過，國際聯繫是因為香港的法律和經濟體制模式與國際標準較為接近，比如說 *bill of lading* 提貨單，*bill of exchange* 匯票，這些都是有國際概念的，外商也會接受。因為香港普通法的制度是雙語制，所以內地亦比較容易接受，因而有雙向互動的交流。

（七）保障私人和企業財產 —— 最後當然是香港的法例有普通法再加上《基本法》以保障私人和企業財產，我就不再詳細講了，第六條及第一百零五（一）條等，都讓營商人士安心。

總結一下，我不是說香港的普通法是全世界最棒的，因為世上沒有最標準、最完美的法律，而每一個法律都要視乎對當地是否合適。從生意人的主要角度來看：第一，法律必須要清楚；第二，地方必須要廉潔；第三，制度必須要穩當

可靠，而香港均具備以上元素，所以我覺得香港的普通法制度和獨立的司法制度對於自由經濟體有很大的影響和作用。謝謝。

李國章：十分感謝陳法官。你充分說明了普通法對香港的重要性，謝謝。下一位講者是陳弘毅教授，他自 1997 年起擔任全國人大常委會基本法委員會委員。陳教授是傑出的法律學者，曾任香港大學法律學系主任和法律學院院長，現時為香港大學法律系的鄭陳蘭如基金教授及憲法學講座教授。有請陳教授。

陳弘毅：謝謝主持人。我想我會跟陳官一樣，以廣東話發言。

今天我非常高興和榮幸有機會被邀請講這個題目，就是有關香港普通法的發展與國際上的普通法聯繫等。首先，我先說普通法和經濟發展的密切關係。

眾所周知，普通法是源自英國的英格蘭。英國是其中一個最早發展資本主義市場經濟的歐美國家，她也是世界上第一個進行工業化的國家，所以英國的法律還有英國的法律經驗與資本主義的發展、現代工商業的發展有着密切的關係。

英國的法律、普通法制度在歷史上有助於或有利於其經濟發展，這亦包括剛才陳官談及的普通法的一些特徵，包括普通法重視合約的精神，普通法可以有效執行合約，同時有效保障財產權，這些都是現代經濟發展的必須條件。

普通法的制度亦發展出僱傭法，或者所謂勞工法及公司法、銀行、金融等相關的法律，這些都是在普通法制度之中比較早期就已經出現了，對於現代的勞工和資本市場的運作也有很大的幫助和很大的貢獻。

英倫普通法，也就是我們所說的 English Common Law，在過去幾個世紀擴展到世界上很多其他國家，包括北美，即現時的美國，以及一些過往曾屬於大英帝國、目前已經獨立了的國家。現在，她們都屬於世界上所謂的普通法法系（Family of Common Law Legal System）。這些地方亦受惠於普通法，對當地的經濟發展有很大的幫助。

現在再看世界上最主要的金融中心、最主要的國際金融中心，其實都在普通法適用的地區當中，可是，那並不表示在不同國家是實行完全一樣的普通法。普通法在當代世界已經形成了不同版本，我們可以說有美國版的普通法，也有澳洲版的普通法、加拿大版的普通法、新加坡版的普通法等，所以在不同普通法適用的地區都是根據當地的情況、當地的需要，把原本源自英國的普通法作出一些適應及新的發展，從而形成不同版本的普通法。

在香港回歸之前，雖然英國法律是根據一條名為 *Application of English Law Ordinance*（《英國法律應用條例》）適用於香港，可是並不表示所有的英國法都在回歸以前適用於香港，比方說成文法（legislation），其實大部分英國的成文法都不適用於香港，因為香港在殖民統治時期已經建立了自己的立法局，而大部分香港的成文法是由當時的港督會同立法局一起制定的。

至於以案例法所組成的普通法，英文為 judge-made common law，不是成文法。大部分英國的 judge-made common law 都適用於香港，但也不是百分之百的。因為根據 *Application of English Law Ordinance*（《英國法律應用條例》），如果有某些英國法律，如普通法本身不適合香港

的情況，那麼香港法院是有權予以修改或適應化，即所謂 modify。

回歸之後，正如今天的論壇已經有多位講者提到，根據《基本法》，原有的法律是大致上保留的，當然有些違反《基本法》的就不會被保留。今早環節亦提到 1997 年 2 月全國人大常委會作出一個決定，這個決定基本上已列出了哪些在回歸之前有效的法律是可以保留，哪些是不可以保留。回歸之前的普通法中的案例法又怎樣處理呢？因為普通法案例法不可能逐一把案例列出，然後說明哪些案例可以保留，哪些案例不可保留。因此，原則上在回歸之前的案例法都能在回歸之後繼續適用。

然而，全國人大常委會在 1997 年 2 月的這個決定當中有一條說明，採用為香港特別行政區法律的原有法律。在適用的時候，即 1997 年 7 月之後適用的時候，應作出必要的變更、適應、限制或例外，以符合中華人民共和國對香港特別行政區恢復行使主權後，香港的地位和《基本法》的有關規定。簡而言之，在 1997 年之前，香港法律包括普通法在內，在必要的時候需要作出變更和適應，以符合 1997 年之後，香港新的憲制地位。稍後，我們舉一個案例來說明。

因時間有限，我會簡單地提一下五個案例，可能每個案例只能說幾句。

回歸之後，先例的適用或者約束性的原則，剛才陳官提到 *Precedent* 先例，什麼案例在回歸之後具有約束力呢？基本上，在 2008 年一個叫 *Solicitor v Law Society*¹ 的案例中，終審法院已經定出有關原則。基本上終審法院本身不會受到任

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

何英國判例的約束。即使在回歸之前由香港上訴至英國樞密院、由樞密院作出的判例，在回歸之後，終審法院亦不會受到該判例的約束。換言之，香港是可以發展自己的判例法。

另一個案例 *China Field*²，是於 2009 年終審法院的判例。我現在提到的很多判例，陳官也是判案法官之一。*China Field* 這個個案，基本上就處理了香港是可以發展自己的香港版，就是回歸之後香港特別行政區版本的普通法。這個案件有一個英國土地法的某個原則，就是關於這個根據時效可取得的地役權的原則，這個案件涉及某些技術方面的問題，終審法院認為這並不適用於香港，香港要有一個自己版本的有關法律。

第三件案例說明我剛才所說的 1997 年 2 月人大常委會決定的適用事宜。這個就是今天早上已經提到的*剛果金案*³。2011 年，終審法院第一次提請全國人大常委會解釋《基本法》。人大常委會的解釋亦清楚指出在 1997 年之後，香港普通法的適用就正如 1997 年 2 月人大常委會的決定所作出的指明，需要就香港新的憲制地位，在必要時作出變更或適應化。所以在 1997 年前的普通法中所謂外國國家豁免權原則，在 1997 年之後需要作出一個改變，以配合香港新的憲制地位。

第四和第五件案件都切合到近年來比較受到關注的英國普通法中一個叫做共同犯罪計劃原則，英文為 *Joint Criminal Enterprise Rule*。在 2016 年，英國最高法院將這個原則廢

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

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

除，可是在 2016 年終審法院的其中一個案例，*陳錦成案*⁴ 就認為香港是不應該跟隨英國的做法，香港仍然可以保留這個共同犯罪計劃原則，也就是說在謀殺的案件裏面繼續適用。

可是這個共同犯罪計劃原則是否適用於非法集會及暴動案件呢？2021 年，終審法院在*盧建民一案*⁵ 中作出判決，認為由於香港的 *Public Order Ordinance* 《公安條例》內的條文應該作某些解釋，因此，這個普通法的共同犯罪計劃原則不適用於根據《公安條例》作出的關於非法集會及暴動的檢控。

由此觀之，香港法院沿用英國普通法原則是不斷地有所適應和更新，以配合香港的實際情況，以及香港成文法的相關規定。總括來說，1997 年之後，香港作為世界上其中一個普通法的司法管轄區，其普通法制度是導致香港在經濟上成功的其中一個要素。而這個普通法制度亦有海外法官參與的。

眾所周知，終審法院擁有一些海外非常任法官。然而，《基本法》並沒有說明終審法院必須聘用非常任的海外法官，這只是一個授權性條文，就是我們可以聘用非常任法官參與個別案件的審訊。我所指的是海外非常任法官，可是這並不是必須的。

近來，當然大家都知道有兩位來自英國的非常任海外法官經已辭職，即使將來再有這種情況發生，亦絕不會影響香港普通法制度的運作。

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

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

正如前首席大法官李國能法官在最近一篇文章裏指出，在 1997 年之後到現在的情況已有很大的變化，未來不排除出現一種情況，就是海外的非常任法官參與終審法院的工作人數或許會減少，可是他還是充滿信心，認為這絕對不會影響到我們終審法院或者香港司法制度的運作，因為我們本地的法官及本地的司法人才已經完全足夠，足以應付香港司法制度的運作、需求與挑戰，這是我十分認同的。由於時間有限，我的演講到此為止，多謝大家。

李國章：謝謝陳教授。今日最後一位講者是莫樹聯先生。他是一位資深大律師，自 2007 年起成為全國人大常務委員會基本法委員會委員。我不得不說，莫大律師一直站在道義一方，因為他曾在許多本地案件中代表政府和律政司。有請莫大律師。

莫樹聯：感謝李教授。各位來賓、講者、先生女士，今天確實很漫長，現在也已經很晚了；因此，我想我可以先與大家一起動動腦筋，嘗試延伸普通法的意義，以配合國家和香港的當今現實。不久前，我與一位已退休的毛里求斯法官攀談，他的一席話實在有趣。他告訴我：其實，毛里求斯與中國關係非常好，兩國有很多貿易往來；可是，儘管兩國關係極好、貿易也頻繁，但卻遇到一個問題。問題是，一旦涉及不同商人或合約方之間經常發生的某種糾紛，由於毛里求斯人往往與大型的中國組織或公司打交道，他們的合約通常會列明須在深圳或中國某些地方仲裁，並遵循毛里求斯人不熟悉的法律或規則。毛里求斯人便會立刻想，這對他們來說非常困難，因為他們對千里之外的仲裁機制一無所知，更遑論仲裁過程的規則和規例了。這令我想起，普通法曾經在英格蘭或英國有另一層意思，便是指適用於整個英格蘭或英國的一套法律或規則。

但我可以想像，不論牽涉的國家是大是小，也不論立約方的業務規模是大是小，或許我們現時可以有一套法律，對所有自願進行相互貿易往來的國家來說都是共通的；我們理應有一套共通慣例，特別是所有國家都能理解的商業慣例；我們也應有一個解決爭議的過程。現今，我們幾乎可以在世界上任何地方進行爭議解決，亦可委任來自任何國家的法官——只要他們具備若干資格便可。我認為，如果涉及這種安排或程序，香港可以作出重大貢獻，原因包括陳法官剛才談及有關法治的眾多因素，特別是司法獨立、法官如何不受外部影響，以及關乎遴選和罷免法官過程的所有制度因素等。

我認為香港的歷史和所扮演的角色都非常獨特，因為我們有接近 180 年的普通法歷史或傳統。試想想：成為長達 180 年或以上的普通法傳統的一部分有何意義？在我看來，這意味着，我們在香港每天都像呼吸般自然地遵行的傳統，其實已代代相傳了 180 多年。要確立此傳統，既非透過寫進法律書籍，也不是制定一項程序，然後說：「明天你遵循這個程序」便可。即使你擁有世界上最好的規則、最好的制度，若然沒有這種傳統，亦無法輕易採納和成功執行這些規則和制度。

陳法官剛才舉了一個令人印象深刻的例子。他表示可以親自作第一手作供。他帶出一件非常重要的事情，就是不論在審判案件時，還是在遴選法官到特定法庭任職的過程中，法官都從沒有受任何人影響。儘管我們都知道貪污舞弊確實不時出現，有時更會在政府或私營界別內出現，但香港從沒有法官在任何案件中，因受到外界影響而作出任何對與訟方有利的裁決。


這是難能可貴的，而其可貴之處在於香港法律制度一直以來均奉行這些規則和傳統，歷史悠久。究其原因，我認為是香港的執業律師和法官都抱有相同心態，便是香港的司法制度有一條神聖的界線，不論是法官，還是與訟各方，都不會逾越，否則司法制度的誠信或公平性可能會遭到破壞。正如我所說，這種心態世代相傳；在任何特定國家或司法管轄區的歷史中，如果沒有經過同等漫長的時間，就無法延續這種心態。我想這就是為何對香港……即今天的講題「為什麼普通法對香港的自由經濟體舉足輕重？」我的答案是，這不僅對我們的自由經濟體很重要，對國家很重要，對所有與我國有關係（特別是貿易關係）的國家也很重要。我傾向認為普通法不僅為我們服務，實際上普通法也可以成為我們出口到這些國家的產品，因為香港的執業律師和專業人士可與這些國家和司法管轄區攜手訂立真正的普通法，當中我們擁有共同利益，並公平和平等地互相對待、一視同仁，不會基於經濟規模或我們與哪個國家打交道而作出歧視。

而我認為，如果我們稍微發揮一下我們的想像力，便會發覺香港普通法的一般實踐範圍可遠遠超出香港這個地方。大家都知道，我們現時生活的世界非常分化，而且分化程度與日俱增。在這種新境況中，我認為我們可以回到普通法的根源，因為普通法乃香港法治之基石；我們要追本溯源，思考為何香港可以發揮如此重要的作用。香港的法治和普通法有數個獨特之處。

首先，香港的普通法位處「一國兩制」框架之內；世界上沒有其他普通法制度像香港特區般設於「一國兩制」框架之內，這是非常獨特的因素。第二，香港的普通法非常特別，因為正如我所說，我們擁有非常悠久的普通法傳統。第三，非常重要的是，我們在一國之內，而這一國與世界上許

多其他國家打交道。這三個因素非常重要；因此，在這種框架內，我認為我們現在必須認識到，香港的法治和香港的普通法是一種非常特別的法治。

為何如此特別？因為法治在各個國家和司法管轄區不盡相同。試想想，某些國家雖然確實施行法治，但可能只對某些人實施相同的原則——也許只限於該國本身或與它們友好的國家，但未必包括與它們不友好的國家和不甚友好的人士；所以某些司法管轄區確實有法治，但那是它們自己一套的法治，與我們的不同。那為什麼我們與眾不同？因為香港的法治是全面實施的，對所有人、所有國家和所有背景都一視同仁，毫無差別。這在我們的《基本法》中述明，也在《香港人權法案條例》中述明。我們不能基於種族、膚色、政治信仰、所屬國家或任何其他理由而歧視任何人。因此，只要香港仍然是「一國兩制」的一部分，我們便可以繼續實施法治，而這個版本或分支的法治並不會歧視世界上任何人，這使香港的法治對很多確實與我們打交道的國家和人士極具吸引力，他們亦樂意擁抱香港所代表的普通法理念。由於時間關係，我的發言到此為止。謝謝。

李國章：謝謝。我衷心感謝所有講者，特別要感謝律政司；我相信各位都跟我一樣，十分感激律政司舉辦這場法律論壇。謝謝。

香港的普通法制度對發展自由經濟 的作用和影響

陳兆愷
香港終審法院非常任法官
2022年5月27日

1

2

香港 = 內地面向世界各地的窗口
世界各地進入中國市場的跳板
國際商業、貿易和金融中心之一

成功因素包括：

完善法律和獨立司法制度 +
成熟的經濟體制

普通法和司法制度與自由經濟體制 回歸後予以保留

法律制度 = 普通法制度 + 獨立的司法制度

自由經濟體制 = 奉行資本主義 + 採取自由貿易
市場開放政策

1997年7月1日回歸

成立香港特別行政區《中國憲法》第31條

實施一國兩制方針政策 直轄於中央人民政府

除國防外交事務外 實行高度自治

回歸後保留現有基本制度

- ❑ 保持香港繼續繁榮和穩定
 - ❑ 保留原有資本主義社會經濟制度、
 - ❑ 生活方式、基本法律 五十年不變
 - ❑ 保持國際金融中心和自由港的地位
- [《基本法》第5、8、109、114條]

國際社會對香港的法律和司法制度 與經濟體制的評價

- 香港具備良好條件
 - 成熟的經濟體制 + 完善的法律和司法制度
 - 獲得基本法的保障，良好的國際聲譽

- 世界金融和法律的排行榜佔很高位置 - 國際肯定，成功指標
 - 2020年度國際 IPO Listing 上市 - 世界第二，521.8億美元
 - 2021年度 [世界正義計劃] 法治指標 - 全球第19位，
(美國27位) 亞洲經常名列三甲
 - 廉潔排名 - 世界第9名

自由經濟體制包含和要求什麼？

- 自由經濟體制 - 資本主義特色
 - 奉行自由貿易原則
 - 遵守若干規則和符合一些條件

- 自由貿易原則：商業的運作，商品的生產和服務，包括成本、工資、價格，取決於供求定律，由市場主導

- 香港被視為遵守有關規則和符合相關條件
 - 《中英聯合聲明》第三款第六、第七項
 - 《基本法》第 105(3)、109、110、112、114條

香港自由經濟體制重點，受基本法和法律保障

- (一) 所有經濟、貿易和商業活動 - 自行決定和進行；
- (二) 私人企業和財產，知識產權，受法律保障；
- (三) 金融活動，外匯、黃金、證券、期貨等市場，自由開放，資金進出自由，貨幣流通自由兌換不受管制；
- (四) 經濟、貿易和商業活動自由開放不受干預或規管

自由經濟體制中的一些規管

- ❑ 經濟迅速發展，新的轉變和活動模式
- ❑ 任何不正當或不規則的情況，須受規管
- ❑ 以杜絕不法商業活動，減少經濟風險

法律和司法制度對自由經濟的重要性

法律和司法系統的保障：

- (一) 經濟活動過程 權利和義務，受法律保障
- (二) 規管須符合法治精神，經得起法律上的挑戰

完善的法律和獨立的司法制度 -

- 有助經濟活動順利進行
- 確保規管政策和法律能公平公正地執行
- 增強國際信心，有利經濟活動，良好營商環境

香港的獨立司法權和終審權能增加營商信心

法律和司法制度

- 現行法律基本不變 - 普通法及衡平法，條例，附屬立法習慣法，除與基本法相抵觸或特區立法作出修改者外予以保留 (《基本法》第8、18(1)條)

營商人士確實知道商業活動/糾紛，受法律和獨立法院保護

獨立司法權 - (《基本法》第2、19(1)條)
審理案件時，公平、公正、無偏、無私
不受行政和立法機關或任何人士干預

終審權 - 終審法院 (《基本法》第2、19(1)條)
民事和刑事案件第三審(終審) 最終裁決
(《基本法》的最終解釋權在人大常委會)

法官和司法人員 (《基本法》第88、89、92 條)

任命 - 根據司法和專業才能，經獨立委員會推薦，
特首正式任命

免職 - 只在無力履行職責/行為不檢，經特別程序審查
才可免職

香港的普通法有利自由經濟發展

普通法：法官處理案件時，公開審訊，依據事實證據和有關法律作出判決，並列出理由，成法律一部分，公之於世

普通法特點 - 對自由經濟體制，產生積極和正面作用
有利營造適合的自由市場經濟和營商環境

(一) 案例法 - 增加法律的確定性，清晰性和可預見性

案例法：上級法院判決 所依賴的法律原則 對下級法院
後來須要處理類同案件 具約束力或說服力

法律原則，具高度確定性，清晰性，可預見性
減少訴訟或上訴案件

對於經濟活動進行、推廣和發展，非常重要。

(二) 靈活性 - 可因時制宜，能適應社會的轉變

- ❑ 案例或未能追上時代/社會轉變，不合時宜，造成不公
- ❑ 普通法不是一成不變，是持續發展，能因應社會需要和改變，重新審視過時的原則
- ❑ 對於發展經濟活動和商業貿易模式更為重要。

(三) 合約自由原則 - 尊重商業協議，有助履行貿易承諾

- ❑ 奉行合約自由原則，尊重雙方有權自由、不受約束簽訂合約，自由選擇和制訂雙方交易的條件
- ❑ 法庭會公平公正地盡量執行雙方所達成的協議，除非某些條款受法例規管
- ❑ 法院尊重私人合約的精神有利金融、貿易和商業成交。

(四) 接納商業現實 - 法院在審理案件時接納務實的商業現實

- 法庭接納務實的商業現實，快速適應轉變的環境，與時並進，跟隨財經發展步伐，為商業社會提供指引
- 普通法發展根據實際經驗，商業實況，有利經濟發展。

(五) 商業法 - 普通法中的商業法很多取材於貿易活動的慣例

- 普通法中的商業法形成的過程，受自由經濟學說影響，成為法官判決商業糾紛的法律原則，國際商業貿易標準

(六) 國際聯繫 - 增強香港國際商業、貿易和金融中心的作用

- 香港的法律和經濟體制與國際標準較為接近，容易接受
- 外地商人來香港進行商業、貿易和金融活動，藉此尋找機會到內地發展，也以仲裁形式採用香港的法律解決糾紛
- 內地商人也會藉香港的地位來進行商業、貿易和金融活動，如上市或融資，以圖進一步打開國際市場
- 香港便成為內地和世界其他地方互動交流的中心。

(七) 保障私人 and 企業財產——《基本法》和普通法原則保障私人 and 企業財產

普通法和《基本法》保障私人財產受到法律的保護

(《基本法》第6條：依法保護私有財產權

第105(1)條：依法保護私人 and 法人財產，依法徵用財產，得到補償

第105(3)條：企業所有權 外來投資均受法律保護)

普通法原則和《基本法》，保障私人 and 企業財產，製造良好營商環境，使安心在香港進行 and 發展業務。

結語

- 奉行普通法和擁有獨立司法制度，有利推行自由經濟和開放政策
- 得天獨厚的地理環境和中央的大力支持，優秀人材，良好國際聲譽，行之有效的制度和政策
- 回歸後得到保留，更有效地保障商人合法權益，鞏固商業、貿易和金融中心地位。

傳媒訪談

坐言起行

主持人



盛智文 大紫荊勳賢 GBS JP
蘭桂坊集團主席

嘉賓



捷成漢 BBS
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新創建集團有限公司行政總裁



李浩然 MH JP

華潤集團粵港澳大灣區首席戰略官



Toni Younes

Paul Lafayet創辦人兼行政總裁



盛智文：謝謝。我知道今天在座多位都辛苦了一整天，但我們很榮幸邀得四位傑出的講者蒞臨，談談為什麼香港對世界各地的企業和商人如此具吸引力、為何人們選擇香港，以及《基本法》如何協助提升香港的吸引力。它讓香港成為全球矚目的知名品牌。我們都知道企業喜歡穩定，穩定就是關鍵所在。《基本法》有助促進穩定，而穩定帶來繁榮。這就是為何人們說「本固枝榮」。穩定為香港帶來繁榮。

我知道在座每位講者所從事的業務都有別於先前多位講者。我很想你們每一位跟我們分享：是什麼令你們在香港的業務如此成功的？我們在屏幕上看到了捷成漢先生。歡迎你，Hans Michael。我們不如先與 Hans Michael 談談吧。讓我先作簡介。Hans Michael 是香港捷成集團的主席。他是一位長駐香港的丹麥商人。他於 1981 年在香港加入捷成集團，自 2000 年起擔任集團主席和主要股東。在香港成立的捷成集團在投資於廣州方面經驗豐富，而 Hans Michael 於 2021 年更獲封廣州市榮譽市民，十分特別。因此，Hans，我們很想你談談自己和你的業務。是什麼令你一直在香港居住和工作？

捷成漢：好的。謝謝 Allan。各位午安！我明白各位在場已久，所以我的發言會盡量簡短。我所屬的家庭跟許多其他家庭一樣，透過航運業來到東方，其後發展至貿易和製造業。今天，我們的業務遍佈全球，並以中國為主要市場，但仍是一個全球家族企業和家族生意。

說到香港，我們基本上要問自己四個問題：是什麼造就了香港？是什麼令香港與眾不同？是什麼令香港成功？香港為何是我們這類企業設立總部的理想首選？當然，我們剛才已經聽到很多非常重要的客觀事實，例如香港的法律制度、

普通法、地理位置，以及我們作為貿易夥伴與全世界打交道的悠久傳統。在航運方面我還可提供更多資料。無容置疑，香港曾經是關鍵的轉口港。現在，香港是進入中國的眾多重要轉口港之一，但這些資訊在如商會的傳單中都可以找到。我認為更重要的是文化。我們無法擺脫自己的過去和身份。造就我們今天的眼界和心態的，就是前人所建立的價值觀和世界觀。

我認為香港的優勢在於心態，在於應對變化、應對干擾的能力，以及不僅作為追隨者，還要成為先驅的心態。這些令我想起大灣區計劃，內地正帶來全新的消費主義浪潮，香港理所當然地處於非常有利的地位，可同時扮演關鍵的參與者、先驅者和緊貼步伐的追隨者。

我的公司很久以前已在中國建業營商。我最深刻的記憶之一，是父親辦公室內的多張照片。放在他工作桌上的照片除了有家庭照片外，還有「買辦」和公司董事的照片，他們都是家族企業的主要推動者。這種人與人之間的無條件信任，一直給我留下深刻印象。當中蘊涵着文化。我認為以禮相待的傳統、信任、可靠、榮譽這些觀念都是建立心態、思維模式或傳統時極其重要的元素，而這正是香港真正賴以成長的東西。無論我們如何看待在中國的所有投資，它們都並非無緣無故的存在。它們的存在是基於香港人和內地悠久的信任關係和傳統。

當然，這造就了香港成為聯繫人，或我們所說的超級聯繫人、大門或入口。它們的意思基本上相同，就是我們要獲得信任。我的公司選擇以廣州作為業務樞紐，原因很合情理。因為它靠近香港並使用粵語，它位於大灣區的中心點，而前往當地只需一個多小時，所以有很大的凝聚力。我們的



決定很明智，我認為這也是香港政府在制定如接觸毗鄰省份和《內地與香港關於建立更緊密經貿關係的安排》時的政策考量，而這當然只是起步。回歸後，我們是最受國內歡迎的貿易夥伴。

而《基本法》正正是讓香港得以穩佔其地位的基石。許多人都認為這是理所當然的，但我們在這場論壇上聽過實現這個目標背後要付出多大努力，我認為我們要明白這點和捍衛這個地位。就我的公司而言，驅使我們在香港和廣東發展業務的另一重要因素是人才，這地區的人力資源。這個地區有很多潛質優厚、充滿幹勁的年青人。而我們當然都知道，我們正身處於科技不斷變化的時代，而這一代年輕人的想法和處事方法與我的年代的人完全不同。

順帶一提，我真的很高興能得到很多來自內地不同省市的人的啟發，而這亦是另一個巨大的優勢。我的意思是，在香港，我們可以接通全球，而在內地，我們有當地優勢，

不少人足迹遍佈上海、北京等大江南北，還有香港。不用多說，對我的公司以至香港來說，中國都是主要市場。讓我們有信心的不是數字，我們當然可以看到不斷增長的貿易數字，這固然很好，也是意料之內。但我所指的是韌力、是心態。我會說香港人經得起考驗，也曾經歷不少風雨、悠長的歷史包括戰爭。我認為香港取得今天的成就之前所付出的一切值得仔細欣賞，但內地作為香港主要貿易夥伴是優勢這點也不容忽視。因為內地既是一個龐大的市場，也是一個快速發展的市場。在我看來，這個市場必定會為許多積極的發展勢頭鋪路，例如環境、炭足跡、「食物和廚餘」等。

我認為，像中國這樣人口眾多的國家在未來 20 年左右也將要面臨人口老化等問題。香港將位處創新之地的中心點。香港的大學紛紛在內地開設校園。我有幸與科技大學合作一段頗長時間，也樂見科大在短短數年內已在離邊境不遠處興建一個比香港校園大兩倍的新校園。這些事情經常都被視為理所當然，因而被忽略。這就是我們培育下一代人才的地方。我必須向所有為未來提供資源的教育界賢能致敬。那麼，為何香港在未來也會取得成功呢？其中特別的原因是因為香港固然不乏接受過學術培訓的人，同時也有不少天生充滿好奇心的人。我認為好奇心極為重要。最近我在聽了其他人的話後採用了一招：不向求職者提出與履歷表內容相同的問題，而是要問他們自己有哪些興趣和嗜好。我認為這做法披露得更多。香港人以至很多內地人都對周遭世界深感興趣，這些資料教人耳目一新，也難以用數字表達。我甚至會爭辯，我們看到的國內生產總值和許多其他數字，全都是量化的，但質量的量度標準在哪裏？我們又如何衡量可靠性？如何衡量端正行止？舉例說，我們如何衡量企業家精神或樂觀精神？我不用再多言了。

我認為在心態和文化方面，我們處於理想的位置，因為中國不只是一個國家，它還有海外社區，而香港扮演重大的角色，是海外華人的秘密資本，但也是一種根深蒂固的文化，這點我們必須明白。而且我認為，香港越能與內地互動和感受這種悠久傳統便越好。坦白說，我的公司內部現時有很多跨城市人際關係，人們以往都互不認識。但我很好奇，為何我們相信香港有如此特別的未來？香港確是獨一無二的地方，我想我們已經聽過很多。我要說的是，從沒有一個地方能像香港般具有韌力、能夠應對干擾、能夠輕易適應新環境、可同時展現傳統文化和進行創新，因為未來將有別於我們已習慣的過去。我的意思是，資源方面如何？氣候方面如何？所有這些真正重要的問題又如何？我認為中國在這方面可以發揮非常重要的作用。香港越能貢獻和參與其中，處境便越好。我的公司已經看到許多創新的事物，例如虛擬保時捷陳列室或汽車陳列室，中國可牽頭與許多香港人攜手開發這些事物。所以對我來說，這是最好的證明，而當然這些發展日新月異。毫無疑問，這確是關於未來。中國可與香港共同創造更綠色和更美好的未來，當中香港也會擔當非常重要的角色。

珠江三角洲當然起着至關重要的作用。我們看看珠江三角洲的人口結構時，會留意到很多人從國內其他地方遷移到珠江三角洲。為什麼呢？因為教育、生活質量和連通性，當然還有一群志同道合的人，這是非常強大的力量。我有興趣知道這些群組是什麼、為何人們會聚集在一起，而這令我覺得我們置身香港即置身亞洲最佳地方，因為我們可與其他亞洲地區聯繫起來，這也是我的公司正在做的事情。正因如此，我們看到了一些非常健康的成長。當然，這也是一個學習的過程。我認為我們必須聆聽現實，了解人們想要什麼、

將來想如何生活。而我認為香港的貢獻和學習越多越好。就是這樣。我的公司已經營 130 年，而我可以說，多年來的環境變遷給我們上了很多課，特別是中國文化價值觀，這文化淵源既是我們工作的核心，也是我們現在和將來選擇以香港為總部的主要原因。

盛智文：好，謝謝 Michael。當然，捷成在香港歷史悠久，也是已在中國經營多年的知名公司之一。我跟 Jebsen 家族相識多年，也相信 Michael 已經詳盡地告訴我們為何香港是如此適合居住和營商的好地方。下一位講者是新創建集團有限公司行政總裁馬紹祥先生。馬先生在工程師業界享負盛名，也是香港和海外多個備受尊崇的工程師學會的會員。他也具備與香港特別行政區政府合作的豐富經驗。他於 2014 年加入政府，出任發展局副局長，其後於 2017 年 2 月獲委任為發展局局長，任期至 2017 年。他是香港都會大學科技學院的名譽教授及香港理工大學客座教授。所以馬先生一直身兼多個崗位。

馬紹祥：謝謝 Allan。

盛智文：他還在 2014 年獲任命為太平紳士。現在有請馬先生分享他的故事。

馬紹祥：謝謝 Allan。各位嘉賓，我很榮幸代表新世界集團分享商界在香港《基本法》下「一國兩制」的經驗。香港自 25 年前回歸祖國以來，一直實行「一國兩制」這項獨特且沒有先例可循的憲制新構思。過去 25 年，我們探索「一國兩制」的過程曾出現挑戰。有賴各界的堅持和耐心，香港得以保持競爭力和吸引力，使我們可自豪地展示自己是國際金融中心、環球貿易中心和國際航運中心。沒有《基本法》，一切都不可能實現。

今天，我想從商界的角度，分享我們在《基本法》對香港整體營商環境的影響方面的經驗和觀察。我也會探討香港的一些前景，特別是「一國兩制」下哪些地方應該改變、哪些地方應該保持不變。

25年前，香港回歸祖國，標誌着《基本法》生效。但事實上，《基本法》的草擬可追溯至40年前，即1982年。當年，內地剛剛啟動改革開放，中英兩國亦就香港前途展開談判。國際社會仍對中國擁抱全球化的決心表示懷疑，對香港的未來亦持悲觀態度。香港股價暴跌、貨幣貶值，恐慌性拋售隨處可見。部分市民離開香港，不少企業也把業務遷移到其他地方。儘管充滿變數和身處逆境，新世界集團從未驚惶失措，也從未想過離開這座城市。我們相信，只要中國堅持對外開放，香港的穩定繁榮必會得到保障。這座城市將在國家發展中發揮不可或缺的作用，成為連接內地與世界的橋樑，本地商界也必會從中受益。

因此，與其他人相反，新世界集團當時反而展現更大決心，加快在香港投資的步伐。毗鄰我們現時所在地的香港會議展覽中心一期就是堅實的證明。1980年代，殖民地政府計劃興建世界級設施，以便舉辦大型國際會議和展覽。由於香港前途尚未明朗，許多企業都不願承辦這項龐大的工程。但當政府與新世界集團接洽時，我們毫不猶豫地接受了邀請。這表明我們對香港的未來充滿信心。我們克服了重重困難，按時完成了興建工程。時至今日，會議展覽中心仍是這座城市的標誌性建築物。香港自1980年代起的發展，證明了我們的樂觀態度是正確的。《中英聯合聲明》簽署後，香港實現平穩回歸祖國。

自回歸以來，香港的資本主義制度和生活方式維持不變，包括一切現有自由和權利。商業便利和法律保護是香港

實力的重要支柱，這些都在《基本法》訂明並得到保障，確保我們的業務在香港運作成功。請讓我闡述這點。首先，《基本法》確認香港的簡單稅制和低稅率，並保留香港的自由港地位。這讓香港能夠成為廣受歡迎的人員、貨物、信息和資本交流樞紐。此外，《基本法》容許香港以獨立關稅區的身份參與各種貿易安排。憑藉這種競爭優勢，香港在經濟自由度、營商便利度和繁榮指數方面長期處於世界領先的位置，成為全球的榜樣。這座城市持續享有世界上最能吸引環球資本和企業的地區之一的美譽。

第二，《基本法》保證香港司法獨立和實踐普通法。過去 25 年，香港法律制度一直相當透明和有效，商業糾紛得到公平和公開的審判，加上政府廉潔公正並致力打擊貪污，令企業可安心在香港營運。雖然國際社會曾一度擔心香港的營商環境在《港區國安法》制定後將不再如昔，但統計數據證明他們的想法錯誤。舉例說，在世界銀行發佈的「2021 年環球治理指數」中，香港的法治水平排名亞洲第二，而在倫敦瑪麗女王大學發表的「2021 年國際仲裁調查結果」中，香港獲評為全球第三大首選仲裁地。香港在這些方面的驕人表現，令商界對這座充滿活力、穩定和吸引外國直接投資的城市更有信心。資本的湧入也證明了這一點。2020 年 5 月，香港銀行體系結餘總額達 3,370 億元以上，比《港區國安法》生效前的 2019 年 6 月多了一倍。《港區國安法》顯然並無窒礙資本進入香港，亦反映了商界對香港的信心。

過去 25 年，在香港經營的中外企業一直受惠於《基本法》對「一國兩制」的保障。在這個 50 年期的首半，我們都已見證、參與和受惠於香港的強勁經濟增長。不過，我們不斷在強調「不變」的持續優勢之餘，忽視了改變的必要性。儘管香港在過去 25 年屢創佳績，但社會某些方面仍有待改進甚至改革。

我們的制度、政策和心態必須與時並進，以迎合社會的需要。最明顯的例子是土地和房屋短缺，背後的理由包括審批制度日趨僵化和複雜，以及土地發展和房屋供應極為緩慢，遠遠未達到社會的期望。另一個急須解決的問題是社區支援不足。第五波疫情揭示了我們在危機管理方面的缺陷，以致市民無法及時獲得抗疫用品。我們需要思考，一旦再次出現危機，我們該如何為市民（特別是弱勢社群）服務。這些只是其中兩件涉及深層問題的事。現在就是作出改變和擁抱改變的時候。我相信作出改變的責任不單在政府身上，商界也應承擔部分責任。

數年前，新世界集團已把「創造共享價值」設定為企業理念。我們相信我們的使命不僅是為股東帶來回報，而在我們的業務中採納創新和對社會負責的做法，為所有持份者帶來更大福祉。在這個願景的引領下，我們於去年創立了一間名為「新世界建好生活」的非牟利房社企，目標是就可負擔房屋構思創新的替代方案，為首次置業者提供更多可負擔的房屋。商界可與政府合作，透過定下較低買價、較低的首期金額和較低的每月分期付款額，讓年青人更容易置業和「上車」。我們不但決心建設美好生活，而且立志令更多人得享美好生活。

今年3月，我們設立了全港首個大型的眾捐平台「愛互送」，創新地讓捐贈者與受惠者提供特定配對，為弱勢社群提供支援。該平台讓物資能夠及時送到有需要人士手上。這個網上平台在首個階段已籌得總值超過4,000萬元的捐贈，惠及超過10萬個弱勢家庭。

簡言之，我們相信，作為社會的重要持份者及「一國兩制」的主要受惠者，商界也有義務貢獻社會和承擔社會責

任。來年我們會繼續致力促進公平分配，以滿足廣大市民的需要。只有這樣，我們才能共享繁榮。

今年，「一國兩制」政策的實踐將正式踏入五十年「不變」的「下半場」。我們正邁向新的里程碑。過去 25 年，社會出現了新的挑戰，也有聲音促請政府和商界改變它們在社會上的角色。改變是為了確保「一國兩制」的制度安排維持不變。只有牢牢掌握變與「不變」的藝術，「一國兩制」這艘船才能順利航行，繼續為香港市民帶來繁榮、為國家的開放作出貢獻。感謝各位！

盛智文：謝謝馬先生。眾所周知，新世界是香港社會的支柱之一，「一國兩制」也確實令香港獲益匪淺。新世界是最早進入中國及其經濟的先行者之一，更已駐足國內土地，也確實令內地獲益良多。香港可說是偉大的領航員，引領內地取得今天的眾多成就，也造就了我們今天的許多成就。十分感謝你！

下一位講者是李浩然博士。他是香港特別行政區立法會議員，也是華潤集團粵港澳大灣區首席戰略官。他於 2012 年獲清華大學頒授法學博士學位，是現任基本法基金會會長。他是許多知名法律協會和委員會的成員、一位廣受尊敬的法律學者，也是團結香港基金的副總幹事。身為國家的青年學者，李博士是大灣區經濟和商業發展專家。他先後於 2016 年和 2019 年獲香港政府頒授榮譽勳章和太平紳士榮銜，並獲選為 2017 年香港十大傑出青年。可見李博士成就斐然，幸好這已是全部，否則我們便一整晚也說不完。現在有請李博士和我們分享他的故事。

李浩然：謝謝 Allan。各位晚安！我很高興出席這最後一場訪談環節。在之前的各個環節，多位講者討論過立法和

《基本法》的概念問題，而到了這時候，我們討論的是《基本法》和「一國兩制」的實踐。香港是國家的唯一普通法司法管轄區，對商界來說，普通法既能帶來靈活性，又能帶來確定性。

眾所周知，靈活性來自法官的判決，它能迅速地回應日新月異的商業需求和發展。但法官們同時也依循先前的案例和考慮因素，保持原則貫徹一致，從而體現確定性。凡此種種，都憑藉《基本法》而得到保證、維護和發展。如果我們談論《基本法》內與經濟有關的條文，它們包括：第一百零八條談及稅收、第一百零九條談及經濟和法律環境、第一百一十二條談及投資自由，第一百一十五條談及自由貿易、第八條談及普通法，而最後但同樣重要的是第八十五條談及司法獨立。這些全都受到《基本法》保護。《基本法》最重要的立法原意清楚地反映在「總則」一章第五條中，該條指出香港特別行政區不實行社會主義制度和政策，而原有的資本主義制度和生活方式保持五十年不變。

簡言之，就是「一國兩制」方針政策及平穩過渡的精神。前者的意思是，在「一國」的原則下，香港不會實行社會主義市場經濟，以賦予香港最大的經濟發展自由。這種自由甚至大於蘇格蘭和北愛爾蘭在英國主權範圍內享有的自治權。事實上，根據《基本法》第十三條，中央政府負責管理與香港特區有關的外交事務。中央政府同時授權香港特區政府按照《基本法》的規定自行處理相關對外事務，而這點在《基本法》第一百五十一條明確指出，其准許香港以「中國香港」的名義與世界各國、各地區及相關國際組織以經濟發展的名義保持和發展關係，以及履行協議。

至於後者，它承諾延續原有的公共行政制度和香港人的生活方式，特別是市場經濟原則、資本主義原則和背後的精神。

神。資本主義的兩項基礎原則是立約自由和保障個人財產。整體來說，我們會留意到，在經濟方面，《基本法》的條文實際上圍繞着兩個範疇來擬備：自由和保障。

從經濟角度出發，《基本法》最重要的條文應該是第六條和第一百零五條，它們分別保障私有財產及公司所有權和外來投資。至於自由，《基本法》第五章對「經濟」起了強化作用，在最大程度上承諾貿易自由，例如第一百一十條下貨幣和金融業務的經營自由、第一百一十二條下的外匯自由，以及第一百一十五條下自由貿易政策的延續性。尤其是，免關稅政策是為了保持香港的自由貿易港地位。

簡言之，1997年以前一直由政府採納的各項原則和政策都要予以保留。除了第八條訂明普通法和法律制度繼續適用外，這些延續性原則在一宗近期的終審法院案例 *FACV 6 至 9/2020*¹ 中予以敘述和分析。單單是《基本法》載有促進業務運作的條文並不足夠，切實地落實這個立法原意也非常重要。事實上，《基本法》得以成功實施，實有賴香港特區堅定維持因奉行法治原則而獲全球高度讚揚的獨立司法制度、廉潔和高效的公共行政體制，以及同樣重要的穩定和安全社會環境。我們應該明白，「一國兩制」政策的一切都是為了解決香港和澳門問題以及實現國家和平統一，而這是以人民為中心的。事實上，多年來，中央政府曾再三強調香港特區政府有責任和義務發展經濟、改善民生和促進繁榮。從中央政府在香港實行的特殊政策和《基本法》賦予的高度自治中，我們可以看出，其中一個主要目的是讓香港居民生活得美好、在回歸祖國後更美好，而不是相反。

1 郭榮鏗及其他人訴行政長官會同行政會議及另一人 (2020) 23 HKCFAR 518.

此外，一方面香港是東西方文化的橋樑、國家與世界其他地方之間的橋樑。另一方面，香港為有意在內地建立業務的外國企業充當通道。這種獨特的安排和合作事實上塑造了香港獨特的金融和經濟地位。讓我們談一談大灣區，我現時在華潤工作的重點也在於大灣區的業務。

關於大灣區，一般來說，香港社會對大灣區的發展有一定的共識。社會普遍認為它可以為香港帶來新的發展空間和機遇，不只是在商業領域，還有年輕人和社會各方面都會帶來裨益。但面對不穩定的全球形勢和日趨普遍的反全球化現象，我們需要更深入地了解國際形勢，讓我們可以更好地思考香港能如何發揮自身優勢和配合國家發展。

關於華潤的角色，我認為隨着粵港澳三地深化合作和大灣區建設不斷推進，預計大灣區及其他地區的企業對專業服務的需求一定會增加。香港應擔當協助內地企業走出去的重要角色，成為協助大灣區企業拓展海外業務的首選平台。

香港以至整個大灣區都面對着具歷史意義的機遇：國家的「雙循環」重大戰略判斷，以及國際政治和經濟形勢長期變化帶來的長期變革焦點。要解釋這個問題，首先要清楚正確地認識國家過去 40 年來在引進全球科技、資本和市場的基礎上取得的顯著經濟建設和成就。

未來，國家必將更積極地走出去，並將與世界上在科技、資本和市場方面領先的國家建立更緊密的經濟聯繫。現時，隨着「雙循環」的啟動和國家更積極地走出去，香港也將有機會協助國家走出去，並協助推動更深入、更高效、更公平的全球化。我們可能被中美貿易爭端或反全球化浪潮困擾，但我們必須相信，全球化是世界大趨勢，而當前的問題不外是全球化發展道路上的細微調整和迷途。在這進程中，

認清新的重大歷史機遇並為香港和整個大灣區定位，將為我們帶來下一個戰略和系統性的機遇。

我深信這些機遇會促進香港與大灣區所有城市深度融合，也會讓香港成為國家走出去的橋頭堡。與世界三大灣區相比，大灣區是唯一一個事實上在「一國」原則下完善實施兩個制度的區域發展城市群。香港應當把握「一國兩制」的優勢，發揮香港的長處，滿足國家發展的需要，創造跨境發展前景，為區域合作譜寫新篇章。

身兼學者、立法機關成員和商界專業人士，我得以了解香港的特殊地位和吸引力是何等寶貴。在《基本法》規定的「一國兩制」框架下，我們必須珍惜這種機會。大灣區與「一帶一路」倡議的共同發展，有賴香港的獨立司法制度、高效的公共行政，以及穩定的社會和政治環境。我們可以攜手再創新高，令香港和大灣區成為國際金融貿易大都會、爭議調解和仲裁的區域樞紐，以及全球創意創新中心。感謝各位！

盛智文：謝謝李博士。有一件事是肯定的：我們每當提到大灣區，都一定要向你討教。我們會經常邀請你提供關於大灣區的資料。我認為這必定是香港的未來。現讓我介紹最後一位講者 Toni Younes 先生。他是 Paul Lafayet 的創辦人兼行政總裁。各位如果喜歡品嚐法式糕點，都必會認識 Paul Lafayet 這個糕點連鎖集團。Paul Lafayet 於 2010 年由 Toni 和他的公子創立，希望從中品嚐到家鄉的味道和重拾他們對至愛法國糕點店的美好回憶。當時香港的精品糕點店只設於五星級酒店，而 Toni 看到了拓展市場的機會，於是將業務帶離五星級圈子，進駐大眾市場。Toni 於 2010 年在 K11 購物藝術館開設首間糕點店，至今在香港設有 9 間分店、在深

圳和上海設有合共 4 間分店。他們正計劃擴展中國市場，包括在大灣區（包括澳門、深圳、廣州）開設 10 至 15 間分店。Toni 的例子就像是香港的縮影：香港吸引來自世界各地的人士前來開業，而業務憑藉我們的《基本法》、「一國兩制」和中國的吸引力而得以蓬勃發展。香港是擁有 14 億人口的中國的一部分，因此企業家都期盼在香港開業和拓展業務。有請 Toni。

Toni Younes：好的。謝謝 Allan 的介紹。我也想感謝律政司邀請我參加這次盛會。感謝各位和一眾同事。我是 Toni，而正如 Allan 剛才指出，我是 Paul Lafayet 的創辦人。Paul Lafayet 是一家生於香港的公司，於 2010 年初創時屬於中小型企業。也許各位會問我：為何選擇香港？我在 1990 年代曾經常前往亞洲，後來留意到香港這個中轉站，當時人們經過香港前往中國，而我們意識到香港是亞洲的旗艦窗口。我時常來港生活，覺得香港確實擁有優良的基礎設施、具備健全的法律制度，還擁有大量人才。

我們是中小型企業，而香港有大約 34 萬家中小企業。超過 95% 的香港公司都是中小型企業，它們僱用了超過 150 萬人。因此，它們充滿了企業家精神。香港真的像磁鐵般吸引着我們。我不知道 Allan 是否認同我這種「香港磁鐵」看法，但我可以說我被香港吸引了。此外，香港是一個非常安全的城市。所以可以說，沒甚麼理由不選擇香港吧。到了今天，我很高興地說，香港是我可以自豪地稱之為家的地方。

關於 Paul Lafayet 的故事：我在 1990 年代經常前往香港，而在 2000 年之前，香港根本沒有咖啡連鎖店。很抱歉，當時在香港，如要吃甜品、喝咖啡，便要光顧五星級酒店。像當時許多來港的人一樣，我心目中有一個辦公室設計

和貿易業務。也許我來得有點遲，但遲來總比沒來好。2000年開始，我觀察到這裏的女士們經常聚在一起喝咖啡、吃蛋糕、品酒。我意識到香港人的生活方式出現轉變。那我們會做什麼？這是一個缺口，我們可以填補它，所以這個想法萌芽了。當時我正從事其他業務：設計和貿易。我愛食物，雖然我不是廚師，但喜歡這個想法。所以我意識到是時候開展連鎖店業務。K11 於 2009 年剛剛準備好營業，所以我們當時在 K11 開設了一間小店。我們於 2010 年 1 月從 K11 開始（K11 不是連鎖的，Paul Lafayet 也不是連鎖店）。2010 年，我們開始營業，而位於 K11 的分店一直營業至今。當時我們決定要以合理價格提供大眾負擔得起的奢華蛋糕，因為並非每個人都能負擔五星級酒店的價錢。所以這個想法就來了，我們從一個中央廚房開始，由法國廚師建立團隊，然後我們於 2010 年開業。Allan，請容我稍作糾正，至今我們有 10 家分店，而本年稍後我們在香港將會有 12 家分店，在中國則會有 4 家。

我可以說，從 2010 年到 2022 年的 12 年間，這個創業旅程很難忘，也是一種激情。這個旅程很有趣，但也涉及許多艱辛的工作。香港確能提供真正的機會，讓我們由零開始構建一些東西。老實說，只要我們肯努力、有策略，香港可提供一切支援，政府會協助我們。香港也有很多配套，不乏人才和勤奮的人。我們能夠做到一些事情，但必須聚焦、必須貫徹始終。若然希望長期在食品行業經營，必須時刻保持「質量」、「質量」、「質量」。這些都是最重要的事情。

我們的業務發展相當不錯，過去 12 年從一家店擴展到十家，做了大約超過 1,500 萬件馬卡龍餅。我們的焦糖燉蛋非常出名，這是一種「法式蛋撻」，不知道在座各位有沒有吃過。我們在香港大約有 86 位同事，我稍後會到國內。人們

問我們在做什麼，我會說我們向顧客提供幸福，因為我們都知道，吃早餐、午餐和晚餐是例行公事，但甜品和生日都代表着歡樂的時光。所以在某程度上，我們經營的是帶來幸福的業務。但帶來幸福的業務總是快樂的嗎？並非總是如此。

我可以說，從 2010 年至今的過程當中，曾經有一段艱難的時期，面對太多競爭。而業主有點 —— 只顧「價格」和「加租」。我可以說，2019 年非常艱難，這與新型冠狀病毒病有直接關係。2020 年初確是非常艱難的時期。有些事情我們可以控制，但有些是我們無法控制的，可以肯定的是疫情已經失控。所以我們跟同事協定，也許我們需要調整工資，共渡時艱。我們沒有任何同事被解僱，全都留下來。我們與業主的談判也波折重重、耗時不少，但最終業主接受了我們的方案，我們深表感激。政府也推出各項計劃，例如「保就業」計劃和銀行貸款擔保。它們提供了很大的幫助。但如果我能說些什麼，那就是雖然政府為銀行貸款提供擔保，但銀行處理申請的速度太慢，提出的要求太多，所以也許要檢討一下。因此，這是一個頗為艱難的時期，但我們總算熬過去。我們的業務在 2020 年下半年開始改善，到了 2021 年更表現卓越。

也許我可以總結一下 —— 我們就像一枝竹子，可能會彎但不會折斷，因為我們小巧靈活。中小型企業就是這樣。我們從這部分可以學到什麼？我們了解到香港的業主雖然很有權勢，但也願意與租戶談判。我們每當遇到困難，總可以向政府求助，政府也會樂意幫助。由此可見我們有很多工具，若然我們能加以善用，業務便會繼續前進。但如果業務品質無法保持，而經營者又欠缺策略，則所有人都會受苦。

說完香港，現讓我談談國內和大灣區。當我們於 2010 年開設第一家店舖時，我想在尖沙咀的中心地帶開店；我不想選擇跑馬地，也不想選擇半山區，因為我想為香港和中國開一家店。這是認識我和我的品牌的人都知道的基本事情，因此 12 年前我們從那裏開始，經過數年的成功營運後，我們進駐上海，開設了一家旗艦店和三家分店。我們在 2019 年開了另一家分店，位於華潤在深圳灣的總部所在地。但不幸的是，從 2019 和 2020 年起直至現在都是艱難時期，我們已有兩年半無法出行。我們在國內的計劃是把業務擴展到國內其他主要城市。我正在考慮大灣區，香港與澳門和珠海相連，前往深圳也很容易，我以前每逢星期二都到深圳去，它與廣州有很完善的連繫。我想說的是，我們有一個大型樞紐，它擁有大約 8,000 萬人口，本地生產總值超過 1.7 萬億元，在未來數年內更可能達到 2 至 3 萬億元。因此大灣區集金融和服務於一身、集各類消閒娛樂於一身、集廣州的貿易和工業及深圳的超級科技於一身。

在深圳，我們的對象顧客年齡平均約為 30 歲，而根據我們的顧客資料，我們的顧客年齡正是從 24 或 25 歲到 45 歲不等，70% 是女性。我們為此感到高興，因為他們喜歡我們的甜品。我們的計劃大概如此：我認為大灣區具有龐大潛力，而對於這個潛力，當通關措施放寬後，我們就可以把食品從中央廚房送到澳門和深圳。我們這裏有一個由法國廚師和 12 位同事組成的團隊，也許我要說一些我以前沒有說過的話。我們確實提供了自己的所有專業知識，在這裏和國內有很多人向我們的廚師學習，數年後自行開店和發展自己的業務。因此，對於大灣區和國內，我們計劃在未來五年內開設約 100 家分店，並預計其中 35% 會在大灣區開設。

我們有信心嗎？當然，毫無疑問，我們相信中國、相信香港的未來。過去兩三年的整體情況無疑十分特殊，席捲全球，但我認為人類未走到盡頭，因此自會慢慢地找到解決方案。我們要有耐心，在國內從商時要有耐心。今時已不同往日。我認為我們做的是令人快樂的生意。我們在香港有 85 名員工，在國內有 35 名，團隊肯定會繼續壯大。這就像一個社交團隊，員工之間有團隊合作，而若然沒有這種群策群力的精神，我們的業務不可能成功和持續到今天。這就是我想跟大家分享的故事。Allan，我樂意回答任何問題。衷心感謝各位！

盛智文：謝謝 Toni。Toni 是一個完美的實例，代表着所有在香港建立基地的公司和個人，他們最初都是小企業家，不僅在香港發展，就像 Hans Michael、他的公司、Toni、我自己和許多其他人，我們都能夠利用中國內地和香港作為一個整體而擴展業務。而這展示《基本法》和《國安法》真正協助了香港，建設香港成為西方與東方、東方與西方之間強大的超級聯繫人，而這一切都植根於我們的《基本法》制度。好的，我們沒有忘記 Hans Michael，就讓我再向他請教。Michael，你在中國內地和香港已從商多年，對有意在國內做生意的香港人甚至外國人，你會給予什麼建議？他們會遇到哪些困難？他們如何才能像你一樣排除萬難並取得成功？

捷成漢：我會說貫徹始終是至關重要的。當然，我們在其他地方需要的東西，在這裏一樣需要。這包括盡職、保持清醒的頭腦、還有經營方針等。但貫徹始終真的很重要，同樣重要的是與各個層面的人士建立誠摯的關係。在中國，業務是公司與公司之間進行的，但個人也很重要，而記憶是長久的，對已經發生的好事的記憶也是長久的，我一次又一次

地體會到。因此，我認為要付出時間，真正運用頭腦，意識到中國的不同——它不只是母親大地，不，它是一種文化，有一些非常不同的價值體系，也有許多高度敏銳之處。因此，我認為我們要經常提問，說話之前要先聆聽。我們需要朋友，而這是交朋友的好地方。我的個人經驗告訴我，如果我們有一些令我們感興趣而遠超金錢符號的東西，這總是美好的，不是嗎？我的意思是，當然我們是在做生意，生意就是生意，但它同時也是我們生活中的承諾。而且我們確實看見，為何我們的公司能夠吸引優秀的人士加入？我想是因為企業社會責任的部分，走進社區並成為社區的一部分，而不僅只作為商業。我認為這方面很重要，它令我們的生活變得豐盛。因此，要貫徹始終，要坦白，要真誠，也要全情投入。

盛智文：好的。這很有意思。馬先生，我們想請教：你會如何鼓勵商界擁抱寶貴的機會，並充分發揮國家戰略和融入內地所帶來的益處？我們如何能利用國家戰略，加強與內地融合？

馬紹祥：這是非常好的問題。我認為商界普遍希望善用香港與內地的聯繫。我認為香港是非常獨特的。香港也許不是亞洲唯一廉潔和高效的普通法制度城市，但香港是非常獨特的。香港背後有多達 14 億人口的內地市場，即使只在大灣區，我們也有 9,000 萬人口。因此，兩地的聯繫非常緊密，而過去數年，兩地政府一直致力加強彼此的聯繫。

現在香港有高鐵，讓我們輕易連接內地城市，前往廣州不需一小時，前往毗鄰的深圳也不需半小時。因此，這種非常高的連接度，為我們提供了種種便利。此外，在香港，我們在雙方之間有非常好的連接，我們有這些額外能力，

特別能惠及專業服務界別。他們「已打開一道大門」，我們現正等待那些界別打開小門，在那些領域建立業務。因此，就像中小型企業一樣，我認為這是龐大的商機，因為我們享有這些機會和建設，而在疫情過後，我認為我們要重啟一系列的活動和重新建立香港的角色，讓國際社會了解香港在旅遊、貿易、金融等領域的優勢。這一切對香港都非常重要，也是內地與香港之間的橋樑。所以我認為這是一個非常好的地方。

盛智文：馬先生，你的答案很好。隨着香港政府銳意在疫情過後重塑香港的品牌，我希望這最終會讓香港回到原來的位置和角色。李博士，我們都知道你是一位備受尊敬的學者，你對《基本法》也十分熟悉。根據你教育年青一代的經驗，請問我們如何能協助海外投資者以更有活力、更務實的方式了解《基本法》？

李浩然：這是個好問題，事實上我們在這方面已工作了十多年。我認為，單單跟他們解說，並非理想的方法。我們不能只逐一讀出《基本法》的條文，這做法太沉悶，而且不是每一位年輕人都會對《基本法》進行研究或學術研究。我認為最好的方法是提供機會，讓他們進入內地體驗不同事情。我想在此分享一個例子。我有一個名為「沖出夢想」的項目，我們所做的是嘗試給年青人提供機會，讓參與者學習如何自製咖啡，隨後在我們的咖啡館「太平洋咖啡」接受實習培訓。然後，我們和他們一起進行商業策劃。我們若然遇到優良的商業計劃和團隊，便會對他們進行投資。現時已有兩家店舖在深圳開業，這對他們來說是寶貴的經驗。我認為這是讓他們體驗一切的最好方式，不僅認識大灣區，也有助加深他們對「一國兩制」和《基本法》的了解。不只是談話或向他們演講，讓他們親身體驗是最佳方法。

盛智文：我想這是理所當然的，經驗永遠是最好的，因為閱讀《基本法》可能相當枯燥乏味。

李浩然：對我來說並不沉悶。

盛智文：對普通人來說並不如此，而我的職業生涯不斷告訴我，經驗總是最好的。現在讓我提出最後一條問題，這是簡短的問題，因為我們的時間不多了。關於大灣區，較早前另一位講者陳先生提到一件非常有趣的事情：讓香港與大灣區順利協作。這肯定是「一國兩制」，但兩種制度始終有別。我們如何融合邊境、金融、銀行和一切，以實現這個偉大的項目？我們知道它必會成功。

李浩然：讓我這樣說：試想想為何設立大灣區。如果只是各個城市之間，這便是合作，那我們就沒有必要設立大灣區。但是大灣區很獨特，在世界上也獨一無二，因為我們有「一國兩制」和粵港澳三地。如何把最好的制度融入成為大灣區的整個體系，是大灣區成功的關鍵所在。舉例說，當我們談論橫跨粵港澳三地的建造工程時，三地的標準、原則和制度各異，那麼應採納哪一個制度作為建造標準？我們選擇一個最好的制度作為標準，這就是融合。因此，為何我們可以說大灣區將擁有全球最好的制度？這是因為在比較香港、澳門和內地的制度，當然還有廣東省的制度之後，會選擇最好的制度作為大灣區的制度，這就是融合。當然，我們也知道，在法律領域內，我們有前海的律師，這是展現如何為整個地區和區域選擇最佳標準和制度的另一例子。

盛智文：謝謝。Toni，你在國內有一個積極的業務拓展計劃，特別是在大灣區。你們在這些地區面對哪些挑戰和看到哪些機遇？你們在國內和大灣區開設新店時，面臨着哪些挑戰？

Toni Younes：在整體上，我認為國內大灣區、成都和部分其他地區是非常開放的。我想也許我們一開始就犯了某些錯誤。如果在某個地區開業，最好聘請當地人協助運作業務，因為他們熟悉當地環境。我們學懂的第一件事，是國內市場是很「地道」的市場。第二件學懂的事，是必須花時間在國內。在國內開店並非開完就算，而是更長期的事。我們也學懂：這是使用同一種語言的國家，是一個單一市場。我認為正如李博士剛才所說，大灣區涵蓋四個最大的樞紐，總人口約為 8,000 萬。所以它幾乎是香港的十倍，對我們來說是龐大的市場，我可能容後再說。以我的業務為例，我們建基於香港，在這裏有很大的中央廚房，我們是否願意把食品運到澳門和深圳，抑或我們要在深圳另建設施？這取決於往後的架構是怎樣、香港與大灣區其他地區之間的運輸安排是怎樣。如果它非常流暢，我們便可更迅速地擴展，這當然會是好事。我認為很多香港團隊可以到大灣區工作，大灣區的主要團隊也可前來香港，若非如此，便可能需要一些時間，但我認為在這兩方面我們都願意嘗試。


盛智文：好的。我們還有一點時間，我知道現在已經很晚，所以我會盡量簡短。讓我再向馬先生請教一下。香港正從疫情中恢復過來。你如何看這座城市的前景、經濟發展、機遇和挑戰？你認為香港如何能在當前的營商環境下脫穎而出？

馬紹祥：展望未來，我們當然對香港人充滿信心。香港已具備所有人才。我們也看到，多年來香港人口改變不大，即使在受到新冠疫情困擾的過去兩年，香港人口也大致保持不變，人們對香港仍滿有信心。因此，展望將來，最重要的是我們要對自己有信心、要攜手努力。正如我們提過，也正

如你剛才提及，我們要重新啟動自己，特別是發揮香港的角色。香港是一個非常獨特的城市，兼容了東西方文化，也是東方與西方之間的橋樑。因此，我們除了強調商業業務外，還應強調這個角色。我們要有自己的文化，也要攜手致力重返國際社會，告訴全世界：香港正從疫情中恢復過來。

盛智文：好。很高興聽到這個消息。現在已是黃昏六時，我知道各位已在這裏久留。既然我是主持人，就讓我代表各位作最後發言吧。我只想說，過去 25 年十分重要，而今年是《基本法》和「一國兩制」實施 25 周年。回想在 1980 年代，鄧小平先生提出一個構思，而人們非常擔心，我記得當時也目睹人們對香港回歸祖國這件事非常擔憂。當時鄧小平先生首先說的是：不用擔心，我有一個想法，「一個國家，兩種制度」，這會令我們順利過渡。這是創新的實驗，全世界都沒有先例。過去 25 年，一直在這裏的所有朋友都在這個實驗中生活，也經歷過不少高低起伏：1997 年的香港人離港潮、亞洲金融危機、「2014 年佔領中環」事件，緊接着當然還有影響全球的新冠病毒疫情。因此，我們既經歷過順境，也經歷過逆境。

我們都領會到，《基本法》和 2020 年的《香港國安法》確實有助香港穩定、令香港百業興旺、令香港保持繁榮。而國家當然也理解和明白我們過去的問題，並致力修補缺陷。2019 年滙聚了各種問題，而國家透過選擇愛國者加入立法會和選舉委員會，解決了該些問題。志同道合的立法者令法案得以通過，以往任何事都拉布，讓香港人困苦，因為立法會是推動香港的引擎，但法案卻因拉布而無法獲得通過，立法會內部嚴重分裂，令理應在數天內已可通過的法案要費時三個月、四個月、有時甚至五個月才能通過。

簡言之，香港在過去這 25 年穩步發展，現已成為一座安全的優質城市，而我們將能克服所有難題。我可以告訴各位，未來 25 年，香港只會繼續進步。隨着國家不斷發展，香港只會越變越強。這是我個人的看法。我剛剛知道還有數分鐘的時間，就讓我在此結束這場論壇。今天是極有意義的一天，我剛才亦作出了正面的結語，讓每個人都對香港充滿信心。各位可以邀請所有對香港有懷疑的海外朋友來港看看，這座城市現正處於歷來最好的狀況，並且只會越來越強大。非常感謝各位撥冗出席，也衷心感謝一眾嘉賓講者。

本刊物由律政司出版，主要為提供一般參考。律政司盡力確保內容包括翻譯之準確性，惟本刊物的內容並非用作提供法律專業意見或決定採取任何行動的根據，故律政司對任何因過失或遺漏而導致的後果，概不負責。



中華人民共和國憲法

中華人民共和國
香港特別行政區基本法

2021年5月版本



THE CONSTITUTION
OF THE PEOPLE'S REPUBLIC OF CHINA

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

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OF THE PEOPLE'S REPUBLIC OF CHINA
THE CONSTITUTION





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

Stability to Prosperity

27 May 2022

Foreword

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

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

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

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

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

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

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

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

3 Ibid, footnote 1.

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

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

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



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WELCOME REMARKS



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

Then Chief Executive of the HKSAR of the PRC

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

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

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


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

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

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

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

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

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



Mr Wang Ling-gui

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

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

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

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

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



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

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


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

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

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

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

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

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



Mr Chen Dong

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

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

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

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

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

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

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

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

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

I wish this conference a great success! Thank you!

KEYNOTE SPEECH

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



Mr Shen Chun-yao

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

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

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

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

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

KEYNOTE DIALOGUE

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

KEYNOTE SESSION



The Hon Ms Teresa Cheng Yeuk-wah

GBM GBS SC JP

Then Secretary for Justice

Distinguished guests and friends,

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIALOGUE SESSION

Panelists:



The Hon Ms Teresa Cheng Yeuk-wah

GBM GBS SC JP

Then Secretary for Justice



The Hon Ms Maria Tam Wai-chu

GBM GBS JP

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

Maria Tam Wai-chu: Thank you.

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

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

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

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

THEMATIC SPEECH

Interpretation of the Basic Law

THEMATIC SPEECH



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

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

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

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

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

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

1 (2021) 24 HKCFAR 349.

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

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

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

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

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

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

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

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

The Discipline of Law

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

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

The Originating Process

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

The Matters in Issue

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

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

Complexity Smothers Transparency

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

Ex parte Applications

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

Take section 21K(3) of the Ordinance:

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

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

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

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

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

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

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

“Rolled up” Hearings

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

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

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

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

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

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

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

The Upside Down Process

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

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

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

Leung Lai Kwok Yvonne's Case

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

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

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

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

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

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

The Proposed Grounds of Application

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

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

The Proposed Amended Grounds

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

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

The Scope of an *Ex parte* Hearing

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

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

A Further Descent into the Bizarre World

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

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

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

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

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

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

The Subsequent Events

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

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

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

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

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

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

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

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

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

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

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

This is the stuff of theatre, not of courtrooms.

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

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


The exercise descended into total farce.

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

3 (2016) 19 HKCFAR 372.

Conclusion

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

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

KEYNOTE SPEECH & PANEL DISCUSSION

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

Moderator



Prof Zhu Guo-bin

Professor,
School of Law of City University of Hong Kong

Keynote Speaker



Mr Deng Zhong-hua

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

Panelists

The Hon Mr Tam Yiu-chung GBM GBS JP

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



The Hon Ms Maggie Chan Man-ki MH JP

Deputy to the National People's Congress



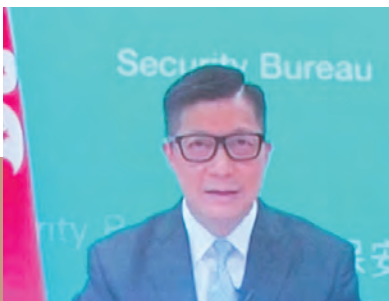
Professor Wong Yuk-shan SBS BBS JP

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



The Hon Mr Tang Ping-keung PDSM JP

The Secretary for Security



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

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

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

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

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

of strenuous effort, the People's Republic of China and the United Kingdom signed the Sino-British Joint Declaration on the Question of Hong Kong, which confirmed that China would resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. In April 1985, the National People's Congress (NPC) formed the Drafting Committee for the Basic Law of the HKSAR. With the joint effort of people from various sectors of the Mainland and Hong Kong and the active participation of Hong Kong compatriots, the drafting of the Basic Law, "a law of historical and international significance", was completed after four years and eight months. On 4 April 1990, pursuant to the Constitution, the Third Session of the Seventh NPC adopted the Basic Law of the HKSAR of the People's Republic of China, giving effect to the legalization and institutionalization of the "one country, two systems" initiative. This constitutional law establishes the fundamental policies of China towards Hong Kong and the systems to be practiced in the HKSAR.

On 1 July 1997, Hong Kong reunited with the Motherland, washing away a century of national shame, and the Basic Law came into effect. Over the past 25 years, the Central Government has always adhered to the principles of "one country, two systems", "Hong Kong people administering Hong Kong" and "high degree of autonomy" and acted in strict compliance with the Constitution and the Basic Law; and has been a determined guardian of "one country, two systems" and the Basic Law, an active supporter of the overall progress of various undertakings in the HKSAR and a faithful defender of the legitimate rights and interests of Hong Kong compatriots. Under the protection of the Basic Law, the previous capitalist socio-economic system and way of life in Hong Kong have remained unchanged, and the laws of Hong Kong by and large have also remained unchanged.

Under the Basic Law, the HKSAR exercises a high degree of autonomy and enjoys executive power, legislative power, independent judicial power and the power of final adjudication. The executive-led political system of the HKSAR established by the Basic Law operates effectively. The rights and freedoms enjoyed by Hong Kong residents in accordance with the law are fully safeguarded. The economy of Hong Kong enjoys stable growth and the social undertakings in Hong Kong including education, medical and health care, culture, sports and social security are scaling new height continuously. Hong Kong has entered the highway of complementing with and developing jointly with the Motherland. The implementation of “one country, two systems” has achieved universally recognized success.

Since the 18th National Congress of the CPC, the Central Government has dealt with the affairs of Hong Kong and Macao from the perspectives of the overall national development and the great rejuvenation of the Chinese nation. Facing new situations and issues arising in the course of implementing “one country, two systems”, the Central Government has adhered to its original aspiration and resolutely taken a series of significant measures which address both the symptoms and the root causes, thereby ensuring that the “one country, two systems” flagship is sailing in the right direction and at the same time enriching and developing the theory and practice of “one country, two systems” and the Basic Law. The strong adaptability and vitality of the “one country, two systems” policy have been and will continue to be manifested in the practice of the governance of Hong Kong. I would like to do a brief review and summary with all of you here.

On the major theoretical aspect: first, always accurately grasp the relationship between “one country” and “two systems” and

emphasize that, when dealing with the relationship between “one country” and “two systems”, “one country” is the prerequisite and basis for the implementation of “two systems” whereas the “two systems” is reproduced and derived from “one country” and unites in “one country”. **Second**, the Constitution and the Basic Law jointly form the constitutional basis of the HKSAR. The Constitution, as the cardinal law of the country, enjoys the highest legal status and legal effect and is the highest manifestation of “one country, two systems” in the country’s rule of law. The Basic Law, enacted pursuant to the Constitution, provides for the systems and policies of the HKSAR. **Third**, correctly handle the relationship between the overall jurisdiction of the Central Government and the high degree of autonomy of the HKSAR. The former is the prerequisite and basis for the latter. The overall jurisdiction of the Central Government includes the powers exercised by the Central Government directly and also the powers delegated by the Central Government to the HKSAR for exercising a high degree of autonomy in accordance with the law. The power of supervising the high degree of autonomy of the HKSAR rests with the Central Government. **On the major practical aspect: first**, the integration of the HKSAR into the overall national development has been facilitated. The Guangdong-Hong Kong-Macao Greater Bay Area has been developed with high quality by combining the strong backing role of the Motherland with the HKSAR’s own competitiveness. **Second**, the systems and mechanisms of the HKSAR in relation to the implementation of the Constitution and the Basic Law have been improved, the improved legal system and enforcement mechanism for safeguarding national security of the HKSAR have been established, the HKSAR National Security Law has been enacted, the principles of “patriots administering Hong Kong” and “patriots administering Macao” have been implemented,

and the electoral system of Hong Kong has been improved. It has to be reiterated that major theories lead and guide major practice, and major practice further enriches and nurtures major theories.

2. Fully, accurately and firmly implement the “one country, two systems” policy; adhere to and improve the “one country, two systems” regime; and steer the implementation of “one country, two systems” back on track

Ever since the reunification of Hong Kong with the Motherland, two thorny institutional issues have troubled the Hong Kong society and become major hindrances to the implementation of the Basic Law. One is the protracted delay in enacting legislation on Article 23 of the Basic Law, and the other one relates to the continuous politicization in Hong Kong. These two issues are intertwined and mutually influential, and were intensified following the turbulence over the proposed amendments to the Fugitive Offenders Ordinance, which involved rampant advocacy of “Hong Kong independence”, prevalence of “black violence” and widespread ideas of “mutual destruction”. Social order and public safety were severely undermined, and in particular, some foreign and external forces openly meddled in Hong Kong’s affairs and attempted to turn Hong Kong into a “bridgehead” for infiltration into the Mainland and subversion of the leadership of the CPC and the socialist system of China. All these posed a great threat to the national security of China, especially the political security of the HKSAR, and the HKSAR faced the most critical situation since the reunification. Against this background, the Central Government resolutely took a number of important measures including the enactment of the HKSAR National Security Law and improvement of the electoral system of the HKSAR. In order to fully and accurately understand the joint force of the enactment of the HKSAR National



Security Law and improvement of the electoral system, it is necessary to properly grasp the following three points:

First, adhere to the holistic view of national security and properly perform constitutional responsibilities. President Xi Jinping has stressed that “national security is the cornerstone of the safety and stability of a nation.” Safeguarding national security is a matter of top priority for our nation. Since its 18th National Congress, the CPC has kept up with the times, systematically answered the important question of the times of how, as socialism with Chinese characteristics enters a new era, to properly resolve the common problems faced by major countries in the process of development and, at the same time, properly deal with the unique security issues faced by the Chinese nation at the critical stage of its great rejuvenation. The CPC has also creatively put forward the holistic view of national security, which stresses that in establishing a national security system

with Chinese characteristics, the people's security is the aim, political security is the basis, economic security is the foundation, military and cultural/social security is the safeguard, and the promotion of international security is the underpinning. The holistic view of national security emphasizes the concept of mega security which encompasses numerous areas such as politics, military, homeland, economy, finance, culture, society, technology and network and which is constantly and dynamically adjusted with social development. Of all the elements of the holistic view of national security, political security is at the core, and ensuring political security is the prerequisite for safeguarding national security. The essence of political security is regime security and institutional security. Our nation is a socialist country led by the CPC, and the most fundamental requirement of safeguarding political security is to protect the leadership and ruling position of the CPC and to preserve the socialist system with Chinese characteristics. Articles 52 and 54 of the Constitution stipulate that Chinese nationals are under the obligation to safeguard national unity and national security. Articles 11 and 40 of the National Security Law further provide expressly that compatriots of Hong Kong and Macao shall safeguard national sovereignty, security and territorial integrity and are under the duty to safeguard national security. The Basic Law of the HKSAR and the HKSAR National Security Law also stipulate that the Central People's Government has an overarching responsibility for national security affairs relating to the HKSAR and that it is the constitutional duty of the HKSAR to safeguard national security. Therefore, in safeguarding national security in the HKSAR, the holistic view of national security has to be adhered to, political security and institutional security have to be ensured, the constitutional order of the HKSAR as established by the Constitution and the Basic Law has to be properly safeguarded, the leadership and

ruling status of the CPC have to be respected and protected, and the two different social systems in force in the Mainland and Hong Kong have to be respected and preserved.

Second, fully implement the principle of “patriots administering Hong Kong” and maximize the convergence of interests. The principle of “patriots administering Hong Kong” is at the heart of “one country, two systems” and is fundamental to national sovereignty, security and development interests as well as the long-term prosperity and stability of Hong Kong. President Xi Jinping has stressed that “in order to ensure the steadfast and successful implementation of ‘one country, two systems’, the principle of ‘patriots administering Hong Kong’ must always be adhered to”. The power to administer Hong Kong, as a special administrative region of the People’s Republic of China, must be in the hands of patriots. The criteria for a patriot are objective and clear. At a symposium organized by the Chinese Association of Hong Kong & Macao Studies on 22 February 2021, Vice Chairman Xia Baolong expressly pointed out that a patriot is someone who truly safeguards China’s national sovereignty, security and development interests, respects and upholds the fundamental system of the country and the constitutional order of the HKSAR, and makes every effort to maintain the prosperity and stability of Hong Kong. Those who participate in the political structure of the HKSAR have to be unflinching patriots with talent and integrity and also ability to govern. The newly improved electoral system, with a reconstituted Election Committee, an adjusted candidate nomination mechanism, enhanced exercise of the functions of the Election Committee and an improved mechanism for checking candidates’ eligibility, serves to exclude “anti-China, destabilizing” forces from the political structure of the HKSAR and to ensure that those elected to key public positions of the HKSAR are staunch

patriots. Actual practice has proved that adherence to the principle of “patriots administering Hong Kong” is a fundamental prerequisite for resolving deep-seated conflicts and problems in the Hong Kong society, ensuring the prosperity and stability of Hong Kong and giving full play to the unique advantages of Hong Kong in the context of great national rejuvenation. By adhering to the principle of “patriots administering Hong Kong”, the “highest common factor” under the “one country, two systems” regime can be found and convergence of interests maximized.

Third, adhere to the principles of the Constitution and improve the “one country, two systems” regime under the framework of the Constitution and the Basic Law. The Constitution is the cardinal law of the nation and enjoys the highest legal status and legal effect within the country. It is the constitutional basis for the establishment of the HKSAR and the legislative basis and source of validity for the Basic Law, and also provides the fundamental principles which must be followed for the application and interpretation of the Basic Law. “One country, two systems” is based on and originates from the Constitution. According to the Constitution, the NPC is the highest organ of state power and exercises sovereign powers of the state. Since Hong Kong’s return to the Motherland, the NPC and its Standing Committee (NPCSC) have made a number of decisions, resolutions and legal interpretations to develop the “one country, two systems” regime and have specifically enacted a number of important laws. For example, the NPCSC has made a number of legislative interpretations which clarify the meaning of specific provisions of the Basic Law, properly resolving major issues such as the political development of the HKSAR, right of abode, the term of office of the Chief Executive, the oath of office and state immunity, and thereby removing doubts and settling disputes. As another example, through

the NPCSC's specific authorization, jurisdictional issues including the "co-location arrangement" between the Mainland and the HKSAR have been effectively resolved, facilitating exchange of personnel, economic and trade interactions and joint development. It can be said that from great conception through vital implementation to refinement of relevant systems and mechanisms, "one country, two systems" has been realized through the system of the People's Congress. The HKSAR National Security Law and the decision on it, the decision on improving the electoral system of Hong Kong and the amendments to Annexes I and II of the Basic Law passed by the NPC and the NPCSC have further improved the "one country, two systems" regime and provided even stronger constitutional support and protection for "one country, two systems".

3. Continue to leverage on the governance advantages of "one country, two systems", seize opportunities and embrace challenges to ensure it is implemented steadfastly and successfully in the right direction

The HKSAR National Security Law and improvements to the electoral system of Hong Kong are major steps in fully, accurately and firmly implementing the "one country, two systems" policy; arrangements made pursuant to the Constitution and the Basic Law which are of the greatest constitutional significance; and also the milestones in the development of the implementation of "one country, two systems". Like wheels of a car and wings of a bird, such major measures have improved the systems and mechanisms relating to the implementation of the Constitution and the Basic Law; ensured full implementation of the provisions of the Basic Law; preserved the integrity and authority of the Basic Law; ensured the major turn of Hong Kong from chaos to order; and opened a new chapter for the

progress of the Hong Kong society from stability to prosperity. With the effective implementation of the HKSAR National Security Law and the putting into practice of the new electoral system, more and more talented and capable patriots will enter the political structure of the HKSAR. A team for administering the HKSAR, which comprises patriots who love the country and love Hong Kong and who are willing to shoulder responsibilities, sincere and united and ready to serve Hong Kong people, has gradually taken shape; but at the same time, the situation of safeguarding national security in the HKSAR is still precarious and complex. The development of Hong Kong society is still facing a series of severe tests on enhancing the governance efficacy of the government, strengthening competitiveness and solving deep-seated socio-economic problems, etc. Opportunities and challenges co-exist.

In the face of opportunities and challenges, we have to continue to act in strict compliance with the Constitution and the Basic Law; insist on administering Hong Kong in accordance with the law; solidify the constitutional basis of the HKSAR as jointly established by the Constitution and the Basic Law; preserve the constitutional order of the HKSAR as laid down by the Constitution and the Basic Law; ensure that the “one country, two systems” policy will remain unchanged and unswerving; and ensure that the practice of “one country, two systems” will be on the right track always, and away from distortion or deviation.

In the face of opportunities and challenges, we have to continue to steadfastly implement the holistic view of national security; effectively implement the HKSAR National Security Law; actively perform the constitutional duty to enact legislation on Article 23 of the Basic Law; improve the relevant laws; continue to shape a

politically secure Hong Kong in accordance with the Constitution and the Basic Law; eliminate any actual and potential risks which may endanger national security; and solidly establish the foundation and line of defense for safeguarding national security in the HKSAR.

In the face of opportunities and challenges, we have to continue to enhance the systems and mechanisms relating to the implementation of the Constitution and the Basic Law and, with powerful legal weapons and the courage to innovate, continue to deal with new situations and new issues that may be encountered in the course of implementing “one country, two systems” and the Basic Law and to overcome all difficulties and strive ahead.

In the face of opportunities and challenges, we have to continue to fully implement the principle of “patriots administering Hong Kong”, ensure that the administrative power over the HKSAR rests firmly with those who love the country and love Hong Kong, and promote good governance in Hong Kong. We have to step up our effort in developing the economy, improving livelihood and resolving deep-rooted conflicts, so as to solidly enhance the sense of ownership and contentment among Hong Kong people.

Distinguished guests and friends, on 11 November 2021 the Sixth Plenary Session of the 19th Central Committee of the CPC passed the “Resolution on the Major Achievements and Historical Experience of the Party over the Past Century” and, for the first time, included in the Resolution the adherence and improvement to “one country, two systems” in Hong Kong and Macao as an important part of the CPC’s remarkable achievements and historical experience over the century. The extraordinary journey of Hong Kong since its reunification with the Motherland 25 years ago has amply proved that the implementation of “one country, two systems” is conducive to

safeguarding the fundamental interests of the country, Hong Kong and all compatriots in Hong Kong. At a new starting point in history, we firmly believe that the team of patriots elected under the new electoral system to administer Hong Kong will be able to unite and lead all sectors of our society in working hard towards weaving the “Hong Kong chapter” of the great rejuvenation of the Chinese nation.

This concludes my speech and I welcome valuable comments and enlightenments from the three panelists. Finally, on behalf of the Chinese Association of Hong Kong & Macao Studies, I wish the conference a great success and wish all of you good health and prosperity. Thank you.

Zhu Guo-bin: As we all know, the NPC and the NPCSC completed the national security legislation and improvement to the electoral system for the HKSAR by means of “decision plus legislating” and “decision plus amendment” in 2020 and 2021 respectively. Just now, Mr Deng used the expression “address both the symptoms and the root causes”, which I think is an accurate summary. These two laws play the most crucial role in the governance of the HKSAR over the next 25 years. Therefore, in this session we will focus on discussing these two laws. First of all, I would like to invite our guest speaker Mr Tam Yiu-chung, a member of the NPCSC. Mr Tam is an experienced politician. He was a member of the Drafting Committee of the Basic Law of Hong Kong, the Executive Council and the Legislative Council, and has been a long-time chairman of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Mr Tam please.

Tam Yiu-chung: Thank you, Professor Zhu. The organizer would like me to talk about these three points as shown in the Power Point, as I have been attending meetings of the NPCSC and have

the benefit of personal experience. So, based on what I can recall, I am going to talk about three aspects. First, the cardinal principles followed by the NPCSC in enacting the HKSAR National Security Law and the Decision on Improving the Electoral System. Second, the legislative approach regarding the HKSAR National Security Law and improvement to the electoral system. Third, in future, with the strong support of the Central Government, how we can start a new chapter for Hong Kong.

Let me start by talking about the first point, namely the principles followed by the NPCSC in enacting the HKSAR National Security Law and the Decision on Improving the Electoral System.

I have come to appreciate three points. These three points have one overriding principle and the two laws are interrelated and consistent. The first point is to safeguard national security, the second is to improve and accurately implement “one country, two systems”, and the third is to insist on administering Hong Kong in accordance with the law. As to the important principles underlying the HKSAR National Security Law, I think they were most authoritatively spelt out by Mr Wang Chen, Vice Chairman of the NPCSC, in his speech at the plenary session of the NPC in March 2020. He said, “The affairs of the HKSAR are the internal affairs of China and are not subject to interference by external forces. We must resolutely oppose any form of interference in Hong Kong’s affairs by a foreign country or any foreign organization or individual. We must resolutely prevent and curb external forces from meddling with Hong Kong’s affairs and conducting any act of secession, subversion, infiltration or sabotage. We will take all necessary measures to counter any legislative, administrative or other measure formulated or implemented by the foreign countries to interfere in the affairs of Hong Kong.” This point was very clearly stated. Second, he stressed that the legitimate

rights and interests of Hong Kong residents would be effectively protected and human rights would be respected and safeguarded in the legislative process. As regards the important principles relating to the Decision on Improving the Electoral System, Vice Chairman Wang emphasized two points: first, develop a system of democratic elections that fits in with Hong Kong's actual conditions and reflects the overall interests of the society; second, enhance the governance efficacy of the HKSAR. The legislation was enacted on the basis of these important principles.

Different legislative approaches were taken for the HKSAR National Security Law and the Decision on Improving the Electoral System. The former adopted the “decision plus legislating” approach while the latter adopted the “decision plus amendment” approach. We will analyze the differences between the two approaches later.

As to the legislative approach to the HKSAR National Security Law, the first step involved the NPC passing the “Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security” pursuant to the relevant provisions of the Constitution and the Basic Law and, at the same time, authorizing the NPCSC to enact the relevant laws. In fact, we had already talked about this when the Drafting Committee for the Basic Law discussed Article 23, the reason being that we all considered it necessary to safeguard national security and this area was indispensable. You may ask, had provisions on safeguarding national security been included in drafting the Basic Law, would it not have resolved the issue once and for all? This is indeed correct, but then there were different views during the drafting of the Basic Law. The final decision, namely

that the HKSAR was to enact the relevant law on its own after its establishment, was made partly out of respect for the opinions from Hong Kong. But who could have imagined that 23 years would have passed without the relevant law being enacted. Finally, when something detrimental happened in 2019, the NPCSC stepped in. This fully accorded with the Constitution and the Basic Law and was indeed something we had considered when drafting the Basic Law in the first place. The second step was to add the law enacted pursuant to the Constitution to Annex III of the Basic Law so that it could be directly promulgated and implemented by and in the HKSAR.

At the time of enacting the legislation, I also participated in the discussions. I do admire the Mainland for their drafting work as they were able to formulate, within a short period of time, a law on safeguarding national security and its enforcement mechanism. If there were only a law with no enforcement mechanism, the effect would not have been the same. I recall that, during our meetings in Beijing, we specially invited Vice Chairman Deng Zhong-hua, who spoke just now, to discuss with our delegates for more than two hours. We also discussed further with Chairman Li Fei afterwards because we hoped that this law, once enacted, could be implemented smoothly. Following the discussions and understanding, we think that this law has done a good job. We can see that since the enactment of this law, the entire situation of Hong Kong has changed from chaos to order and many things are now underpinned by law, so that the stability of Hong Kong has been restored.

The Decision on Improving the Electoral System is different from the enactment of national security law that we have just mentioned. This Decision was made at a plenary session of the NPC, which also authorized the NPCSC to amend Annex I and Annex II to the

Basic Law without involving the main text of the Basic Law. The amendments to Annex I and Annex II were also mentioned at the session this morning. We made this arrangement when we drafted the Basic Law because, in respect of matters on the political system, we took the view that we could not provide for all the arrangements for the coming 50 years at one go, and this would also allow us to proceed in a gradual and orderly manner in light of changes to the social situation. Therefore, it was specifically stated in clear terms that certain matters could be reviewed in 2007, that is 10 years after the establishment of the HKSAR, and the procedural requirements for amendments were also clearly stated. Therefore, on this occasion it was sufficient just to amend Annex I and Annex II to make changes, without having to amend the main text of the Basic Law. These arrangements are also what we had prepared for when we drafted the Basic Law in the first place. Here we have two steps, namely the amendments to Annex I and Annex II and then the enactment of local legislation by the local legislature, i.e. the Legislative Council of Hong Kong. The Legislative Council was very conscientious. They held the First and Second Readings of the relevant Bill on 14 April 2021 and held the Third Reading of and passed the Bill on 27 May, thereby enabling the implementation of “improving the electoral system” in Hong Kong.

Having talked about these two laws, I would like to briefly talk about **what the future of Hong Kong should be with the support of the Central Government**. Following the enactment of these two laws, Hong Kong has in fact been stabilized and enjoys protection in respect of elections. So we hope to work together from now on to open a new chapter for the future of Hong Kong. Thank you, Professor Zhu.

Zhu Guo-bin: Thank you, Mr Tam. Mr Tam has outlined the legislative principles and features of these two laws and also revealed some details of the legislative process, which is of great significance when we study both laws. The next speaker is the Hon Ms Maggie Chan Man-ki, a deputy to the NPC. The Hon Ms Chan is a registered lawyer and also a Hong Kong deputy to the NPC, a member of the National Committee of the Chinese People's Political Consultative Conference of Hunan Province, a member of the Legislative Council, and a member of the Fifth Sector of the Election Committee of Hong Kong. She also holds a number of public offices. Let us welcome the Hon Ms Chan.

Maggie Chan Man-ki: Thank you, Professor Zhu, and thank you all. The topic I am going to share with you today is to explore and analyze, from my perspective as a practicing lawyer, a member of the Legislative Council, a deputy to the NPC and a former member of the District Council for four terms, how an improved electoral system has further enhanced the broad representativeness and inclusiveness of Hong Kong's political system, realized the principles of balanced participation and fair competition, and produced a positive effect on the operation of the Legislative Council as well as the government's administration in accordance with the law. I also welcome comments and enlightenments from our senior audience and experts.

Based on my own experience, I think that improving the electoral system enables Hong Kong's political system to operate correctly in the constitutional order and the rule of law order. The Candidate Eligibility Review Committee ensures that political candidates and politicians are patriots and that "patriots administering Hong Kong" is implemented. It is important that politicians from different classes and parties, or even the executive and legislative branches of the

government, share a common political order, ideology and core value and have solid mutual trust. When there are disagreements, we can all focus on the larger picture, so that there can be greater political pluralism and broader representativeness within the constitutional and legal framework, allowing for both common ground and differences, both harmony and diversity. “A stable system will make Hong Kong strong, and a strong system will make Hong Kong prosperous.”

Hong Kong has recovered from chaos to order and progressed from stability to prosperity. It is necessary for Hong Kong to run a political system with patriotism as the overriding principle. Only through this can Hong Kong develop, under “one country, two systems” and, in line with the actual situation of Hong Kong, a democratic path with Hong Kong characteristics and make progress while maintaining stability. “Improvement of the electoral system” has further promoted the breadth, inclusiveness and representativeness of our political system and given effect to the principles of balanced participation and fair competition. I would suggest the following four points: first, protection of the authority of the Constitution should be emphasized. Second, members of the Legislative Council and the Election Committee should have an overall perspective, a national perspective and a global perspective. Third, more patriotic talents for administering Hong Kong should be identified and nurtured. Fourth, the HKSAR Government should ensure that the political system progresses with the times, accurately reflects and absorbs public opinions, and upholds the principle of balance. As regards firmly defending the authority of the Constitution and strengthening and implementing the principle of “patriots administering Hong Kong”, I also have a few suggestions. First, the functions of the Basic Law Promotion Steering Committee should be enhanced and the Committee should be re-named “Constitution and Basic Law

Promotion Steering Committee”, and a position of Commissioner for Promoting the Constitution and the Basic Law should be created. Second, pursuant to Article 6 of the HKSAR National Security Law, expand the scope of the requirement for public officers to swear to uphold the Basic Law of the HKSAR of the People’s Republic of China and swear allegiance to the HKSAR of the People’s Republic of China in accordance with the law when standing for election or assuming office. Third, in accordance with Article 7 of the HKSAR National Security Law, the HKSAR should strictly enforce the HKSAR National Security Law, complete the enactment of local legislation on Article 23 of the Basic Law as soon as possible, and improve the existing local laws on safeguarding national security. Fourth, all colonial features in local laws should be removed as soon as possible and colonial terms such as “Her Majesty” should be deleted. Fifth, in accordance with Articles 9 and 10 of the HKSAR National Security Law, the HKSAR Government and various sectors of the community should step up education not only on the Basic Law, but also on the origin, i.e. the Constitution, the Basic Law, the HKSAR National Security Law, patriotic Chinese culture and the rule of law, so that “patriots administering Hong Kong” and “love the country and love Hong Kong” are not just slogans but are in the blood of every Hong Konger.

Members of the Legislative Council and the Election Committee form an integral part of the political system of Hong Kong, and members of the Legislative Council of Hong Kong must have an overall perspective, a national perspective and a global perspective. It is important to uphold the principle of balance and prevent polarization and fragmentation. It is also necessary to be “down to earth” and accurately understand the sentiments of the community, promote cross-sectoral collaboration on livelihood issues, and work

for the overall interest of Hong Kong, so that our political system can reflect the actual social, political, economic and livelihood conditions in Hong Kong. In addition, it is essential to keep abreast of the latest developments and policies of our country, and always take the steadfast and successful implementation of “one country, two systems” as a fundamental responsibility in the performance of our duties, so that Hong Kong can focus on development, resolve livelihood issues, continue to leverage its unique advantages as an international metropolis, and maintain its prosperity and stability.

Individual members of the Election Committee and the related organizations and institutions have to make the best use of the new functions of the Election Committee to serve the community on an ongoing basis. The Election Committee should not play a role only during elections but should also reflect public opinions, so that the Election Committee can become a microcosm of Hong Kong society and reflect the overall interest of Hong Kong on a macro level. On the common basis of “patriots administering Hong Kong”, we should be inclusive and synergistic and fully uphold the “one country” principle, and at the same time respect the differences between the “two systems” and facilitate the organic combination of the overall jurisdiction of the Central Government with the high degree of autonomy of the HKSAR.

As for the political system of Hong Kong, it has to constantly strengthen itself and enhance its own capacity. I suggest that multiple channels be developed to discover and offer long-term training to more talents who love the country and Hong Kong and who participate in politics and debate public policies, so that talents can continuously be injected into the Election Committee. I also encourage and hope to promote the establishment of various non-governmental

research centers for patriots, set up systems for cultivating patriots of different age groups, make good use of primary and secondary school organizations such as uniformed groups and flag-raising teams, and establish think tanks of youth patriots in order to provide talents of various classes, types and expertise for the implementation of “patriots administering Hong Kong”. In addition, to attract more aspiring individuals who regard “patriots administering Hong Kong” as their lifetime goal, it is necessary to construct a revolving door for talents who uphold “patriots administering Hong Kong”, by providing them with jobs and opportunities in the government, the legislature, various non-governmental consultative bodies and research centers.

The HKSAR Government is obliged to keep the political system abreast of the times, ensure accurate reflection and absorption of public opinions, follow the principle of people-based governance and uphold the principle of balance. I think that under the principle of “executive-led; mutual checks and balances as well as cooperation between the executive and the legislature; judicial independence and independent power of final adjudication”, it is necessary for the HKSAR Government to think from others’ perspectives and make proper use of the Election Committee to seek views and opinions from various sectors, to take a bottom-up approach, in order to assist the government in showing greater empathy. I think it is very important for the current Government or the principle of “patriots administering Hong Kong” to have empathy because it enables them to be “down to earth”; always have a sense of crisis and bottom-line thinking; and have micro perspective as well as an overall perspective, a national perspective and a global perspective. The Civil Service College has to provide programs and internship opportunities to allow civil servants to have more interaction with the Election Committee and various sectors of the community, and to train them to become down to earth,

to be sensitive to the community's sentiments, and to firmly grasp the situations, developments and changes in the society, politics, economy and livelihood.

The principal officials of the Government have to promote broad representativeness, inclusiveness, balanced participation and fair competition in the political system of Hong Kong, and also have to unite all forces in Hong Kong to resolve deep-rooted issues of Hong Kong, lead Hong Kong in its integration into the overall development of the country, maintain long-term prosperity and stability of Hong Kong, and facilitate the steadfast and successful implementation of “one country, two systems”.

Finally, the political system of Hong Kong must implement the general principle of “patriots administering Hong Kong”, improve the constitutional system and rule of law in Hong Kong, and better manifest the Central Government's overall jurisdiction and the HKSAR's high degree of autonomy. Last but not least, as many leaders, seniors and experts mentioned just now, it is important to ensure political security, regime security and system security. “Patriots administering Hong Kong” is the largest common denominator of the 7 million-strong Hong Kong community. All the forces that can be united have to be united so that under “one country, two systems”, the development of the political system and democracy in Hong Kong will accord more with the actual situation of Hong Kong. The western form of democracy should never be blindly applied to the HKSAR, and in developing democracy in Hong Kong, the goal should always be to safeguard national sovereignty, security and development interests as well as lasting prosperity and stability of Hong Kong. By enhancing the governing effectiveness of the HKSAR and achieving good governance, “one country, two systems” will be steadfastly and

successfully implemented and we Hong Kong people will enjoy a safe, stable and fruitful life in Hong Kong. Thank you.

Zhu Guo-bin: Thank you, the Hon Ms Chan, for your constructive and impassioned sharing. Our next speaker is Professor Wong Yuk-shan. Professor Wong is currently a Hong Kong deputy to the NPC and a member of the Basic Law Committee of the NPCSC. He has also served as chairman and member of various committees of the HKSAR. As a social activist, Professor Wong also held a number of public offices. He has been teaching, conducting research and undertaking administrative work at tertiary institutions of Hong Kong for a long time, and served as Vice-Chancellor and Pro-Vice-Chancellor of two universities. Please welcome Professor Wong.

Wong Yuk-shan: Thank you, Moderator. Distinguished friends, just now we have heard and learnt a lot from the speech made by Deputy Director Deng Zhong-hua. Here, I would like to share my views on “patriots administering Hong Kong”. On 11 March 2021, the Fourth Session of the NPC adopted, by an overwhelming majority, the Decision on Improving the Electoral System. Following the implementation of the HKSAR National Security Law, the Central Government, also pursuant to the Constitution and the Basic Law, further improved the electoral system of Hong Kong, including the methods for selecting the Chief Executive and forming the Legislative Council. This is to manifest, on an institutional level, the principle of “patriots administering Hong Kong” and ensure that the policy of having Hong Kong people administering Hong Kong, with “patriots administering Hong Kong” at the core, can be fully implemented, and hence guarantee the steadfast and successful implementation of “one country, two systems”.

As you all know, following the turbulence over the proposed amendments to the Fugitive Offenders Ordinance in 2019, the extreme opposition camp in Hong Kong, together with the external “anti-China, destabilizing” forces, blatantly propagated “Hong Kong independence” and, making use of the election platforms of the Legislative Council and District Councils of Hong Kong and of their capacity as public officers, flagrantly engaged in various illegal “anti-China, destabilizing” activities. There was every indication that obvious loopholes and flaws existed in the electoral system of Hong Kong as it then stood. Therefore, the principle of “patriots administering Hong Kong” must be stipulated on the legal and institutional levels in order to prevent those “anti-China, destabilizing” elements from entering the governing team.

The principle of “patriots administering Hong Kong” is by no means a recent creation. As we all know, back in the 1980s during the Sino-British negotiations, the late leader Mr Deng Xiaoping repeatedly explained the principle of “patriots administering Hong Kong” and its importance. I still remember that on 22 June 1984, while receiving a delegation to Beijing from the Hong Kong industrial and commercial sectors, Mr Deng Xiaoping said: “Some requirements or qualifications should be established with regard to the administration of Hong Kong affairs by the people of Hong Kong. It must be required that patriots form the main body of administrators, that is, of the future government of the Hong Kong special region. A patriot is one who respects the Chinese nation, sincerely supports the Motherland’s resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong’s prosperity and stability.” This is a very clear definition.

Year 1997 marked the end of the British administration of Hong Kong, Hong Kong reunified with the Motherland and China has resumed exercise of sovereignty over Hong Kong. According to the Basic Law and the “one country, two systems” policy, Hong Kong is to be administered by Hong Kong people. Following the reunification, Hong Kong has become part of the sacred territory of the Motherland. Therefore, in addition to implementing “one country, two systems” and maintaining the prosperity and stability of Hong Kong, those who administer Hong Kong have to protect the sovereignty, security and development interests of the country in various areas of administration. As Deputy Director Deng Zhong-hua said earlier, Hong Kong is under the constitutional obligation to safeguard national security. Therefore, if our administrators were not patriots, it would not be possible to perform the said obligation or complete the said mission. Patriots who administer Hong Kong are not only Hong Kongers but also Chinese people who identify with their own country, respect the nation, and strive to protect national sovereignty, security and development interests. In addition to serving Hong Kong, patriots who administer Hong Kong are also loyal to and supportive of the country as a matter of principle and political ethics.

The various “anti-China, destabilizing” phenomena in Hong Kong in 2019 are salient negative examples which show that “patriots administering Hong Kong” is necessary and indispensable. This also exemplifies the statement by Mr Deng Xiaoping that there are parameters and qualifications for “Hong Kong people administering Hong Kong”. In every country in the world, love for one’s own country and allegiance to the Motherland are basic requirements of political ethics that civil servants at all levels must comply with. We must have these requirements which are not unique to Hong Kong but ubiquitous worldwide. The Decision on Improving the

Electoral System has effectively guaranteed a better electoral system in future with the relevant loopholes plugged and defects fixed. It is an important milestone on the road of implementing “one country, two systems” and also a solemn declaration of a new political situation in which “patriots administer Hong Kong” and in which “anti-China, destabilizing” elements have no place. It also clearly establishes new political rules and legal standards which will enable the HKSAR Government to truly shoulder the weighty responsibility of safeguarding the sovereignty, security and development interests of the country, and which will also enable Hong Kong to integrate into the overall development of the country more smoothly.

With the full implementation of the HKSAR National Security Law and the improvement of the electoral system, some people are concerned about whether this means that the Central Government has tightened its policy towards Hong Kong. Some people wonder whether “one country, two systems” will still be necessary after 20 years when China develops into a modernized socialist power. My own view is that “one country, two systems” is an idea conceived by the Central Government and its leaders after much thought and planning, and is also an achievement which can withstand repeated challenges and testing. Over the past 30-odd years, many leaders of China have repeatedly and publicly stated that the “one country, two systems” policy is constructive and has to be upheld. From a historical perspective, “one country, two systems” is pioneering and unprecedented, but it has strong vitality. In his report at the 19th National Congress of the CPC on 8 October 2017, General Secretary Xi Jinping set out our country’s basic policy of “fourteen points of insistence”, the twelfth of which is “one country, two systems”, which means that “one country, two systems” is part of our country’s strategic policy. This is what General Secretary Xi said: “Maintaining

lasting prosperity and stability in Hong Kong and Macao and achieving China's full reunification are essential to realizing national rejuvenation. We must ensure both the Central Government's overall jurisdiction over the Hong Kong and Macao special administrative regions and a high degree of autonomy in the two regions. We should ensure that the principle of 'one country, two systems' remains unchanged, is unwaveringly upheld, and in practice is not bent or distorted." This is a major decision and commitment.

I believe that the implementation of the HKSAR National Security Law and the improvement of the electoral system will not undermine "one country, two systems" but rather, as President Xi has said, will organically combine the overall jurisdiction of the Central Government over the HKSAR and the high degree of autonomy of the HKSAR. The implementation of the HKSAR National Security Law and improvement of the electoral system will simply further strengthen and refine "one country, two systems". In my view, China is an ancient civilization and a great socialist country with Chinese characteristics. Only a country like ours would have such open-mindedness and magnanimity, and such insightful wisdom and vision, to realize "one country, two systems". By creating and implementing two systems in one country, China has creatively solved the problems left behind by history, responded to the expectations for peaceful development of mankind, and enriched the meaning of human civilization. The successful implementation of "one country, two systems" and future development are, in my view, a significant contribution by the CPC and the Chinese Government to the history of human political civilization. We should all be proud and honored to be part of it. For these reasons, I have no doubt that "one country, two systems" will be steadfastly and successfully implemented and I am confident in the future of "one country, two systems". Thank you.

Zhu Guo-bin: Thank you, Professor Wong, for sharing your wealth of insights on the political and legal implications as well as the institutional meaning of “patriots administering Hong Kong”. Thank you for your very inspiring speech. Our last speaker, who is also a heavyweight speaker, is Mr Tang Ping-keung, the Secretary for Security of the HKSAR. He will be giving an online speech. He joined the Hong Kong Police Force in the 1980s and served as an Inspector, Senior Assistant Commissioner of Police, Director of Operations, Deputy Commissioner of Police and then Commissioner of Police, and in June of last year became the Secretary for Security. Let us welcome Mr Tang.

Tang Ping-keung: Thank you, Professor Zhu. Mr Deng Zhong-hua, Mr Tam Yiu-chung, Ms Maria Tam Wai-chu, the Secretary for Justice Ms Teresa Cheng Yeuk-wah and distinguished friends, today I am very delighted to be invited to participate in the Legal Conference on the Basic Law organized by the Department of Justice and to share with all of you the HKSAR’s experience in improving the law on safeguarding national security.

With the implementation of the HKSAR National Security Law, Hong Kong has turned from chaos to order and recovered from a turbulent and riotous environment. Through a review of the experience in implementing the HKSAR National Security Law and an analysis of the changes to the national security situation in the HKSAR, I hope you all would understand how the HKSAR National Security Law, as a key component of the “combination of punches” supporting the steadfast and successful implementation of “one country, two systems”, achieves the effect of elevating Hong Kong from stability to prosperity and consolidating the basics.

The HKSAR National Security Law is a targeted and pertinent law that fully takes into account the actual situation of the HKSAR. The law was enacted against the background of rampant “black violence” in 2019 when rioters flagrantly vandalized government buildings, shops, railways and other public facilities, committed arson, forcibly entered and vandalized the Legislative Council, and wantonly assaulted enforcement officers and dissenters. External forces tried to infiltrate Hong Kong and stage a “color revolution” and, through agents, engaged in activities endangering national security, including attempting to influence the outcome of elections and subvert the state power. Hong Kong was facing an unprecedented threat in respect of national security and the prosperity of Hong Kong was put in grave jeopardy.

Against such background, the HKSAR National Security Law lays down targeted offences and penalties for the four most serious and pressing types of behavior and activities that endanger national security, including secession, subversion, terrorist activities and collusion with a foreign country or external elements to endanger national security, thereby providing a legal basis for enforcement actions. The law also provides for the establishment of relevant organizations for safeguarding national security and stipulates their duties, including the Committee for Safeguarding National Security of the HKSAR, the National Security Department of the Hong Kong Police Force, the National Security Prosecutions Division of the Department of Justice, and the Office for Safeguarding National Security of the Central People’s Government in the HKSAR.

In addition, the Hong Kong National Security Law specifically provides for the protection of personal rights and freedoms and also realizes important principles of the rule of law such as the

presumption of innocence, protection against double jeopardy and ensuring a fair trial.

In addition to providing for offences and enforcement mechanism, the HKSAR National Security Law also places particular emphasis on the prevention of acts which endanger national security. The HKSAR National Security Law stipulates that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the People's Republic of China. It also stipulates that the HKSAR should promote national security education and strengthen public communication, guidance, supervision and regulation over schools, universities, social organizations, the media and the internet. This is of paramount importance to the full and accurate implementation of the policies of “one country, two systems”, “Hong Kong people administering Hong Kong” and a high degree of autonomy, and to the maintenance of the prosperity and stability of the HKSAR.

Of course, apart from the HKSAR National Security Law, the HKSAR Government has also revived existing legislation to fully suppress and punish acts and activities that endanger national security. The effects of the enforcement actions over the past two years have begun to be felt, including the invocation of sections 9 and 10 of the Crimes Ordinance to actively combat seditious speeches and publications and other acts of “soft resistance”. Furthermore, the Chief Executive in Council has, in exercise of the relevant powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance, ordered the Registrar of Companies to remove from the Companies Register those organizations that pose a risk to national security.

The relevant bureaux and departments of the HKSAR Government have also sought to better perform their obligations of public communication, guidance, supervision and regulation in relation to safeguarding national security by actively enacting new ordinances, regulations and mechanisms, including:

First, implementing a real-name registration program for prepaid stored value cards through the Telecommunications (Registration of SIM Cards) Regulation;

Second, including national security as one of the considerations for film censorship through the implementation of the Film Censorship (Amendment) Ordinance 2021 and the updated Film Censorship Guidelines for Censors;

Third, by passing the Personal Data (Privacy) Amendment Ordinance 2021, creating a new “doxxing” offence to combat the malicious act of disclosing any personal data without consent of the data subject, and conferring on the Privacy Commissioner the power to carry out criminal investigations and conduct prosecutions;

Fourth, incorporating offences of endangering national security into the Social Workers Registration Ordinance, so that any person convicted of any offence endangering national security cannot work as a registered social worker.

With the support of the abovementioned legal framework, the HKSAR Government follows the principle of “laws are observed and strictly enforced, so as to bring offenders to account” and, in accordance with the law, takes enforcement actions against those who endanger national security.

Since the HKSAR National Security Law took effect, to date a total of 186 persons have been arrested for suspected involvement

in acts and activities endangering national security, of whom 115 have been prosecuted, and five companies have been prosecuted for suspected commission of crimes endangering national security. As for court trials, eight trials involving ten defendants have been completed, and all of them have been convicted. The heaviest sentence imposed so far is imprisonment for nine years.

The implementation of the HKSAR National Security Law has reversed the chaotic situation in the HKSAR that started in 2019, with a significant reduction of violent acts and a continuous decline in the advocacy of “Hong Kong independence”. In addition, many organizations suspected of endangering national security have dissolved by themselves or ceased operation. These results are clear proof that the implementation of the HKSAR National Security Law has produced notable results.

Although the HKSAR National Security Law does serve as a deterrent, those who endanger national security will not give up easily and will wait for the next opportune moment to do their heinous acts. Hong Kong still faces considerable national security risks, including:

First, forces that endanger the security of the country and Hong Kong will continue to use “soft resistance” tactics to propagate messages against the Central Government and the HKSAR Government and advocate “Hong Kong independence”;

Second, domestic terrorism activities, such as the “1 July stabbing of police” case in 2021 and the case of the “Returning Valiant” who attempted to launch bomb attacks in public places such as railways and courts in order to achieve political goals, show that domestic terrorists have become more operational;

Third, making use of Hong Kong's unique environment of "one country, two systems" with a high degree of autonomy, external forces constantly meddle with and discredit the affairs of the HKSAR with the intention to endanger national security; and

Fourth, those endangering national security who have fled overseas collude with external forces and continue to engage in activities that endanger national security, such as requesting foreign countries to impose so-called sanctions, and attempt to conspire with local media or organizations which intend to endanger national security, in order to jointly incite hatred.

In light of these, the HKSAR Government will continue to adopt a series of strategies to combat the abovementioned internal and external national security risks, including, in particular:


First, in terms of intelligence: We will strengthen the collection and analysis of intelligence on national security and counter-terrorism, especially online information and counterintelligence, and at the same time, we will strengthen sharing and exchange of information and intelligence with various national organizations and institutions;

Second, in terms of law enforcement: We will, among other things, continue to conduct in-depth investigations into persons and organizations suspected of endangering national security, in particular their sources of finance, expenditure and ties with external forces; and we will fully collaborate with various disciplined forces, bureaux and departments to jointly safeguard national security;

Third, in terms of legislation: We will, among other things, complete the enactment of legislation on Article 23 of the Basic Law and enact legislation on cyber security so as to further improve the legal system for national security;

Fourth, in terms of promotion and education: Only through a correct understanding of the importance of safeguarding national security can the prosperity and stability of Hong Kong be ensured. In particular, as regards raising awareness of national security among young people, the HKSAR Government has been encouraging the participation of teachers and students of all local primary and secondary schools through various competitions and activities such as online virtual exhibitions; and through the competitions and activities on the National Security Education Day, enables national security education to root in schools and the society. And the disciplined forces under the Security Bureau will, through their youth groups, continue to help young people develop good character, positive thinking and law-abiding sense.

Ladies and gentlemen, the HKSAR National Security Law has turned Hong Kong from chaos to order. The HKSAR Government will continue to work hard towards safeguarding national security. With the effort of everyone, I believe that the HKSAR Government will be able to shoulder the responsibility of safeguarding national security so that “one country, two systems” will be steadfastly and successfully implemented. Thank you!

Zhu Guo-bin: Thank you, Secretary Tang, for sharing with us your professional insights which deepen our understanding and raise our expectations on the implementation of the HKSAR National Security Law in the HKSAR. This discussion session is now coming to an end. I would like to thank our keynote speaker and the four panelists. A big “Thank You” to our online audience and everyone of you here. I wish you all the best. Thank you. 

Strengthen the Rule of Law and Start a New Chapter Mr Tam Yiu-chung

- i. Important principles that the NPCSC followed in enacting the HKSAR National Security Law ("HKNSL") and the "Decision on Improving the Electoral System" ("Decision")
- ii. The legislative approach of the HKNSL and the Decision;
- iii. Start a new chapter for Hong Kong with the strong support of the Central Government!

I. Important principles that the NPCSC followed in enacting the HKNSL and the Decision

As we all know, the HKNSL and the Decision enacted by the NPCSC form the joint force are closely related, and many of the important principles underlying them are consistent and interconnected. Of course, each of the HKNSL and the Decision also has its own focus and unique emphasis.

There are three important principles which are highly consistent and interrelated:

1. Safeguard national security,
2. Improve and accurately implement "One Country, Two Systems", and
3. Insist on administering Hong Kong in accordance with the law, etc.

Important Principles of the HKNSL

In the explanations on the draft of the HKNSL, Wang Chen, Vice Chairman of the NPCSC, emphasized at the NPC session that:

1. "The affairs of the HKSAR are the internal affairs of China and are **not subject to interference by any external forces**. We must resolutely oppose any form of interference in Hong Kong affairs by a foreign country or any foreign organisation or individual. We must resolutely prevent and curb external forces from meddling with Hong Kong's affairs and conducting any act of secession, subversion, infiltration or sabotage. We will take all necessary measures to counter legislative, administrative or other measures formulated or implemented by the foreign countries to interfere in the affairs of Hong Kong."

2. The HKNSL also places specific emphasis on the firm protection of the lawful rights and interests of Hong Kong residents and the respect for and protection of human rights. "The purpose of effectively preventing, suppressing and punishing, in accordance with the law, a very small number of illegal and criminal acts that endanger national security is to better protect the lives and properties of the vast majority of Hong Kong residents and to better safeguard fundamental rights and freedoms. Any work or law enforcement in safeguarding national security must strictly comply with the law, conform to legal authority and follow legal procedures, and must not infringe on the legitimate rights and interests of the residents, legal persons and other organizations of Hong Kong."

Important Principles of the Decision

In the explanations on the draft Decision, Wang Chen, Vice Chairman of the NPCSC, emphasized at the NPC session that:

1. **It is necessary to develop a system of democratic elections that fits in with Hong Kong's actual situation and reflects the overall interests of the society.** "It is imperative to guarantee in accordance with the law the extensive and balanced political participation of the Hong Kong compatriots, and guarantee in accordance with the law the right to vote and the right to be elected which are lawfully enjoyed by Hong Kong permanent residents. It is imperative to unite all that can be united and build extensive, positive energy in the Hong Kong society.", and
2. **It is necessary to improve the governance efficacy of the HKSAR.** "It is imperative to improve the system under which the Chief Executive is responsible to the Central People's Government and maintain the executive-led governance structure and operational system of the HKSAR. It is imperative to support the Chief Executive, the executive authorities, the legislature and the judiciary in exercising power and performing duty in accordance with the law, so as to ensure the smooth and efficient operation of the political and governance systems and mechanisms of the HKSAR."

II. Legislative Approach of the HKNSL and the Decision

In establishing and improving, at the national level, the legal system for safeguarding national security and improving the electoral system of the HKSAR, the NPCSC has, to a large extent, taken into account the differences between the legal systems of the HKSAR and the Mainland, and has therefore adopted the approaches of "decision + legislating" and "decision + amendment" respectively.

Legislative Approach of the HKNSL

The HKNSL adopted a "decision + legislating" approach, followed by promulgation and implementation in Hong Kong:

As the first step, the NPC made, in accordance with the relevant provisions of the Constitution and the Hong Kong Basic Law, the "Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to safeguard for Safeguarding National Security" and, at the same time, authorized the NPCSC to enact relevant laws on establishing and improving the legal system and enforcement mechanisms in the HKSAR for safeguarding national security:

As the second step, in accordance with the Constitution, the Hong Kong Basic Law and the NPC's authorization in the relevant decisions, and taking into account the actual situation of the HKSAR, the NPCSC enacted the relevant law and decided to include it in Annex III to the Hong Kong Basic Law, and have it promulgated and implemented by the HKSAR.

Legislative Approach of the Decision

The Decision adopted a "decision + amendment" approach:

The electoral system previously practised in Hong Kong was established in accordance with the Hong Kong Basic Law, the relevant interpretations and decisions of the NPCSC, and the relevant local legal provisions of Hong Kong. Articles 45 and 68 of the Hong Kong Basic Law set out the principles, while Annexes I and II to the Basic Law and the relevant amendments set out specific and express provisions.

On the basis of comprehensive analysis and overall assessment, the Central Government amended and improved, at the national level, the electoral system of Hong Kong, mainly by amending the methods for selecting the Chief Executive and members of the Legislative Council of the HKSAR; at the same time, taking into account the need to maintain the continuity and stability of the relevant systems of Hong Kong, this improvement only involved amending Annexes I and II to the Basic Law and did not involve amending the main text of the Basic Law.

As the first step, the NPC made, in accordance with the Constitution and the relevant provisions of the Hong Kong Basic Law and the HKNSL, a decision on improving the electoral system of the HKSAR, which expressly states the fundamental principles to be followed in amending and improving the electoral system of the HKSAR and the core elements of the amendment and improvement, and also authorizes the NPCSC to amend Annexes I and II to the Hong Kong Basic Law in accordance with this decision.

As the second step, in accordance with the Constitution, the Hong Kong Basic Law, the HKNSL and the relevant decision of the NPC, the NPCSC amended Annex I "Method for the Selection of the Chief Executive of the Hong Kong Special Administrative Region" and Annex II "Method for the Formation of the Legislative Council of the Hong Kong Special Administrative Region and its Voting Procedures" to the Hong Kong Basic Law.

As the third step, after the completion of the amendments to Annexes I and II at the national level, the HKSAR Government made consequential amendments to the relevant local laws, including amendments to 8 pieces of primary legislation and 24 pieces of subsidiary legislation, and the Bill was gazetted on 13 April.

The First and Second Readings of the Bill by the Legislative Council took place on 14 April.

The Bill was passed by the Legislative Council on the Third Reading on 27 April, with 40 votes in favour of the Bill and 2 votes against the Bill.

III. Start a new chapter for Hong Kong with the strong support of the Central Government!

"One country" is the premise and foundation of "two systems". From the valuable experience gained in the past 25 years since the reunification, we can clearly see that the strong support of the Central Government is the most fundamental guarantee of the good administration and governance of Hong Kong and the steadfast and successful implementation of "one country, two systems".

The enactment of the HKNSL and the Decision is an important measure taken by the Central Government to firmly implement the original aspiration of "one country, two systems" and marks the official start of a new journey for the democratic system with Hong Kong characteristics. All Hong Kong residents eagerly expect Hong Kong to advance from stability to prosperity.

The election of the sixth-term Chief Executive was an important democratic election of the HKSAR under the HKNSL and the improved electoral system. The election was conducted in accordance with the law and in a fair, open and just manner. Throughout the election, we clearly saw that the atmosphere in Hong Kong was unified and harmonious and that all people were united. The good administration and governance of Hong Kong is very worthy of our expectation.

(1) "Strengthen the government's governance capacity and unite to tackle problems for the people."

- In order to meet the expectations of the public and embrace challenges, it is necessary to further innovate and optimise governance capacity and build a loyal, efficient and practical governance team.
- Adopt a result-oriented approach, establish a new style of working with courage, and enhance the team culture of the civil service; take the interests of the public as the basis, and give full play to the strengths of all sectors to actively tackle problems for the public.

(2) "Streamline procedures and adopt a multi-pronged approach to provide more secure homes for the people."

- Streamline the aspects of land, planning, construction and supporting facilities, make good use of the strength of the government, organizations and private sector.
- Set objectives of enhancing speed, efficiency and quantity, speed up the construction of land and houses, shorten waiting time for public housing.
- Improve living environment for residents, enable more people to realize their dream of home purchase, ensure stability of people's livelihood and promote prosperity of all industries.

(3) **"Comprehensively enhance competitive edge and create room for sustainable development."**

- Hong Kong should properly play its role as the **"eight centres"**, drive development through innovation, strengthen the foundation of real economy, proactively explore opportunities in the Greater Bay Area, and serve as a bridge for interaction between China and the rest of the world in line with the domestic and international dual circulation policy.
- **Four traditional centres:** international financial centre, international shipping centre, international business and trading centre, and international legal and dispute resolution services centre in the Asia-Pacific region.
- **Four emerging centres:** international aviation hub, international innovation and technology centre, East-meets-West centre for international cultural exchange, and regional intellectual property trading hub.

(4) **"Build a caring and inclusive society, and enhance upward mobility for young people."**

- The well-being of the public is the key objective of social development. The government has to be people-oriented in its administration.
- The education, social welfare and medical systems should work together to create a favourable environment for protecting the general public, and at the same time individuals should enhance their capabilities and utilise their strengths.

Conclusion: Unite to realise a new chapter in history!

To open a new chapter means forging a broad consensus in the community, actively bringing into play the power of the people, uniting and working together to create the greatest social value for Hong Kong.

With the support of the Central Government, as long as **"I"** and **"we"** are of one mind and work in tandem, we will be able to **"open a new chapter for Hong Kong"**!

PANEL DISCUSSION 1

**Hong Kong's Blooming Capitalist System –
Chapter V of the Basic Law**

Moderator



Dr Anthony Neoh SC JP
Chairman of the Asian Academy of
International Law

Panelists



The Hon Mrs Laura Cha Shih May-lung
GBM GBS JP
Chairperson of the Hong Kong Exchanges and
Clearing Limited

Panelists

Mr Norman Chan Tak-lam GBS
Former Chief Executive of
the Hong Kong Monetary Authority



Mr Ashok S. Kothari
Managing Director and Senior Partner of
Asia Pacific Capital (HK) Limited



Mr Zhang Jian-ping
Director General of the Center for
Regional Economic Cooperation of Chinese Academy
of International Trade and Economic Cooperation of
the Ministry of Commerce



Anthony Neoh: Thank you, Master of Ceremonies. Welcome to our first panel discussion this afternoon. The theme of this seminar is “Hong Kong’s Blooming Capitalist System – Chapter V of the Basic Law”. I hope that the topic under discussion today will be of interest to you. As you know, Article 5 of the Basic Law clearly states that Hong Kong does not practice the socialist system, but instead practices the capitalist system with the previous way of life. As we have all heard this morning, this is in fact not just for 50 years; if the system works, it can go on after 50 years. In this context, what we need to consider is that, under the capitalist system, the Basic Law supports our existing systems in every aspect, including the legal system. A very important point is that Chapter V of the Basic Law is devoted to the economy, and in matters concerning the economy we can see how the Basic Law supports and promotes Hong Kong as an international financial center, an international trade center and a shipping center, how the Basic Law protects the rights and entitlements of these centers and the various aspects and areas of their operations, as well as how the Basic Law enables them to perform their obligations.

On the other hand, we must bear in mind a very important point in Chapter VII of the Basic Law, which is that Hong Kong itself is empowered by the Central Government and the Basic Law to enter into international agreements with other regions in the economic field. This is also very important. Therefore, we are an *ex officio* member of the World Trade Organization (WTO). Hong Kong is also a major player in many areas of the international economy, including the financial sector. We will also discuss this point later in this session. First of all, let us invite Mrs Laura Cha Shih May-lung to give us a speech.

Cha Shih May-lung: Good afternoon. I would like to first thank the Department of Justice for inviting me here to speak today. As we gather to celebrate the 25th anniversary of the establishment of the Hong Kong Special Administrative Region, it is a pleasure to take stock of our achievements as a city and as a financial and legal system over the past 25 years. It is also a good time to look ahead to the opportunities that we can seize together in the future. Every period in history brings with it events, news and innovations that shape and define our future, and the last 25 years have been no different.

From the Asian financial crisis of 1997, the Lehman Brothers crisis in 2008 that has reshaped the global financial landscape, the rapid development of high speed internet and technology that has drastically changed the way people live to the onset of the COVID-19 pandemic, the last 25 years have been as eventful as any that have gone before. Hong Kong as a city has also gone through nothing short of a historic transformation over the years, evolving from a manufacturing base to become an international financial center with vibrant, deep and liquid capital markets. Hong Kong's total stock market capitalization has grown to US\$5.4 trillion at the end of 2021, a thirteen fold increase from US\$413 billion at the end of 1997. We have become one of the world's leading capital raising centers, with about 2,500 listed companies on our markets. These include almost 200 international companies, and our markets have grown ever more vibrant, with average daily turnover of Hong Kong security markets growing to HK\$166 billion in 2021, compared with HK\$15 billion in 1997. Hong Kong stands now as a premier asset and wealth management hub for Asia in the world with AUM of US\$4.5 trillion at the end of 2020, according to statistics of the Securities and Futures Commission. And we are Asia's top base for hedge funds and the

second largest private equity hub in terms of AUM and funds raised in 2021.

Hong Kong also ranks third out of 116 financial hubs in the 2021 Global Financial Center Index Report following New York and London. In addition, Hong Kong stands as the world's freest economy as appraised by the US based Fraser Institute. That is a position we have held for the past ten years due to our robust legal system and commitment to free trade and capital flows, and our position as an internationally respected financial center meant we have played a unique role in China's growth story over the past 25 years. The unique role that Hong Kong has played is that of the super connector, which supported the development of China's financial markets. Hong Kong has grown into the world's largest offshore Renminbi (RMB) center, with total deposit of RMB855 billion at the end of September last year. And as a hub for offshore RMB trading, settlement and clearing, Hong Kong handled an estimated 75% of global offshore RMB payments.

On the equities front, since 1993, with the listing of the first H-share company, HKEX has played a crucial role as China's offshore financial center. In the last eight years, HKEX is pioneering the connect scheme which has revolutionized global markets, providing a trusted and efficient gateway that connects the two way capital flow between China and the world and continue to support the opening up of China's financial markets.

Last year, with the introduction of the MSCI China A 50 Connect Index Futures, which is Hong Kong's first Asia derivative product, HKEX is now home to the world's most competitive offshore China Asia product ecosystem, offering global investors unique and diversified access to China. Another trend that has emerged from

the past two decades has been the growth of Asian innovation. We have seen nothing short of a technology revolution in recent years with Asia and especially China giving birth to some of the world's leading technology giants and new economy companies. Our listing rule reforms in 2018 have made Hong Kong a premier capital raising center for the companies of tomorrow. Since then, nearly 200 new economy companies have listed in Hong Kong, raising over HK\$840 billion. These listings account for nearly 65% of the IPO fund raised in Hong Kong and over 20% of Hong Kong's total market capitalization during the period.

Our listing reforms have changed the DNA of our market and established Hong Kong as Asia's largest and the world's second largest biotech fundraising center. But we aren't complacent. We are constantly looking for ways to enhance the competitiveness of our markets in order to enrich the ecosystem and attract quality new economy companies to list in Hong Kong. Let me give you a few recent examples. In the beginning of this year, we introduced a new listing regime dedicated to Special Purpose Acquisition Companies (SPACs) with very positive market reception. And we welcomed the first SPAC listing in our markets in March this year. We also streamlined our process for overseas companies to list in Hong Kong. We will be announcing further market enhancement and reform in the near future.

The journey that we have been on, the status we now cherish, and the future we look forward to all has Basic Law at its core. Hong Kong's legal system and "one country, two systems", resting on the Basic Law framework, are open, transparent and rule-based. Our legal system ensures that contracts and binding agreements are honored, hence instilling business and investor confidence in Hong Kong as a

financial hub. Under the Basic Law, the free flow of information and capital is protected, in turn supporting Hong Kong's position as one of the world's largest source of foreign direct investment and a premier capital raising venue for companies from around the world.

When we couple the Basic Law with Hong Kong's robust infrastructure, internationally aligned regulatory regime, globalized ecosystem, transparent markets and deep pools of talent, Hong Kong has many attractive qualities that underpin its very special and unique position as the international financial center that connects East and West. And crucially, all of these core elements remain intact today. Hong Kong has made huge progress over the last 25 years, going from strength to strength as the resilience and adaptability of our financial markets during good times and bad have continued to support the city's development.

Now, looking to the future, I'm very optimistic. We live in a time when the world needs more connections, not less. And Hong Kong, together with HKEX, has a major role to play as a facilitator, conduit and super connector between East and West. Cross-border capital flows between China and international markets are becoming larger and more mature every day, and this presents a great opportunity for Hong Kong. As China's premier offshore financing center in addition to being a major global asset allocation and offshore risk management center, Hong Kong will continue to play a key role in creating mutual market access or capital flows between China and the world.

The growth of sustainable finance is where Hong Kong can play a role in connecting capital with opportunities. With an estimated US\$ 9.2 trillion of global investment needed annually to hit net zero targets, demand and opportunities for green finance in Asia and around the world will be enormous. Here at HKEX, we have a huge

role to play as a regulator, operator and a listed company, and we are doing all we can to lead the change towards establishing Hong Kong as the region's sustainable finance hub. As a regulator, we have taken the lead in promoting responsible corporate governance, ESG awareness and best practices with our regulations on ESG disclosure and ending single gender boards. As a market operator, HKEX has played a leading role in driving the growth and development of the green and renewable sector by facilitating the listing of 95 green, social and sustainable bonds that raised over HK\$282.6 billion in 2021. As a listed company, we have joined with global partners and Glasgow Financial Alliance for Net Zero to commit to net zero by 2050, and through our charitable arm, the HKEX Foundation, we are active in the community to support the vulnerable and channel resources to environmental and climate related causes.

And as Asia's innovation engine continue to run at high speed, Hong Kong has a vital and exciting role to play in connecting capital with opportunities and funding the businesses of tomorrow. With our unique position in the Greater Bay Area, itself home to a population of 86 million with an economy the size of Korea, and as the second most innovative science and technology cluster in the world, we have an opportunity to connect the Greater Bay Area companies with international investors.

So to conclude, Hong Kong is a highly respected international destination market in its own right, as well as a vital connector between East and West, facilitating the flow of capital, opportunities and ideas. This unique role in which our trusted and transparent legal system serves as a foundation has been instrumental in building Hong Kong into a premier international financial center. And today, Hong Kong's role is arguably more relevant than ever.

Looking forward, the Basic Law will continue to be the backbone of our legal system underpinning Hong Kong's strength in financial markets, shaping the success of our markets and HKEX will continue to embed the hallmarks of Hong Kong's trusted legal system and due processes in all that we do. From pioneering market changes and reforms to enhancing regulation and guidance, we will engage with all of our stakeholders to ensure transparency, predictability and accountability for the benefit of our markets. I believe that with connection and collaboration among all stakeholders, governing bodies, businesses, communities and individuals we can build an ever more prosperous Hong Kong that continues to play an influential role as one of the world's premier financial centers. Thank you.

Anthony Neoh: Thank you, Mrs Cha. We have just learnt about the important role of our Hong Kong Stock Exchange and the importance of our legal system. Now, I would like to invite Mr Norman Chan Tak-lam to continue to explain the importance of Hong Kong as a financial center. Please, Norman.

Norman Chan Tak-lam: Thank you, Tony, and thanks to the Secretary for Justice for inviting me to this very significant conference today. Article 109 of the Basic Law states that the HKSAR Government "shall provide an appropriate economic and legal environment for the maintenance of the status of Hong Kong as an international financial center". This provision is a clear indication of the importance that the Central Government attaches to Hong Kong's status as an international financial center and the requirement for the HKSAR Government to maintain this status. As we all understand, a place can hardly become and remain as an international financial center simply by relying on a piece of local legislation, be it the Constitution or an ordinary law. I will spend the next ten minutes

discussing the following three topics. First, what competitive edge does Hong Kong have as an international financial center? Second, what are the prospects of development of the Hong Kong financial center? Third, what challenges will Hong Kong face in the future?

On the first question, what does it take to become Asia's premier international financial center? A financial center actually serves as a bridge between savings and investments through various markets and channels. There are many financial centers around the world, some of which are even larger than Hong Kong. However, only a handful of places are eligible to become or be called international financial centers, and Hong Kong is one of them. In fact, the difference between an international financial center and some large financial centers lies not in scale, but in the ability of an international financial center not only to play a role in local financial intermediary activities, but also to play a pivotal role in facilitating capital flow in the neighboring region or internationally.

As we all know, there are many prerequisites for becoming an international financial center. The most commonly mentioned ones include excellent financial markets, highly professional talents, sound regulation, and a legal and judicial system which is conducive to doing business, etc. However, many people overlook three unique advantages that mold Hong Kong into the premier international financial center in Asia. First, an international financial center must be close to and familiar with the sources of savings and its investment market. Compared to Singapore, Tokyo, London and New York, none of these international financial centers is geographically closer to the PRC market than Hong Kong, and at the same time, we belong to the same country and speak the same language. No other financial center has a better understanding of the Mainland market than Hong Kong.

This is the first point. Second, although the local financial centers of the Mainland, such as Shenzhen, Beijing and Shanghai, are very large and active, the capital management measures of the Mainland make these centers less attractive than Hong Kong in terms of allowing cross-border capital flow. Third, as will be explored later in the panel discussion, Hong Kong is the only common law jurisdiction in the world that implements a bilingual legal system, with the Chinese and English languages enjoying equal status, and this gives Hong Kong a significant advantage and attractiveness in channeling capital into and out of Mainland China. I can provide some statistical figures. Over the past few decades, as China's economy took off and soared, Hong Kong simultaneously developed into an international financial center. The entire financial service sector of Hong Kong, comprising banking, securities and financial management, made a contribution of 10.2% to China's GDP in 1997. In 2009, the percentage increased to 16.2%. In 2019, Hong Kong's contribution to the national GDP was 23.3%. This shows that the financial service sector is playing an increasingly important part in Hong Kong's economic growth.

The second question is: What are the opportunities along the road of Hong Kong's development as a financial center? I would like to raise three points here. The first point is that China is the second largest economy in the world and its economy keeps growing, with the increment in a single year amounting to about US\$1.9 trillion to US\$2 trillion. What do we make of this figure? It is even more than the GDP of the whole of Italy, Australia or Canada. Driven by this engine of enormous economic growth, the demand and opportunities for allowing capital flow to and from the Mainland will continue to grow. The second opportunity is China's new mode of economic growth of "dual circulation", which in any case requires an efficient, reliable and secure conduit to connect the internal and

external circulations. Given the advantages I mentioned just now, no other financial center is better placed than Hong Kong to play this role. Third, Hong Kong enjoys even more obvious opportunities in the future development of the Guangdong-Hong Kong-Macao Greater Bay Area. Capital management measures will make Mainland China less vulnerable to external factors, but will also result in a stagnant cross-border capital flow. In the process of implementing the national reform and opening-up policy, the capital markets of Hong Kong and the Mainland have already established interconnection and inter-accessibility. Besides the Shanghai-Hong Kong Stock Connect, the Shenzhen-Hong Kong Stock Connect and the Bond Connect in the stock market, we have recently launched a pilot scheme on Cross-boundary Wealth Management Connect Scheme in the Greater Bay Area. We have to further expand and deepen these pilot schemes in light of the experience in their actual operation. In addition, I believe that the flow of capital at the corporate level in the Greater Bay Area should further open up. One possibility is to implement a pilot scheme in the form of Capital Connect, with the latest blockchain technology to be applied to ensure that the capital raised through this scheme is kept in the Greater Bay Area instead of being transferred to other parts of China.

Finally, let us talk about the challenges ahead. Things are never easy and there are bound to be challenges. I will point out three specific challenges. First, geopolitical tensions between the United States and China may deteriorate, and this may affect Hong Kong's current operation as an international financial center. We must therefore remain vigilant and flexible to enable us to respond to any change that may occur. Second, Article 112 of the Basic Law stipulates that Hong Kong shall not apply any foreign exchange control policies and that the Hong Kong dollar shall circulate

freely and be freely convertible. This provision, which provides a constitutional safeguard for the convertibility of the Hong Kong dollar for the free flow of capital in Hong Kong, is the cornerstone of Hong Kong's status as an international financial center. But as far as I know, this provision is unique to Hong Kong because there are no laws or constitutional provisions in other international financial centers or regions that expressly provide for the free movement and convertibility of currency. This also means that in extreme circumstances or as a last line of defense against the collapse of the financial system, other countries or international financial centers can impose foreign exchange controls where necessary, but Hong Kong cannot do so as it is bound by the Basic Law. Therefore, we must always be vigilant to ensure that our financial and monetary systems are sound and that we have sufficient resources to respond to possible challenge.

Lastly, talking about resources, the Exchange Fund is the last line of defense for safeguarding the stability of Hong Kong's financial system. Previously there was a suggestion that, with the Exchange Fund totaling more than HK\$4 trillion, the Hong Kong Government had excessive reserves and should return wealth to the people. Today is not an appropriate occasion to explore the composition of the Exchange Fund balance sheet, but I would point out that the Government's recent response to the pandemic and launch of numerous measures to support the economy and employment have resulted in a huge deficit and accelerated the decline in the fiscal reserves of Hong Kong. This amply shows that we must maintain sufficient reserves to meet contingencies. More importantly, the Exchange Fund is the last line of defense in preserving Hong Kong's financial stability. HK\$4 trillion is of course a lot of money, but if a global financial crisis like the one in 2008 were to return, would

HK\$4 trillion be too much? According to information available, the Exchange Fund provided to the banks of Hong Kong 100% protection for deposits in 2008, when the aggregate deposits in the banking system totaled HK\$6,700 billion, and this exceptional protection was in place from October 2008 until the end of 2010. Fortunately, we were able to stabilize the banking system without using a single cent of the Exchange Fund. Now that the aggregate bank deposits have increased from HK\$6,700 billion to HK\$15 trillion. If Hong Kong were to face another financial crisis and our government were to introduce a similar deposit protection again, would we be able to ride out the storm like before if Hong Kong did not have an adequate Exchange Fund as backup?

To conclude, I would like to say: Hong Kong has unlimited opportunities with the support of the Motherland, but at the same time, we are facing an unstable and complicated global environment. Therefore, even in times of peace, we must fully prepare ourselves for danger and must not take anything lightly. Only in this way can “one country, two systems” be steadfastly and successfully implemented. Thank you.

Anthony Neoh: Thank you, Norman. Norman told us just now that we should be prepared for danger in times of peace. His remarks also conveyed the very important message that “one country, two systems” is essential to our financial center as a whole. This echoes what Professor Wong Yuk-shan mentioned this morning, namely that “one country, two systems” is a great idea in the economic and political history of the world and has generated tremendous opportunities for us.

Our next speaker is Mr Ashok Kothari. Ashok is a private equity expert. So he's going to talk about "one country, two systems" from his point of view. Ashok please.

Ashok S. Kothari: Thank you, Tony. As a very long term Hong Kong resident, I want to take this opportunity to thank my friend Tony Neoh for all he has done for Hong Kong and for China. And it has been for many years and selfless service and I think we have all benefited from it. Because all the benefits of Hong Kong are obvious and have already been covered. I want to talk a little bit about the mentality of how investors arrive at the decisions of investing in Hong Kong or investing through Hong Kong.

First of all, we talk about innovation a lot. Talking about "one country, two systems" is in itself a huge innovation. And then we have the Basic Law. So it gives people comfort. We have the structure in place and it actually works. Now, the decision process is a very important thing and it's a different angle. So, my experience has been mainly managing money for large institutional investors that would include sovereign wealth funds, big insurance companies, pension funds and endowments. And let's think about how they look at Hong Kong and what they think about. Everybody understands that China is a market which you cannot ignore. But on a bigger scale, China not only has the largest population, it has the biggest consumer market. It already has gone through the cycle of people buying at the lowest price for first time purchases of TVs, washing machines, refrigerators, air conditioners and cars. Now they're going to a second cycle where they're looking for quality. That means the Chinese market is shifting to higher quality, more value-added products and services. This is a market the whole world cannot ignore. So there is the process of asset allocation within institutions. To give you a sense of it, it is generally

accepted that what assets you buy within an asset class is not as important as how you allocate amongst assets. That means it's not as important to choose which shares you buy, but how much you put into public markets compared to private equity, compared to real estate, compared to fixed income so that balance is going to yield the highest returns. And this is a dynamic process to give you a sense of it. My friend from California, Phil, who also studied mechanical engineering and then went on to law school, a very smart guy, wrote a seminal book on asset allocation, and he gave me a first edition autographed copy. Then he gave me instructions. He said, "Make sure you don't put it in your library, you don't put it in your office, you don't put it in your living room, and you must keep my book on your bedside table." And I was puzzled. So I said, "Why?" He said, "If you can't sleep, two or three pages of my book will help right away." So this is asset allocation. It's a mathematical science and it's dynamic.

There are all the big institutional investors. Investing is really a spectator sport because everybody knows everybody's results and it is highly competitive. So the investors are rational and they need to do so as well as or better than anybody else. So when they do this asset allocation models, they cannot afford to ignore the Chinese consumer market. They also cannot afford not to invest in Chinese technology companies because China now has issued more patents last year than any other country. So there is this scientific point of FOMO (fear of missing out). This is an important motivation for investors. So when they see that other investors are investing, they have institutional memories of missing out in Macau. When Macau gave out licenses for gaming about 20 years ago, the western investors said this was just a small place very far away and it had no chance against Las Vegas and even Atlantic City. Ultimately, Macau became bigger than both of them combined, and they missed out. They don't make the same

mistake again. So Chinese consumers and Chinese technology are central to any asset allocation model today.

When people think about investing in China, naturally Hong Kong comes to mind. Most professionals in Hong Kong can speak Putonghua, Cantonese and English. We also have a long tradition of common law legal system that works. We have SFC which is one of the leaders... you can say not only in compliance but also in ESG (Environment, Social, Governance). In the case of the Stock Exchange, our Stock Exchange is one of the first one to require public companies to report on ESG. So Hong Kong is at the forefront of a number of developments worldwide. We also have free flow of capital and information. We have hard currency. If people want to invest in China, this is a logical place to come. I think it is a no-brainer. Similarly, for Chinese companies wanting to go out, Hong Kong is a reasonable stepping stone. The fact that we have free flow of capital, currency that can be freely converted and hard currency gives people comfort and it is secured by the reserves. So there is no concern about either Hong Kong currency or convertibility.

When you think about all the risks and all the opportunities, China is a big opportunity and Hong Kong is the place to come. So I'm quite confident that Hong Kong is going to continue to thrive and flourish. And it is thanks to our institutions that are responsive to the investors in terms of coming up with new structures that work, doing compliance that works and keeping fair play in place. I think that Hong Kong has a great future and it is a considered opinion rather than just an emotional view. I'm sure Hong Kong is going to break new records in IPOs and trade volumes in both incoming and outgoing investments, and it will play an important part in the development of China internationally. Thank you.

Anthony Neoh: Thank you very much. Thank you Ashok. Again the importance of “one country, two systems”, by what you’ve just told us.

Our next panelist is Mr Zhang Jian-ping, Director General of the Center for Regional Economic Cooperation of Chinese Academy of International Trade and Economic Cooperation of the Ministry of Commerce. Please, Director Zhang.

Zhang Jian-ping: Great, thank you, Moderator. It is a great honor for me to participate in the conference today. I myself think that over the past 25 years, “one country, two systems” has firmly ensured China’s national unity and integrity and safeguarded China’s national interests. Our system enjoys very obvious advantages. I can see that the implementation of “one country, two systems” and the Basic Law of Hong Kong has ensured China’s national security and long-term stability, prevented the division of the country, and manifested the wisdom of the East as well as inclusive development. I think some Westerners may question the logic of “one country, two systems”: how can the two systems come together and jointly support the cooperation between and the development of Hong Kong and the Mainland? But I think that, with the safeguard of the Basic Law of Hong Kong and the continuous improvement to the Basic Law, the past 25 years is solid proof that the Basic Law enables Hong Kong to overcome all kinds of difficulties and impacts and to maintain stable development. In China, there is a familiar saying that “stability crushes all”. Stability in Hong Kong is an important safeguard for its sustained prosperity and development. Therefore, I think that under the framework of “one country, two systems”, the Mainland and Hong Kong can complement each other, and the cooperation and interaction between the Mainland and Hong Kong are continuously making new contributions to the high-quality development of our country.



During the 14th Five-Year period, China is implementing an innovation-driven development strategy and a dual circulation strategy. In this process, I think Hong Kong is still playing a very crucial role. I will now discuss the prospects and opportunities of Hong Kong's future development under the support of the Basic Law, by reference to the implementation of the Guangdong-Hong Kong-Macao Greater Bay Area's governance plan and the national direction for the future development of the Greater Bay Area, including the development direction mandated by our recent 14th Five-Year Plan.

The Greater Bay Area has become a regional economic growth pole enjoying the fastest development in marketization and internationalization, and having the best and most accessible market mechanism. This region has become a pioneer in China's innovation and development as well as a very competitive carrier and world-class city cluster in the global development process. Therefore, the proposal of developing the Greater Bay Area also means that, in the process of participating in international competition, China notices that the United States, the world's largest economy, has a financial bay area

in New York and a technology bay area in San Francisco, and that Japan also has a consolidated bay area of Tokyo which covers positive developments in both finance and technology. In future, if China is to have a similar region that can compete with the world-class bay areas, then the Greater Bay Area, including Hong Kong, will shoulder pivotal tasks and responsibilities.

The first aspect is that the Greater Bay Area will become a world-class city cluster and a major hub for the interconnection of global infrastructures, especially land, sea and air transport. In fact, Hong Kong, Shenzhen and Guangzhou are already occupying prominent positions in the interconnection of the Asia-Pacific region and in the global freight and shipping sectors. I can see that the national 14th Five-Year Plan has already entrusted Hong Kong with a new role in transportation, which is to add a hub, namely to develop Hong Kong into a hub of international air transport of China. So, looking ahead, we can see that Hong Kong's international air transport, especially international transit business, will develop substantially. I did participate in a study on how to enhance the development of the Hong Kong shipping industry. In the process of making comparisons, which was ten years ago, I noticed that Hong Kong's international air cargo transit business was weaker than that of Singapore. But I think that, with the development of the Greater Bay Area and the new role assigned to Hong Kong by our country, we expect Hong Kong to make a new breakthrough in high value-added international air transit business in future.

Our country has now also included the Shenzhen-Hong Kong Loop in the construction of a major cooperation platform between Guangdong, Hong Kong and Macao. In fact, the construction of the Hainan Free Trade Port has now become a new open platform

in the new round of China's reform and open-up process. This free trade port of more than 30,000 square kilometers in area will be open to the whole world in the future. For Hong Kong, I think that the interconnection of Hong Kong and the Hainan Free Trade Port, complementing each other with their respective advantages, will benefit Hong Kong itself in expanding room for development and business, and that Hong Kong's advantages can be brought into full play in the process of "scaling up the market". For example, I noticed that a young economist in Hong Kong, although based in Hong Kong, has extended his academic platform to Hainan University, and his influence in the field of China's opening-up and internationalization is increasing.

The second aspect I would like to talk about is the increasing role that Hong Kong plays as our country is in the process of opening up, with the Greater Bay Area contributing to the country's high-quality construction of the Belt and Road, and with the alignment of international economic and trade rules. As a highly internationalized region, Hong Kong and the Greater Bay Area play a very important and pivotal role in China's international trade and also in China's outward investments and capital inflow. I also notice that Hong Kong is still playing a crucial role in promoting trade and investment connectivity among the cross-strait four regions and in leveraging the strengths of all four regions. The national 14th Five-Year Plan has clearly expressed support for Hong Kong in enhancing its status as an international financial, shipping and trade center and has assigned to Hong Kong many new functions as a center and hub. This also means that Hong Kong's role as a super connector will be further strengthened in the process of the high-quality construction of the Belt and Road, and that Hong Kong's role as the spearhead and

vanguard in the construction of the Belt and Road will also be further strengthened.

The third aspect is to create a global highland for innovation and entrepreneurship, benchmarking against San Francisco Bay in the United States and Tokyo Bay, to enable Hong Kong and other cities in the Greater Bay Area to work in tandem to create a new global platform for technology and innovation. In this connection, Hong Kong's strengths are displayed in the areas of research and development, technology, creativity and design. We also see a combination of the strengths of Hong Kong and those of the major manufacturing bases in Shenzhen and Guangzhou. And we have now created what I would say is the most competitive drone sub-sector in the world. I have also heard that in the Greater Bay Area, Hong Kong and the Mainland are jointly developing unmanned ship products and related industries. In fact, the future of the Greater Bay Area will revolve around our new generation of information technology, cloud computing platform and cloud computing big data, as well as our biomedical industry and new energy industry. We will have a large number of such innovative missions in this field of technological innovation. In the 14th Five-Year Plan, the State has positioned Hong Kong as a future international center for innovative technology and a regional center for trading in intellectual property rights. We very much hope that, by strengthening the protection of intellectual property rights, the Greater Bay Area will become a leader in the competition among the world's major technology bay areas. Such a development will also bring higher added value to Hong Kong and a new impetus for the Mainland to jump across the middle-income trap and move towards innovation-driven development.

The fourth aspect I would like to emphasize is, of course, the strengths of Hong Kong's service industry, which accounts for 95% of our GDP. In connecting with the modern manufacturing services of the Greater Bay Area, our consumption upgrading services are also included, hence there are huge development potentials and business opportunities in both the producer services industry and the life services industry. In particular, the Greater Bay Area will in future speed up the transformation and upgrading of its manufacturing industries and actively participate in international competition by developing strategic emerging industries and new high-tech industries. With its financial services, professional services, logistics services, business services and efficient and integrated systems, Hong Kong can to a large extent meet the future development needs of the Greater Bay Area, and this in turn will make new room for Hong Kong for adding value in future.

The fifth aspect involves the construction of a financial center. During the 14th Five-Year period, in order to strengthen Hong Kong's role as a global international financial center, the State has assigned to Hong Kong the new roles as a global offshore RMB hub and an international asset management and risk management center. I notice that Hong Kong now is the world's largest offshore RMB trading center, this business of Hong Kong is already offering tremendous market potential even though the internationalization of RMB is at the initial stage. We can expect this business to scale up continuously with the economy of China. In 2021, the aggregate economic volume of China already reached about US\$18 trillion, being approximately 80% of that of the United States, and the aggregate economic volume of China is already almost equal to that of Europe. As we all know, in Europe there are now a number of international financial centers including Luxembourg, Frankfurt,

Paris and Zurich. Therefore, for China, with such a huge economic volume, we can also have a number of financial centers in future. And of course, the aggregate economic volume of China in future will, according to the predictions of many international institutions, exceed that of the United States, making China the largest economy in the world. In this process, objectively speaking, China in fact needs an international financial center to match its status as the largest economy. At the same time, the internationalization of our RMB will be further enhanced. Over the past two years, China's financial sector has basically been piloting in the Free Trade Pilot Zones, and in various sub-sectors including banking, securities, insurance and funds, the restrictions on foreign shareholding have been removed. At the same time, we are carrying out reform in terms of expanding access and transformation of business to enable more foreign capital and financial institutions to acquire a share in the huge financial market of the Mainland. Therefore, in the process of competitive development, I very much hope that Hong Kong and the Greater Bay Area can integrate because, as we all know, in Shenzhen we have VC and PE which are good forms of financial businesses. Guangzhou also houses the headquarters of a large number of financial institutions, and so I think that in the future a collective financial center like the Greater Bay Area will have a great prospect of becoming an important global financial center in China and creating more market space in the process of the internationalization of RMB, so that Hong Kong can have the benefit of acquiring high value-added industries.

The final point I would like to make is that our Greater Bay Area is committed to building a quality living sphere and a world-class city cluster which is green, pleasant to live in, pleasant to work in and pleasant to visit. In this process, our cultural and creative industries will develop substantially, and the combination of the cultural

industry and the tourism industry will enable us to establish a cultural, artistic and healthy bay area. In the 14th Five-Year Plan, Hong Kong is expressly tasked with building a hub for East-West cultural and artistic exchange, and I am holding high hopes, for example, that Hong Kong will gather outstanding artistic talents from the cross-strait four regions to create world-class Chinese musicals so that these gems will be treasured all over the world, just like the status that some developed countries currently have in this sub-sector. I think the Greater Bay Area is well qualified to achieve the same status in future. Needless to say, the integration of the cultural and tourism industries will also generate new opportunities for growth for Hong Kong. China's market, in its entirety, is now already the second largest consumer market in the world. Our consumption of commodities is now more or less the same as that of the United States, but our service consumption market is still lagging considerably behind that of the United States. As our big consumer market develops, I think our tourism industry, cultural industry, healthcare industry and medical industry will develop significantly. I also very much hope that Hong Kong will in the process find its own room for value-addition and development, and in the course of promoting Hong Kong's prosperous development, will integrate more deeply into the country's high-quality development, so that China's future competitiveness in the world can be continuously enhanced. This is all I have to say. Thank you.

Anthony Neoh: Thank you, Director Zhang. We will now move on to the discussion session. I wonder if you could enlighten me on one point. Our country has already participated in the Regional Comprehensive Economic Partnership (RCEP). In your opinion, if Hong Kong can participate in RCEP, will this help strengthen our advantages that you mentioned just now?

Zhang Jian-ping: Sure. At present, although Hong Kong is not a member of RCEP, Hong Kong has entered into a free trade agreement with the Association of Southeast Asian Nations (ASEAN). There is also the Closer Economic Partnership Arrangement (CEPA) between Hong Kong and the Mainland, and it has been updated more than ten times. As RCEP represents a system of trade and investment rules for the 21st century, the degree of mutual trade liberalization will reach about 90% in the future. As regards liberalization of services, in six years' time all economies will have to implement negative list commitments and pricing and management models in the trade of services. So we can see that the rules in the 20 chapters of RCEP not only cover traditional trade in goods, trade in services, investments as well as economic cooperation and trade facilitation, but also cover new subjects such as e-commerce, intellectual property rights, government procurement and competition policies. We therefore very much hope that such a large market will provide a major new impetus to China's dual circulation in future. In this process, Hong Kong is at the heart of RCEP, the largest integrated market in the world. Also, Hong Kong has a high degree of openness and, as a free port, a very high degree of freedom in trade and investment and a relatively high capacity for innovation. Therefore, in my view, given that RCEP, as a large-scale trade agreement, will generate huge effects in trade creation, investment growth and GDP growth, this means that in the course of continuously expanding mutual trade and investment in the RCEP region in future, Hong Kong's key role in it will be further enhanced and Hong Kong will also gain a lot of precious added value. This is my view.

Anthony Neoh: Thank you, Director Zhang. We will strive to participate in RCEP.

Now we have been given five and a half more minutes. Norman, I'd like to ask if you were able to suggest one thing to improve the positions that you have put forward, what would you like Hong Kong or the Central Government to do?


Norman Chan Tak-lam: I would like to raise two points if you don't mind. To talk about the Greater Bay Area, I entirely agree with Director Zhang. I am very optimistic about it but you have to bear in mind the biggest difference between all these great bay areas elsewhere. Tokyo, New York and San Francisco – they are different from us. They are within the same country and do not have two systems. The movements of factory production, people, money and goods are free and only constrained by the transport infrastructure; whereas we have “one country, two systems” with separate customs territories. Everything has to go through the customs, health quarantine and most importantly, money. If you don't allow money to flow more freely between Hong Kong and other parts of the Greater Bay Area, it would be a big barrier, my friend. It doesn't work that way and you have to really allow access. The opening up of China is government policy. Therefore, I urge the authorities to think big, to have bold steps to move forward, allowing on an experimental basis movement of capital, money between Hong Kong and other parts of the Greater Bay Area. That's my first point.

You have to take risks because “one country, two systems” is so novel. They took bold risk, big risk and it works but then moving forward to the next stage and next level, we have to take more risks, right? We can do it on an incremental basis step by step. You can always fine-tune and adjust if it doesn't work out as you thought. My second point: Regardless of geopolitics, regardless of greater bay, the geographical consideration, we are entering into a digital world.

The digital age is with us. Therefore, I urge the authorities to move boldly again. Move forward. Stimulate and encourage innovation, technological innovation, especially in the design and application of digital technologies. Again, when you innovate, you have to take some risks. You cannot have everything under control. Have a McKinsey to do your 500-page consultancy report before you proceed. Move forward and be bold.

Anthony Neoh: Ashok, we're moving into digital economy. If there's one thing you want to do, what is it?

Ashok S. Kothari: I think Norman is quite right about digitalization is key to moving forward. One of the obvious things in Hong Kong is that everything works very fast and very efficiently except opening bank accounts. And I would recommend HKMA and other authorities to work with the banks to make a streamlined, balanced process where they have a finite time. Because the deals happen fast, the investments happen fast and the money transfers fast, but bank accounts do not move fast. This is uncharacteristic of Hong Kong. I think it needs to be remedied.

Anthony Neoh: Thank you very much indeed. I think we should thank all our panelists for their very interesting presentations. Thank you. And I would like to thank you all for your presence, for your patience in listening. We have gone over time and with apologies to Arthur and Allan. I hope they will give you the same indulgence as they have given me. Thank you all. 

PANEL DISCUSSION 2

**Why is the Common Law So Important
to Hong Kong's Free Economy?**

Moderator



Prof the Hon Arthur Li Kwok-cheung

GBM GBS JP

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

Panelists



The Hon Mr Justice Patrick Chan Siu-oi GBM

Non-Permanent Judge of
the Court of Final Appeal

Panelists

Prof Albert Chen Hung-ye GBS JP

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



Dr Thomas So Shiu-tung JP

Former President of the Law Society of Hong Kong



Mr Johnny Mok Shiu-luen SC BBS

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



Arthur Li Kwok-cheung: Good afternoon, ladies and gentlemen. As you know, the Basic Law allows the common law to continue to be practiced in Hong Kong. The question we then have to ask is why is the common law so important to the free economy of Hong Kong? And today, we are very lucky to have four extremely distinguished panelists to answer this question for us. So, first of all, I would very much like to ask Dr Thomas So to start. Dr So has been the deputy judge of the District Court, as well as Deputy Registrar of the High Court. He has served as a council member, vice president and president of the Law Society, and currently he has been appointed by the Guangdong Provincial High Court as a Greater Bay Area cross-border commercial mediator. Dr So please.

Thomas So Shiu-tsung: Thank you. Professor Li. First of all, my apologies for jumping the queue, in terms of order of speech because of my commitment that I need to make. So I would finish my piece first and I will leave early. I hope that you don't mind.

Arthur Li Kwok-cheung: No, not at all.

Thomas So Shiu-tsung: Okay. Well, we are now here to talk about the importance of common law in a free economy. I try to do a keyword search of the word "free economy" in the Basic Law, and it comes out in quite a few sentences particularly under Chapter V when we talk about Hong Kong has a duty to maintain Hong Kong as an international financial center. It talks about Article 110, talks about safeguarding free operation of financial business and financial markets. Then Article 112 talks about free flow of capital.

Just now, I think Norman talks about the importance of free flow of capital. Then Article 114 talks about free port, Article 115 talks about free trade, free movement of goods. And on top of all that, I think that I being a lawyer as well as many of you who sit around here,



who deals with foreign investors, foreign people doing business in Hong Kong, they would all tell you that in order to be an international trading center or financial center, what is important is mobility of goods, mobility of capital, mobility of people; people includes if you have foreign companies deciding to set up office in Hong Kong, they need to send their executive people to be stationed in Hong Kong plus talents. I mean, the whole world is now chasing and competing for talents; so mobility of capital, mobility of goods, mobility of people; and lastly, mobility of information. Information, when we are now in the digital world, if you do not have first grade information that is at your fingertips, you will be losing out. So the free flow of all these are very important.

And what is the link between these to the common law? Now, foreign investors, they travel around the world. They invest in different parts of the world and they would like their rights for personal rights, and for talents coming to Hong Kong, their personal

rights and their rights towards their property, investment and money. They would like that to be protected by a system of law that is easy to understand, familiar to the international business community, transparent and practical with certainty and consistency. So those are, I think, some of the crucial elements that for my experience as a lawyer dealing with clients over the past 20 to 30 years. I think it is a common theme that foreign investors would look for when they go to a jurisdiction and invest, stay there and live there and all that.

So common law, in my view, met all those criteria. I remember in the old days, one law professor told me the word, “common law”, is so simple but it embraces a lot of principles that regulate people’s behavior. But then at the end of the day, when you look at the history of common law, it develops because of people traveling and doing business. You know, back in the old days in England, if you look at the history of common law, the common law principle was there to assist people to do business. And I remember one very famous phrase he told me; forget about all those complicated doctrines, common law means, the importance of common law is: “use common language, talk to common people and talk common sense”. That is common law. Because you need a law principle that is easy to understand, transparent, practical, and it works and it talks common sense.

So my view is that under our existing Basic Law, Article 8, common law is to continue and common law is in fact judge-made law. So the independent judiciary is guaranteed under Articles 81 and 82. That is important because you will need to have judges who are independent, who are not interfered by any law or fact, unrelated factors in affecting the decision to deliver reasoned decision and judgment so as to enable people to understand where they stand in their legal position. So I would like to see the continuation of the

practice of common law even beyond 2047. And I think that we should all try our very best to persuade the authorities to let this system continue. Thank you and I think I've said my piece, thank you.

Arthur Li Kwok-cheung: Thank you very much, Thomas. Our next panelist is a very learned jurist. The Honorable Mr Justice Patrick Chan. Patrick has been a permanent judge of the Court of Final Appeal, as well as now a non-permanent judge of the Court of Final Appeal. I think one of the greatest contributions that Patrick has made is the implementation of a bilingual court system in Hong Kong. For that, Patrick has been honored by the City University of Hong Kong, as well as the University of Hong Kong with honorary degrees. He is also an honorary life member of the Hong Kong Bar Association. Patrick please.

Patrick Chan Siu-oi: Thank you very much, Professor Lee. Ladies and gentlemen, I was given three options to deliver my contributions today: Cantonese, Putonghua and English. But since I was told that I made some contribution to the bilingual legal system, therefore I thought maybe I should use Chinese. And I wanted to use Putonghua. But if I use Putonghua, then I will worry exceeding ten minutes. Because one, you may not fully understand and, two, it is going to take five or six times longer. So I've only one option and that is Cantonese. So, I change the channel now and hope that you do not mind. Thank you.

Professor Lee, ladies and gentlemen, I am pleased and honored to share with you my view on the topic "The Role and Effect of Hong Kong's Common Law System in Developing a Free Economy". I have prepared a script and hope to share with you the key points in brief within ten minutes.

It is often said that Hong Kong is a blessed land, and Hong Kong has for years been an international commercial, trading and financial center. A number of factors contribute to Hong Kong's success, including its innate geographical advantages, it being the Mainland's window to the world, and it being a springboard for foreign countries to enter the China market. At the same time, Hong Kong not only has a substantial acquired advantage, but also has a very solid foundation, with a sophisticated legal system, an independent judiciary and a mature economic system. As other speakers have already talked about Hong Kong's financial and economic system at the session this morning, I will refrain from displaying my slight knowledge in front of the experts.

A mature economic system, a sophisticated legal system and an independent judiciary are the pillars of Hong Kong's success. The latter two pillars are complementary and mutually reinforcing and are worth discussing today.

Our legal system consists of the common law system that has been implemented for more than 100 years and is an independent judicial system. Of course, an independent judiciary is not something that can be developed overnight. As regards a free economy, we enjoy the policies of free trade and open market. As we all know, following Hong Kong's reunification with China in 1997, the Hong Kong Special Administrative Region has been established which practices "one country, two systems" and enjoys a high degree of autonomy. What have we preserved after the reunification? These two most essential basic systems have also been preserved with a view to maintaining the prosperity and stability of Hong Kong.

We notice that, under the Basic Law and the Sino-British Joint Declaration, three things have been preserved: First, the previous

capitalist socio-economic system is preserved; second, the way of life; third, the fundamental laws are to remain unchanged for 50 years. At the same time, we notice that two things are to be maintained: the status as an international financial center and the status as a free port. Therefore, in the course of drafting the Basic Law and the Sino-British Joint Declaration, it was already made clear that these systems must be preserved and maintained; this has been a long-term plan.

However, Hong Kong in fact has many good qualities, and the brilliant history of Hong Kong has also been mentioned just now. The city enjoys a good reputation in the world. I won't talk about the other aspects in detail but will focus on the Rule of Law Index with which I am familiar; that is, the Rule of Law Index of the World Justice Project. In 2021, following the enactment of the HKSAR National Security Law, Hong Kong's Rule of Law Index ranked 19th, which was quite good, being eight places higher than the United States (ranked 27th). Hong Kong's global ranking in "absence of corruption" is 9th, which is very good.

Why do we say that Hong Kong's common law system and independent judiciary are conducive to a free economy? Let us start by exploring what a free economy comprises. As I said just now, these are complementary and mutually reinforcing, so we first have to understand what a free economy is. It certainly includes capitalist characteristics, the principle of free trade and an open-door policy. Rather than mere self-labelling, there are certain rules and criteria to be met for an economy to qualify as a "free" economy. And Hong Kong meets these criteria. What about the principle of free trade? I will not profess to be an expert, so I will just mention two things, the supply and demand principle and the market-led principle, which are the most important aspects of free trade.

But as mentioned earlier, the Basic Law and the Sino-British Joint Declaration also refer to a free economy. In fact, four conditions have been clearly stated and guaranteed by the common law and the Basic Law. What are they?

- (1) All economic, trading and commercial activities shall be determined and conducted at people's own discretion;
- (2) Private enterprises and properties, including intellectual property rights, are protected by the law;
- (3) Financial activities, including foreign exchange, gold, securities, futures and other markets are free and open; capital flow is free, circulation of currency is free;
- (4) Last but not least, there is no interference or regulation.

Of course, a free system is not absolutely free, just as human rights are not absolute. Such freedom is subject to restrictions and, where necessary, must be regulated. Why? And under what circumstances does regulation arise?

With rapid economic development come new changes and new trading and economic models. Any improper, irregular or illegal activities will create huge economic risks, so statutory regulation is necessary to eradicate unlawful commercial activities.

Taking London gold trading as an example. A long time ago, the public did not know what London gold trading was, and if it was not regulated, many people would suffer a great loss. By the same token, if virtual currencies are not regulated, the general public will be left unprotected. Times change and models change, and we can never lag behind.

The law and the judiciary are extremely important to a free economy, and such importance has two key aspects. First, in the course of economic activities, such as negotiating business models, the rights, obligations and duties arising from economic trading must be protected and defined by the law. Second, as mentioned just now, it is sometimes necessary to exercise control and regulation by way of legislation. The role of the courts is to ensure that these regulations, if any, are in line with the rule of law. Instead of being arbitrary, these regulations have to be reasonable and able to withstand legal challenge, in order to gain international confidence and create a favorable business environment.

Regarding the judiciary under Hong Kong law, I have already talked about the main point; that is, the common law is the law previously in force which has been maintained, and at the same time, its judiciary has also been maintained. I will say no more on this in order to save everyone's time. Now, let me talk about an independent judiciary.

Articles 2 and 19(1) of the Basic Law stipulate that, in adjudicating cases, the court must be fair, just, impartial, selfless and free from interference by the executive or legislative authorities or by any person. Second, the power of final adjudication, the Court of Final Appeal, which was established under the Basic Law, is empowered to make the third (and final) judgments in both civil and criminal cases. Apart from matters relating to the power of interpretation of the Basic Law, the Court of Final Appeal must also be subject to the interpretations of the Standing Committee of the National People's Congress.

For example, it is very important that any commercial dispute referred to litigation will ultimately only be adjudicated by the Court of Final Appeal, not by the National People's Congress or the Supreme People's Court. For this reason, foreign investors are very confident and can rest assured that any litigation will not be conducted in Beijing but will only be dealt with by our Chief Justice Andrew Cheung and permanent judges or non-permanent judges in the Hong Kong Court of Final Appeal.

Judicial independence is not just an empty promise. The most important thing is that judges and judicial officers are appointed and removed in accordance with Articles 88, 89 and 92 of the Basic Law. Appointments are made on the basis of judicial and professional qualities and upon the recommendation of an independent commission of which I think Professor Li was a member. Formal appointments are made by the Chief Executive. This is very important in that the process is free from interference. The Chief Executive only has the power to appoint and veto, not to recommend, and he cannot recommend anyone at his will. And judges and judicial officers cannot be removed casually. They can only be removed on two grounds, namely inability to discharge their duties (that is, falling ill) or misbehavior (that is, committing criminal offences), and these grounds have to be established in accordance with specified procedures before removal can take place.

For my part, I have served as a judge since the 1980s and no one has ever interfered with the cases I adjudicated. Since the 1990s, I have also been involved in appointing and recommending judges; again I have never been interfered with by anyone, not by the Central Government, not by the Hong Kong Government, not by anyone. So I can give first-hand testimony that the Hong Kong judiciary is truly independent.

How is Hong Kong's common law conducive to the development of our free economy? First, let us revisit how legal principles are formed under the common law. "Law" is not what anyone anywhere says it is. Certain specific criteria have to be met before a judgment becomes part of the law. It must be made in cases heard by judges in the courtroom; it must go through the court procedures and an open trial; it must be made on the basis of factual evidence and legal principles with convincing reasons given as opposed to being abstract and general; and it has to be made public. Legal principles are formed on the basis of the above criteria and in accordance with the common law.

Today, I would like to share with you that, in addition to the importance of an independent judiciary which helps boost public confidence in Hong Kong, I personally believe that Hong Kong's common law has seven characteristics that exert a positive effect on public perception of our free economy and help create a favorable business environment.

(1) Case Law – The doctrine of precedent is the most basic and fundamental feature of the common law. Case law is not something casually made up; there must first be a judgment delivered by the appellate court after trial, which lays down some legal principles. Moreover, these principles are binding on the lower courts when they deal with similar cases in future. Its objective and function are to ensure the certainty, clarity and predictability of legal principles, and at the same time reduce lawsuits or appeals, and this stabilizing effect is very useful for the conduct, development and promotion of trading, economic and commercial activities as well as dispute resolution.

(2) Flexibility – Flexibility of the common law is equally important. What happens if the case law is too rigid such that even

though the judgment was correct at the time it was made, it becomes obsolete in the future when society has changed and new models are at play? The common law is not immutable; it revisits outdated principles in keeping with the times. Not that a mistake had been made before, but that changes are made to respond to the needs of society. This is very important for doing business.

(3) The principle of freedom of contract – This is also a feature of the common law which is very important for doing business. The common law (that is, judges and courts) fully respects commercial agreements. Parties are entitled to freely enter into an agreement in unrestricted circumstances. With emphasis on what is fair and just, parties are free to choose their counterparties and formulate relevant contractual terms such as the date of delivery. This is consistent with the supply and demand principle I mentioned before, in order to achieve a fair deal. Therefore, the court's respect for the spirit of the contract is extremely important to a free economy. If necessary, appropriate legislative control will also be exercised; for example, legislation is necessary where consumers are involved.

(4) Acceptance of commercial reality – Besides the matters mentioned before, the common law system also provides guidance to the business community, embracing the actual and practical commercial realities, economic conditions and development. For example, for new models such as online shopping, relevant disputes cannot be resolved by just relying on pre-existing laws. This situation is different from the one discussed just now, in that this situation involves a lacuna with no previous case law. The court has to accept practical commercial realities when hearing this type of cases and deal with them by reference to actual experiences and commercial practices.

(5) Commercial law – Historically, much of the commercial law gradually evolved from the custom and practice of businessmen. Commercial custom gradually becomes legal precedent and then part of the commercial law, and finally becomes an international business standard. This is conducive to business.

(6) Connection with the world – As mentioned in the previous session, connection with the world is a result of the close proximity of Hong Kong’s legal and economic systems and models to international standards. Take the bill of lading and bill of exchange as examples, these concepts are commonly used around the world and will be accepted by foreign businessmen. Further, as the common law system of Hong Kong is bilingual, it is easier for the Mainland to accept these concepts, thereby facilitating two-way interaction and exchange.

(7) Protection of private and corporate properties – Last but not least, needless to say, under Hong Kong laws, the common law together with the Basic Law protect private and corporate properties, and I shall not go into details. Articles 6 and 105(1) of the Basic Law, etc, are all reassuring to the business community.

To conclude, I am not saying that Hong Kong’s common law is the best in the world, because there is no such thing as the most exemplary and perfect law and every law has to be suitable for its jurisdiction. From the perspective of a businessman, first, the law must be clear; second, the place must be corruption-free; third, the system must be sound and reliable. Hong Kong meets all these requirements, so I think Hong Kong’s common law system and independent judiciary play a significant role in our free economy. Thank you.

Arthur Li Kwok-cheung: Patrick. Thank you very much. You made a great case for the importance of the common law to Hong

Kong. Thank you. Our next panelist is Professor Albert Chen, who is a member of the Basic Law of the Standing Committee of the National People's Congress since 1997. Professor Chen is an outstanding legal scholar who has been the head of Department of Law and Dean of the Faculty of Law at the University of Hong Kong. He is currently Cheng Chan Lan Yue Professor and Chair of Constitutional Law in the Department of Law at the University of Hong Kong. Professor Chen, please.

Albert Chen Hung-ye: Thank you, Chairman. I think I will follow Justice Chan's example and speak in Cantonese.

Today, I am very pleased and honored to have the opportunity to speak on this topic, which is about the development of Hong Kong's common law and its connection with other common law systems in the world. I will start by talking about the close relationship between the common law and economic development.

As we all know, common law originates from England of the United Kingdom. The UK is one of the first Western countries to develop a capitalist market economy and also the first industrialized country in the world, so the laws and legal practice of the UK are closely related to the development of capitalism and of modern industry and commerce.

Over the centuries, the laws and common law system of the UK have contributed to or benefited its economic development. This includes some of the features of the common law that Mr Justice Chan discussed just now, such as respect for the spirit of the contract, the ability to effectively enforce contracts, and the ability to effectively protect property rights. These are all prerequisites for economic development in the modern era.

Under the common law system, employment law (or the so-called labor law) as well as company law and laws relating to banking, finance and so on have also developed. These actually appeared relatively early in the history of the common law system and have been significantly assisting in and contributing to the operation of modern labor and capital markets.

Over the past few centuries, the English common law has spread to many other countries around the world, including North America, i.e. the United States today, and also some countries that once belonged to the British Empire but are now independent. Now, they all belong to the so-called Family of Common Law Legal System in the world. These places have also benefited from the common law, which has greatly assisted in local economic development.

Now, look at the world's major financial centers. In fact, all the major international financial centers are within territories to which the common law applies, but this does not mean that exactly the same common law is implemented in all these countries. Various versions of the common law have taken shape in the contemporary world, and we can say that there is the US version of common law, the Australian version of common law, the Canadian version of common law, the Singaporean version of common law, etc. So, each of the territories in which the common law applies has come up with its own version of the common law by making adaptations and updates to the original English common law in light of local circumstances and needs.

Before Hong Kong's reunification with China, although UK laws were applied to Hong Kong by way of the Application of English Law Ordinance, it did not mean that all UK laws were applied to Hong Kong prior to the reunification. Take legislation as an example. In fact, most of the UK legislations did not apply in Hong Kong because

Hong Kong had already established its own Legislative Council back in the colonial era, and Hong Kong statute laws were mostly enacted by the then Governor together with the Legislative Council.

As for the common law which consists of case law, it is called judge-made common law as opposed to statute. Most of the English judge-made common law applied to Hong Kong – most but not all, because according to the Application of English Law Ordinance, where certain English laws, such as the common law itself, did not fit in with the circumstances of Hong Kong, the Hong Kong courts were entitled to amend or adapt (that is, to modify) those laws.

Following the reunification, as many speakers have mentioned in the conference today, the Basic Law maintains by and large the laws previously in force in Hong Kong, except of course those which contravene the Basic Law. At the session this morning, mention was also made of a decision adopted by the Standing Committee of the NPC (NPCSC) in February 1997, which basically set out which laws previously in force could or could not be maintained. How, then, was the case law under the common law prior to the reunification dealt with? As it was impossible to list all the common law cases one by one and then state which could be maintained and which could not, the whole body of case law previously in force in Hong Kong can, in principle, continue to apply after the reunification.

However, this decision of the NPCSC in February 1997 contains a provision that the laws previously in force in Hong Kong, which have been adopted as laws of the HKSAR, shall be applied after July 1997 with such modifications, adaptations, restrictions and exceptions as may be necessary so that they conform with the status of Hong Kong after the People's Republic of China resumes the exercise of sovereignty over it and with the relevant provisions of the Basic Law.

In short, Hong Kong laws, including the common law, which were in force prior to 1997 are to be modified and adapted as necessary in order to conform to Hong Kong's new constitutional status after 1997. I will illustrate this point later with a case.

Due to time constraint, I will briefly mention five cases and may only be able to say a few words about each case.

After the reunification, on the application of precedents (as Mr Justice Chan mentioned just now) or the “binding authority” principle, what cases are binding after the reunification? In essence, in a 2008 case, *Solicitor v Law Society*,¹ the Court of Final Appeal (CFA) already set out the relevant principles. Basically, the CFA itself is not bound by any UK case. Even for a decision made by the UK Privy Council on an appeal from Hong Kong prior to the reunification, the CFA is not bound by that decision after the reunification. In other words, Hong Kong can develop its own case law.

Another case, *China Field*,² was a CFA case decided in 2009. In most of the cases that I am referring to, Mr Justice Chan was also one of the presiding judges. The *China Field* case basically ruled that Hong Kong can develop its own version of common law, that is, the HKSAR version of common law, after the reunification. This case concerned a principle of the UK land law called easement by prescription and involved certain technical issues. The CFA held that the principle was not applicable to Hong Kong which needed its own version of the relevant law.

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

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

The third case illustrates the application of the NPCSC decision in February 1997 which I mentioned just now. This is the *Democratic Republic of the Congo* case³ which was referred to this morning. In 2011, the CFA for the very first time sought an interpretation of the Basic Law from the NPCSC. The NPCSC interpretation made it crystal clear that after 1997 the application of Hong Kong's common law would, as indicated in the NPCSC decision in February 1997, require such modifications and adaptations as necessary in order to conform to Hong Kong's new constitutional status. Therefore, the so-called doctrine of foreign state immunity under the common law before 1997 had to be modified after 1997 in line with Hong Kong's new constitutional status.

The fourth and fifth cases are concerned with a UK common law principle called the joint criminal enterprise rule, which has received quite a bit of attention in recent years. In 2016, the UK Supreme Court abolished this principle, but in one of the CFA cases in 2016, namely the *Chan Kam Shing* case,⁴ it was held that Hong Kong should not follow the UK approach and that Hong Kong could still maintain this joint criminal enterprise rule, which means it continues to apply in murder cases.

But does the joint criminal enterprise rule apply to cases of unlawful assembly and riot? In 2021, in its judgment in the *Lo Kin Man* case,⁵ the CFA held that the joint criminal enterprise rule under the common law does not apply to prosecutions for unlawful assembly and riot under the Hong Kong Public Order Ordinance for the reason that the provisions in the Public Order Ordinance should be interpreted in a certain way.

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

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

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

From this, we can see that the UK common law principles as applied by the Hong Kong courts have been constantly adapted and updated in response to the actual circumstances of Hong Kong and the relevant provisions of Hong Kong legislation. To sum up, since 1997, Hong Kong, as one of the common law jurisdictions in the world, has maintained a common law system which is a key factor behind Hong Kong's economic success. And overseas judges have been participating in this common law system.

As we all know, the CFA has a number of overseas non-permanent judges. However, the Basic Law does not stipulate that the CFA must appoint non-permanent overseas judges. It is only an empowering provision to the effect that we may appoint non-permanent judges to participate in adjudicating individual cases. I am referring to overseas non-permanent judges, but this is not obligatory.

We of course know that two overseas non-permanent judges from the UK have recently resigned. Even if something similar happens again in future, it will in no way affect the operation of the common law system in Hong Kong.

As the former Chief Justice Mr Andrew Li pointed out in a recent article, the situation has changed considerably since 1997 and it cannot be ruled out that the number of overseas non-permanent judges serving for the CFA may drop in future. That said, Mr Li is still fully confident that this will not affect the operation of our CFA or the Hong Kong judiciary, because our local judges and local judicial talents are more than sufficient to meet the operational needs and challenges of the Hong Kong judiciary. I couldn't agree more. Due to time constraint, this concludes my speech. Thank you very much.

Arthur Li Kwok-cheung: Thank you Albert. Our last panelist for today is Mr Johnny Mok, who is a senior counsel and he is also a

member of the Basic Law Committee of the Standing Committee of the National People's Congress since 2007. I have to say that Johnny has always been on the side of angels because he always represented the Government and Department of Justice in many of our cases in Hong Kong. Thank you very much, Johnny.

Johnny Mok Shiu-luen: Thank you Professor Li. Honored guests, speakers, ladies and gentlemen, this has been a long day and this is a very late hour of a very long day. So I thought I might start by stimulating our thinking a little bit, by trying to stretch the meaning of the common law to suit the present day realities of our country and of Hong Kong. Not very long ago, I had a conversation with a retired judge of Mauritius and we had a very interesting conversation and he was telling me that, you know, Mauritius actually has a very good relationship with China, has a lot of trade with China. And even though the relationship has been very good, the trade has been very good but there is one problem. The problem is that when it comes to some sort of disputes which often happen between business parties, contractual parties, if you look at the contract very frequently because they are dealing with very huge organization or corporations in China it would say arbitration, say in Shenzhen or some part of China and to follow some kind of laws or rules that they are not familiar with. And very immediately they thought, this is very difficult for us because I don't know the first thing about arbitration, somewhere thousands of miles away, even less the rules and the regulations that are applicable to the process. So I thought that common law used to have a meaning in England or in the United Kingdom which means that it is a law or a set of rules that is applicable to the whole of England or the United Kingdom.

But I can imagine in the present day, there might be a law which is common to all the nations that willingly trade with each other, regardless of whether or not a country is big or small, whether or not the contractual party is very substantial or a relatively small operation. There ought to be a common set of practices, particularly commercial practices that all the countries could understand. And there should be a process of dispute resolution. These days, you can have it take place virtually anywhere in the world and have judges appointed from any country of the world so long as they have certain qualifications. And I would have thought that Hong Kong, if it comes to that kind of arrangement, can make a major contribution and the reason why we can make a major contribution to this kind of process is not only because of the many factors of the rule of law which Mr Justice Chan had talked about, particularly judicial independence, how judges are not affected by external influences and all the institutional factors that goes into the selection of judges and goes into the process of removal of judges and so on and so forth.

I think Hong Kong has a very unique role and history because we have a history or a tradition of close to 180 years of the common law tradition. Just think about it, what does it mean to be part of a tradition of common law which has lasted for over or close to 180 years? In my view, what it means is that something that is being practiced which is being followed every day in Hong Kong without us thinking about it and almost as an automatic kind of reaction, is something that has been passed on from generation to generation for over 180 years. This is not something that you can write into the law books or you can institute as a kind of procedure and say: "Tomorrow you follow this". Even though you may have the best rules in the world and the best system in the world, if you don't have the tradition, it's not something that you can readily take on and apply and do it successfully.

Mr Justice Chan has used a very marked example. He said he can be a first-hand witness. Well, one very important thing is that there has not been a single case whereby a judge is being influenced by a party in the process of the decision of a case or in the selection of the judges to a particular court. Even though we all know that corruption does take place from time to time, and particularly sometimes within government and sometimes in the private sector, there has not been a single case where a judge in Hong Kong is being influenced to make a decision a particular way which favors a particular party.

Now this is very remarkable and it is particularly remarkable because Hong Kong has such a long time in the history of its legal system where these rules and this tradition are applied; and the reason why I think that is the case is because Hong Kong practitioners and judges all share the same mentality, which is that there is a sacred line which neither the judges would cross nor the parties on the other side would cross, which might undermine the integrity or the fairness of the judicial system. This is a mentality which, as I said, has been passed down from generation to generation and is something that cannot be replicated without an equal amount of time having elapsed in the history of any particular country or jurisdiction. And I think that is why in Hong Kong, the question today is “why is the common law so important to Hong Kong’s free economy?” And my answer to that is that it is not only important to our free economy, it is also important to the country and also important to all the other countries that our country has relationships with, particularly trade relationship. And I tend to think of common law not just for our own consumption, but actually the common law can be a product of our export to many of these countries because practitioners in Hong Kong and people who are professionals in Hong Kong can help to join hands with all these other countries and jurisdictions and to write a truly common law


whereby we share a common interest, where we treat each other fairly and equally and with an even hand, without discrimination against the size of the economy or what country you happen to be dealing with.

And I think that, stretching our imagination a little bit, I think the common law in Hong Kong can go far beyond what is commonly practiced within the four corners of Hong Kong as a place. Now we all live and we all know that we're living now in a very divisive world which is getting more and more divided every day. In this kind of new realities, I think we can come back to the root of the common law which really formed the bedrocks of the rule of law in Hong Kong. We come back to the root of it and to examine why Hong Kong can play such an important role. Hong Kong's rule of law and the Hong Kong common law is special and unique in several ways.

First of all, it is within "one country, two systems". There is not another common law system in the world which is within "one country, two systems" such as in the HKSAR. That's one very special factor. Secondly, it is very special because, as I said, we have a very long tradition. And thirdly, very importantly, it is because we are part of the one country and this is one country dealing with many other countries of the world. These are the three very important factors. And therefore, within this kind of framework, I think we have to now recognize that, in fact, Hong Kong's rule of law and the Hong Kong common law is a very special brand of rule of law.

Why is it special? Because the rule of law is not equal in all countries and all jurisdictions. Just think of it, in some countries they do practice the rule of law. But they may only apply the same principle to certain people; maybe their own country or maybe their friendly countries or maybe not the unfriendly country and not so friendly people. So in some jurisdictions, you do have the rule of

law but it is their brand of the rule of law. It is different from us. And why are we different? Because the Hong Kong brand of rule of law is applied across the board and can be applied to all people, all countries and all backgrounds without any form of discrimination. This is written in our Basic Law and this is written in the Hong Kong Bill of Rights. You cannot discriminate a person on the basis of his race, his color, his political belief, his country or anything else. So Hong Kong, so long as it remains as a part of the “one country, two systems”, we can continue to practice a branch or a brand of the rule of law which does not discriminate against any people in the world, which in terms makes it highly attractive to many other countries and many other people that we actually deal with – to come and embrace the concept of the common law that Hong Kong represents. So I think because of time, that’s all I’m going to say. Thank you very much.

Arthur Li Kwok-cheung: Thank you very much. Can I just thank all panelists for their presentation and particularly I would like to thank the Department of Justice. I’m sure we all like to join me to thank the Department of Justice for organizing this Legal Conference. Thank you very much. Thank you. 

The Role and Effect of Hong Kong's Common Law System in Developing a Free Economy

Mr Justice Patrick Chan
Non-Permanent Judge, Court of Final Appeal
27 May 2022

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2

Hong Kong =
Mainland's window to the world
Springboard for foreign countries to enter China market
One of the international commercial, trading and financial centres

Factors contributing to success include:
Sophisticated legal system and independent judiciary +
Mature economic system

3

Common law system, judiciary and free economy: preserved after reunification

Legal system = common law system + independent judiciary

Free economy = upholding capitalism + policies of free trade and open market

Reunification on 1 July 1997

Establishment of HKSAR [PRC Constitution] art.31

Practices "One Country, Two Systems", comes directly under Central People's Government

Exercises high degree of autonomy except for defense and foreign affairs

4

Existing basic systems preserved after reunification

- ❑ Maintain prosperity and stability of Hong Kong
- ❑ Preserve previous capitalist socio-economic system
- ❑ Way of life and general laws shall remain unchanged for 50 years
- ❑ Maintain status of international financial centre and free port

[Basic Law arts.5, 8, 109, 114]

5

Evaluation by international community of Hong Kong's legal and judicial systems and economic system

- ❑ Hong Kong possesses good qualities
 - Mature economic system + sophisticated legal and judicial systems
 - Enjoys protection under Basic Law and good international reputation
- ❑ Top global rankings in financial and legal fields – international recognition, indicators of success
 - 2020 global IPO Listing – ranked second in the world, USD 52.18 billion
 - 2021 [World Justice Project] Rule of Law Index – ranked 19th in the world (USA ranked 27th), consistently ranked among top three in Asia
 - Global corruption-free ranking – 9th in the world

6

What does a free economy comprise and require?

- ❑ Free economy – capitalist characteristics
 - upholds free trade principle
 - complies with certain rules, meets certain criteria
- ❑ Free trade principle: business operations, manufacturing and services (including capital, wages and price) hinge on law of supply and demand and led by market
- ❑ Hong Kong is considered to be complying with relevant rules and meeting relevant criteria
 - Sino-British Joint Declaration art.3 (6) and (7)
 - Basic Law arts.105(3), 109, 110, 112, 114

Essence of free economy of Hong Kong: protected by Basic Law and laws

- (1) All economic, trading and commercial activities – determined and conducted at people's own discretion;
- (2) Private enterprises and properties and intellectual property rights – protected by law;
- (3) Financial activities and foreign exchange, gold, securities, futures and other markets – free and open, free capital inflow and outflow, free circulation and exchange of currency without restriction or control;
- (4) Economic, trading and commercial activities – free and open, not subject to interference or regulation

Some regulations in free economy

- ❑ Rapid economic development, new changes and modes of activity
- ❑ Any improper or irregular circumstances have to be regulated
- ❑ In order to eradicate unlawful commercial activities and reduce economic risks

9

Importance of legal and judicial systems to free economy

Protection by legal and judicial systems:

- (1) Economic activities and processes rights and obligations protected by law
- (2) Regulation must abide by rule of law and be able to withstand legal challenges

Robust legal system and independent judiciary:

- Conducive to smooth conduct of economic activities
- Ensure fair and just enforcement of regulatory policies and laws
- Strengthen international confidence, favourable to economic activities, good business environment

10

Independent judicial power and final adjudication power of Hong Kong can enhance confidence in conducting business

Legal and judicial systems

Current laws basically remain unchanged – common law, rules of equity, ordinances, subordinate legislation and customary law to be maintained except for any that contravene the Basic Law and subject to any amendment by the HKSAR legislature (Basic Law arts.8, 18(1))

Business people know precisely business activities/disputes are protected by laws and independent courts

11

Independent judicial power – (Basic Law arts.2, 19(1))

fair, just, impartial, selfless and free from interference by executive or legislative authorities or any person in adjudicating cases

Final adjudication power – Court of Final Appeal (Basic Law arts.2, 19(1))

make the third (and final) judgment in civil and criminal cases

(Final power to interpret the Basic Law rests with NPCSC)

12

Judges and judicial officers (Basic Law arts.88, 89, 92)

Appointment – based on judicial and professional qualities, recommended by independent commission and formally appointed by Chief Executive

Removal – can only be removed by reason of inability to discharge duties or misconduct and only in accordance with specified procedures

13

Common law of Hong Kong conducive to development of free economy

Common law: a judge hears cases by way of open trial and makes judgment on basis of factual evidence and relevant laws, and reasons for judgment are set out, forming part of the law which is made public

Characteristics of common law – exert positive effect on free economy and help create appropriate free market economy and business environment

14

(1) Case law - enhances certainty, clarity and predictability of law

Case law: legal principles relied on by high courts in adjudicating cases are binding or persuasive on lower courts in dealing with similar cases in future

Legal principles are highly certain, clear and predictable, reducing lawsuits or appeals

Very important to the conduct, promotion and development of economic activities

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(2) Flexibility – can make changes in response to changes in society

- ❑ Case law that cannot catch up with changes in time/society - outdated, leading to injustice
- ❑ Common law is not immutable; it develops continuously and can revisit outdated principles in response to needs and changes of society
- ❑ Even more important for developing economic activities and business models

16

(3) Principle of freedom of contract – respects commercial agreements, helps honour trade promises

- ❑ Uphold principle of freedom of contract, respects parties' right to freely enter into contracts in unrestricted manner and to freely choose and formulate terms and conditions of transactions
- ❑ Courts will fairly and justly strive to enforce parties' agreements save for certain terms which are regulated by legislation
- ❑ Courts' respect for spirit of private contract is conducive to financial, trading and commercial transactions

17

- (4) Acceptance of commercial reality – courts accept practical commercial reality in adjudicating cases
- ❑ Courts accept practical commercial reality, rapidly adapt to changing environment, stay current and closely follow financial developments, providing guidance to business community
 - ❑ Development of common law, based on actual experience and commercial reality, is conducive to economic development

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- (5) Commercial law – under common law, much of commercial law draws on custom and practice of trading activities
- ❑ Under common law, evolution of commercial law is influenced by free economy theory and becomes legal principles and international trading standards with which judges adjudicate commercial disputes

(6) Global connection – strengthens role of Hong Kong as international commercial, trading and financial centre

- ❑ Hong Kong's legal and economic systems are relatively close to international standards and are readily acceptable
- ❑ Foreign business people come to Hong Kong to conduct business, trading and financial activities, through which they look for opportunities to develop business in Mainland China, and apply Hong Kong law to resolve disputes by way of arbitration
- ❑ Mainland business people will also make use of Hong Kong's status to conduct business, trading and financial activities such as listing and financing, with a view to further exploring international market
- ❑ Hong Kong then becomes a centre for interaction and exchange between Mainland and rest of the world

(7) Protection of private and corporate properties – Basic Law and common law principles protect private and corporate properties

Common law and Basic Law provide legal protection for private properties

- | | |
|------------|---|
| (Basic Law | art.6: protects right of private ownership or property in accordance with law |
| | art.105(1): protects private and corporate properties in accordance with law, with right to compensation for lawful deprivation of property |
| | art.105(3): ownership of enterprises and foreign investments are protected by law) |

Common law principles and Basic Law protect private and corporate properties and create good business environment, so that people will feel at ease when doing and developing business in Hong Kong.

Conclusion

- ❑ Practices common law and possesses independent judiciary, conducive to implementing policies of free economy and open-up
- ❑ Unique geographical environment and staunch support by the Central Government, outstanding talents, good international reputation, effective systems and policies
- ❑ Preserved after reunification, more effectively protect lawful rights of business people, consolidate status of commercial, trading and financial centre

MEDIA INTERVIEW

Walk the Talk

Moderator



Dr Allan Zeman GBM GBS JP
Chairperson of Lan Kwai Fong Group

Guests



Mr Hans Michael Jebsen BBS
Chairperson of Jebsen Group

Guests

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



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



Mr Toni Younes
Founder and Chief Executive Officer of Paul Lafayet



Allan Zeman: Thank you very much. I know it's been a long day for many of you and so but we are lucky to have four illustrious speakers here and really talking about what makes Hong Kong so attractive to business from all over the world, international business people. Why do people open up and how does the Basic Law really really help Hong Kong to attract so much. It's given Hong Kong such a brand in the world brand name. We know businesses love stability. Stability is the key. The Basic Law helps stability. And that's something that brings prosperity. That's why they say "stability to prosperity"; that brings the prosperity to Hong Kong.

So I know all of you are with many businesses different to many of the speakers that have been up here; and just want to hear from each of you that what makes everything work for you? So basically, we have Mr Hans Michael Jebsen on the screen so Hans Michael welcome, and so why don't we start with Hans Michael first? I'll give a brief introduction. Hans Michael is the chairperson of Jebsen Group in Hong Kong. Hans is a Hong Kong based Danish businessman. He joined the Jebsen Group in Hong Kong in 1981 and has been chairman and main shareholder of the group since 2000. Jebsen Group, established in Hong Kong, has extensive experience investing in Guangzhou and he was awarded as Guangzhou honorary citizen in 2021, something very, very special. And so we'd like to hear from Hans, about you and your business. What keeps you here in Hong Kong?

Hans Michael Jebsen: Well, thanks Allan and good afternoon everybody. Understand it's been a long day, so I'll try to be really short. Now I'm a member of a family of like so many others who came to the East through shipping and have been developing into trade and manufacturing. And today, we are quite a far-flung concern

with China as our main market, but as a global family-owned company and family-run.

And for us, Hong Kong is a place where we basically ask ourselves four questions. What makes Hong Kong? What makes it different? What makes it successful? And why is it the right place for a company like ourselves to be headquartered in? And of course, we've heard all those very important hard facts; the legal system in Hong Kong, the common law, the geographical position, our long tradition in dealing with the entire world as a trading partner. And I could add many things in terms of shipping. Of course, we used to be the absolute key entrepot. Now, we are one of many vital entrepots into China, but these are all things you will find, you might say, in a sort of chamber of commerce flyer. I think what is so important is culture. You cannot run away from your past and run away from your identity. We are who we are and we are always standing on the shoulders of other generations in the mindset that has become ours.

Now, what makes Hong Kong is, I think, is the mindset and it's ability to cope with changes, to cope with disruptions and indeed to be not only followers, but to be also spearheads. And I think the latter part is where the GBA comes in, where the Chinese Mainland comes in with a whole revolution of consumerism. And of course, Hong Kong is extremely well placed in being a key player, the spearhead and a fast follower all at the same time.

Now, our company has been in China, entrenched in business there since a long, long time. And I mean, one of my first memories was really the many pictures that were in my father's office. On his desk, there were family pictures, but there were pictures of the "compradors" and the company directors who were those key movers of the family concern. And that always impressed me deeply, that



unconditional trust that individuals placed in each other. And here we have culture. I think the notion of decency, the notion of reliability and the notion of honor are extremely important elements of the mentality or mindset or the tradition. And that is something which Hong Kong really thrives on. And whatever you look at all the investments in China, they are there for a reason and they are there because Hong Kong individuals have a long tradition of trusting relationships across the board.

And that's where, of course, Hong Kong comes in as the connector, we call it a super connector or main gate or entrance. It all means basically the same; that you have to be trusted. We are, as a company, we decided that Guangzhou would be our hub because it's close to Hong Kong and it is Cantonese speaking, it is in the heart of the GBA and it just makes a lot of sense. I only takes an hour and something to get there. So there's a lot of cohesion. That has been

a good decision and I think it's been carried by also Hong Kong Government policies in terms of reaching out to our neighboring provinces and CEPA; of course it was just a first step. We were the most favored trading partner, if you like, of the Chinese Mainland right after the handover.

And the Basic Law is the very bedrock on which Hong Kong's status stands. So I think we take that pretty much for granted. But we've heard during the course of the conference how much work it took to get there. And I think it's really worth appreciating that and also defending that position. Now, in our case, the other very important element for being in Hong Kong and in Guangdong is manpower, its human resources. This is an area with a lot of young people; young, up and coming. And of course, you know, we are living in times of great also technological disruptions where young people have a totally different approach from people, for instance, of my vintage.

So I'm really enjoying tremendously to be inspired by a lot of individuals that are from all provinces of the Chinese Mainland, by the way. And that's another huge advantage. I mean, in Hong Kong, we have the outreach to the global sphere and in the Chinese Mainland there is both the local sphere where individuals have a footprint in Shanghai, in Beijing, in all sorts of places, and Hong Kong, and of course, China is our main market as a company and I think as a place in Hong Kong. Now, what will make us confident is not figures. I mean, of course you can see the trade figures and it is always growing and it's so wonderful, also to be expected. But it is the resilience and is the mindset. People in Hong Kong are found weatherproof, I would say, and they've come through an awful lot. And of course, the long history of going through wars, and I think it is

worthwhile to really appreciate what it has taken to make Hong Kong the success it is, and also to appreciate that having the Mainland as your main trading partner is a very good place to start. Because this is not only a large market, it is also a fast developing market. And it is a market which will, in my view, definitely pave the way to quite a few positive disruptions; take the environment, take the footprint, take all that is to do with “food and waste” etc.

I think with that large population, with the age situation that the country like China also is going to face in terms of an ageing population in 20 years or so on, we will have Hong Kong sitting right in the middle of a place of innovation. Universities open campuses in the Chinese Mainland. I’ve had the pleasure of being associated to the HKUST for quite some time, and I’m so impressed that it has a new campus being built straight across the border twice the size of Hong Kong in a matter of a few years. I mean, these are all things that often go a little unnoticed because they’re taken for granted. That’s where our people for the future are being groomed. And I must say, I take my hat off to all those people in the educational sphere who are providing the resource for the future. So why is Hong Kong going to be a success also in future? It is because of, particularly, the mix of individuals being both trained academically, but also having that natural curiosity. Curiosity I think is extremely important. And I’ve lately developed one thing which I was told: don’t ask people the same questions that you see in the CV, but ask them what are their personal, private interests? And I think that is so revealing. I think Hong Kong individuals are, including very much Mainlanders, immensely interested in the world around them. And this is so refreshing and it’s something which is difficult to put in figures. I would even argue when we look at GDP and a lot of other things, they are all quantitative. But where are the qualitative measurements? And,

how do you measure reliability? How do you measure decency? How do you measure, let's say, a sense of entrepreneurship, of optimism etc.? So I rest my case.

I think in terms of mentality and culture, we are truly in the right spot because China is more than the country. It is of course a nation and also overseas communities where Hong Kong plays a vast role. It's a sort of secret capital of the overseas Chinese, but it is also a culture that rests on very, very deep roots and I think that has to be appreciated. And I think the more Hong Kong can be interfacing with the Mainland and feel part of that long tradition, I think the better. Frankly, I can see that in our company, there's a lot of cross-relationships now within the company, from city to city, of people who wouldn't know each other before. But I get curious, why do we believe Hong Kong has that special future? Well, there's no place like it, purely. And I think we've heard it in so many words. And I would say that if ever there has been proof of resilience, of being able to cope with disruptions; if ever there has been a place that has been tremendously adaptable to new situations and at the same time can rest on an ancient culture and deal with innovations; because the future will be different from what we are used to. I mean, how about resources? How about climate? How about all these issues which really, really matter? I think that China has such an enormously important role to play in that. And the more we in Hong Kong can contribute to being part of that, the better we are placed. Our company has seen that a lot of innovative things, like the virtual Porsche showroom or car showroom is something which will develop as China was the spearhead, and together with a number of Hong Kong individuals. So I think for me that's the best proof and of course that's moving beyond the day. It's about really the future and a

greener future and better future will be produced, no doubt, and/or co-produced in China with Hong Kong in a very important spot.

The Pearl River Delta, of course, plays a vital role when you look at the composition of individuals over there; there are many people who move from other parts of the Mainland to the Pearl River Delta. And why? Because education, quality of life and connectivity and of course, the cluster of like-minded people, that's a very strong power. And I think it would be interesting to see what are these clusters and why do people congregate? And this is where I feel that we are in the best place in Asia, for that matter in Hong Kong, because we can connect with all those other parts of Asia and that's what we are doing as a company. We've seen some very healthy growth because of that. And of course it's an educational process. I think we have to listen to the reality and see what do the people want, how do they want to live in the future? And there I think the more we in Hong Kong can contribute and learn, the better we are. That's where we are. We have been in business for 130 years and I can say that the dynamics have been teaching us a lot of lessons, but one in particular: That the concept of Chinese cultural values is at the core of what we are doing and why we are choosing Hong Kong as our headquarters now and for the future.

Allan Zeman: Well, thank you Michael. Jebsen, of course, has been here for many, many years, one of the famous companies that has been in China for many years. I've known the Jebsen family for a long, long time. And I guess he's told us all the reasons why Hong Kong is such a great place to stay here and do business. Next, we have Eric Ma, he is the CEO of NWS Holdings Ltd. He's a well-respected engineer. He's also a member of the fellow in various highly regarded engineers institute in Hong Kong and overseas. He also has extensive

experience working with the HKSAR Government. He joined the Government in 2014 as Undersecretary for Development and subsequently appointed the Secretary for Development in February 2017, remained in the post until 2017. He's an Honorary Professor of the School of Science and Technology at Hong Kong Metropolitan University and Adjunct Professor of the Hong Kong Polytechnic University. So Eric gets around.

Eric Ma Siu-cheung: Thank you Allan.

Allan Zeman: And he's also been appointed to Justices of the Peace in 2014. So, Eric, let's hear your story.

Eric Ma Siu-cheung: Thank you, Allan. Distinguished guests, I'm privileged to represent the New World Group to share the business sectors' experience of "one country, two systems" under the Basic Law in Hong Kong. Since its return to the Motherland 25 years ago, "one country, two systems" is a unique constitutional invention with no precedent case to take reference from. Challenges have arisen in the last 25 years along our course of exploration. Thanks to the endurance of different sectors, Hong Kong was able to retain its competitiveness and attractiveness, allowing us to proudly present ourselves as an international financial hub, a global trading hub and also an international maritime center. All couldn't have been achieved without the Basic Law.

So today, I would like to share our experience and observation on the impact of the Basic Law on the overall business environment in Hong Kong from the perspective of the business community. Also, I shall explore some prospect of Hong Kong in particular: What should be changed and remain unchanged under "one country, two systems"?

Two and a half decades ago, Hong Kong returned to the Motherland, marking the enactment of the Basic Law. But in fact, the drafting of the Basic Law dated back to 40 years ago, in 1982. That year, the negotiation on the future of Hong Kong began as the Mainland had just kick-started the reform and opening up. The international community was still skeptical of China's determination to embrace globalization and was pessimistic about the future of Hong Kong. Stock prices plummeted, currency depreciated and panic selling occurred everywhere. Some citizens left Hong Kong, while a number of enterprises relocated their operations. Despite all these uncertainties and adversity, the New World Group never panicked and the thought of leaving the city never crossed our mind. We believed that as long as China persists in opening up, Hong Kong's stability and prosperity will be safeguarded. The city will play an indispensable role in national development, becoming the bridge linking the Mainland with the world, and the local business sector will certainly benefit from it.

Therefore, contrary to others, the New World Group instead strengthened its determination at that time and accelerated our pace of investment in Hong Kong. The Hong Kong Convention Exhibition Center, Phase one, next to where we are now, is a solid proof. In the 1980s, the colonial government planned to build a world class facility to hold large scale international conference and exhibitions. Due to the uncertain future of Hong Kong, many corporates were hesitant to take up this huge commitment. However, when the Government came to the New World Group, we accepted the invitation without a second thought. It was signifying our confidence in our city's future. We overcame many difficulties and completed the project on time. To this date, the Convention Exhibition Center remains a landmark structure in the city. The subsequent development of Hong Kong from the 1980s has proven that our optimism was right. After the signing

of the Sino-British Joint Declaration, Hong Kong achieved a stable transition back to the Motherland.

Since the handover, the capitalist system and the way of living, including all existing freedoms and rights, have remained unchanged. As enshrined in the Basic Law, business convenience and legal protection which have formed integral parts of Hong Kong strength have been safeguarded, ensuring the successful operation of our businesses in the city. Let me elaborate my point. First, the Basic Law guarantees a simple and low tax regime in Hong Kong and preserves her status as a free port. This enables the city to become a favorable hub for exchange of personnel, goods, information and capital. Besides, the Basic Law allows Hong Kong to participate in a wide range of trade arrangements as a separate customs territory. By virtue of these competitive advantages, Hong Kong has long been a world leading example in terms of economic freedoms, ease of doing business and prosperity index. The city retains its reputation as one of the most attractive places in the world for global capital and enterprise.

Second, the Basic Law assures judicial independence and the common law practice in Hong Kong. In the past 25 years, the local legal system has been highly transparent and efficient, where commercial disputes can be adjudicated fairly and openly, together with a clean and impartial Government dedicated to combat corruption. Enterprise can operate here fearlessly. Although the international community has once worried that Hong Kong's commercial environment will no longer be the same after the enactment of the national security law, statistics have proven them wrong. For example, the 2021 Worldwide Governance Index by the World Bank ranked Hong Kong as the second-best place in Asia under

the dimension of rule of law, while the 2021 International Arbitration Survey by Queen Mary University of London rated Hong Kong the third most preferred seat for arbitration worldwide. Hong Kong's performance in these areas has given the business community greater confidence in the city that it is a vibrant, stable and attractive place for foreign direct investment. The influx of capital speaks for itself as well. The aggregate balance of the banking system exceeded HK\$337 billion in May 2020, double the amount in June 2019 before the national security law became effective. Obviously, the legislation does not hinder capital from coming to Hong Kong, reflecting the business community's confidence.

Over the past 25 years, Chinese and foreign businesses operating in Hong Kong have benefited from the Basic Law's assurance of "one country, two systems". We are all witnesses, participants and beneficiaries of Hong Kong's tremendous economic growth in the first half of the 50 years. However, while we have been emphasizing the continuous advantages of "no change", we have been neglecting the necessity for change. Despite the numerous successes in the past 25 years, certain aspects of the society require improvements and even reforms.

Our system, our policy, our mindset have to be evolved over time to suit the community needs. The most prominent example is the land and housing shortage. Due to the increasing rigidity and complexity of the vetting system, land development and housing supply has been extremely slow, far from meeting the expectations of the community. Insufficient community support is another pressing issue. The fifth wave of the pandemic unveiled the challenges in our crisis management and citizens were unable to obtain the anti-epidemic supplies in time. We need to think about how we can serve citizens,

particularly the vulnerable ones, when the next crisis comes. They are just two incidents with deep-rooted problems. It's time for us to make changes and embrace changes. And I believe the responsibility of making changes doesn't simply lie on the government. The corporate sector has to become a part of the solution.

A few years ago, the New World Group made “*Creating Shared Values*” as our corporate philosophy. We believe our mission is not only to bring returns to our shareholders, but also to improve the well-being of all stakeholders by launching innovative and socially responsible practices into our business. Guided by this vision, we founded a non-profit making social housing enterprise “Build for Good” last year, which aims to create an innovative alternative in affordable housing, providing more affordable housing for first time buyers. Working together with the Government, the business sector can offer an alternative for the young to get onto the housing ladder easier with a lower purchase price, smaller down payment and lower monthly installments. And not only are we determined to build for good, but we also vow to share for good.

In March, we set up Hong Kong's first large scale crowd-donation platform “Share for Good” to deliver support to the underprivileged by adopting an innovative solution to allow all targeted matching between the donors and beneficiaries. The platform enables supply to reach individuals just in time. In the first phase, the online platform has raised over HK\$40 million worth of donation and benefited over 100,000 underprivileged families.

In a nutshell, as an important stakeholder in the society and a significant beneficiary under the “one country, two systems”, we believe the business sector is also obliged to be a contributor and a duty bearer in the community. In the upcoming years, we shall

continue our effort to facilitate fair distribution to address the need of the general public. Only then we can achieve common prosperity.

This year, the practice of “one country, two systems” policy will officially enter the second half of 50 years of “no change”. We are sailing towards a new milestone. New challenges have arisen in the society in the past two and a half decades, calling for changes in the role of the government as well as business sector in the society. These changes are to ensure the institutional arrangement of “one country, two systems” remains unchanged. Only by mastering the art of change and “no change”, can the “one country, two systems” vessel be able to sail smoothly, bring prosperity to the people of Hong Kong and contribute to the opening up of our country. Thank you very much.

Allan Zeman: Well, thank you Eric. As we all know, New World is one of the pillars of our Hong Kong society, and “one country, two systems” has really benefited. New World was one of the early first movers into China, into the Chinese economy, and really had most land in China earlier, and really taught the Mainland a lot. Hong Kong really was the great leader in teaching the Mainland many of the great success that the Mainland has today, much of the success that we have today. Thank you very much.

Okay. Next, we have Dr Simon Lee Ho-ey, MH, JP. He’s a Legislative Council member of the HKSAR. He’s also Chief Strategy Officer of China Resources Group for the Greater Bay Area at the China Resources Company. Simon received his PhD in Law from Tsinghua University in 2012 and is the chairperson of the Basic Law Foundation. He is part of many renowned law associations and committees and is a well-respected law scholar, and is also the Deputy Executive Director of Our Hong Kong Foundation. And as one of the nation’s young academics, Simon is an expert on the economic

and business development on the GBA (the Greater Bay Area) and Simon was granted the Medal of Honor and the Justices of Peace by the Hong Kong Government in 2016 and 2019 respectively. Simon was also elected as the Hong Kong Ten Outstanding Young Persons in 2017 with the same recognition. I'm lucky that's all you have, Simon. Otherwise, we'd be here all night listening to all your achievements. But okay. Tell us your story.

Simon Lee Ho-ey: Thank you Allan. Good evening, ladies and gentlemen. I am very happy to be here in the last session. Before this session, speakers were talking about the lawmaking and also some conceptual things about the Basic Law, and up to now, we are talking about the usage of the Basic Law and the “one country, two systems”. Hong Kong is the only common law jurisdiction within China, the common law can bring to us the business sector with both flexibility and also certainty at the same time.

As we all know, flexibility comes from the judge-made law, it is able to respond to the very up-to-date business needs and developments very quickly. But our judges obey with previous cases and consideration, which keeps the consistency of principle. And therefore comes up with certainty. And all these are guaranteed and protected and developed under the Basic Law. If we are talking about the statutes within the Basic Law, talking about economics, it includes Article 108 talking about the tax, Article 109 talking about the economic and legal environment, Article 112 talking about the freedom of investment, Article 115 free trade, Article 8 talking about common law, and last but not least, Article 85 talking about the independence of judiciary. These are all protected under the Basic Law. The most important legislative intent of the Basic Law clearly is reflected from Article 5 of the General Principles Chapter under which

it states that the socialist system and policies shall not be practiced in the HKSAR and the previous capitalist system and way of life shall remain unchanged for 50 years.

Simply speaking, it is the policy of “one country, two systems” together with the spirit of smooth transition. For the former one, it means that under the principle of “one country”, the socialist market economy will not be practiced here so as to grant Hong Kong the greatest freedom in economic development. Such freedom is even greater than the autonomy of Scotland and Northern Ireland enjoying within the UK sovereign. In fact, in accordance with Article 13 of the Basic Law, the Central Government shall be responsible for the foreign affairs relating to the HKSAR. And meanwhile, the Central Government also authorizes the HKSAR Government to conduct relevant external affairs on its own in accordance with the Basic Law; which is clearly stated in Article 151 that allows Hong Kong using the name of “Hong Kong, China” to maintain, to develop and to implement agreements with foreign states and regions, as well as relevant international organizations in the name of economic development.

In respect of the latter, it promises the continuity of the existing public administrative system and the way of living of people in Hong Kong, in particular, the principle of market economy, of capitalism and the spirit behind. The two important founding principles of capitalism are, first, freedom of contract and protection of personal properties. As a whole, one would notice that in relation to economy, the formulation of the articles contained in the Basic Law in fact focus around two sectors: freedom and protection.

Starting from the economic perspective, the most important provisions there, it should be Articles 6 and 105 which respectively

guarantee the protection of personal properties and ownership and foreign investments of corporations. Regarding the matter of freedom, it is further fortified by Chapter V, Economy of the Basic Law that promises trade freedoms which have been provided to the greatest extent. For example, operation freedom of monetary and financial business under Article 110, freedom of foreign exchange under Article 112 and the continuity of the free trade policies under Article 115. In particular, the tariff free policy is to maintain Hong Kong's free trade port status.

In simple words, it is to keep those principles and policies all along being adopted by the government before 1997. Apart from the continuous application of common law and legal systems as stipulated in Article 8, such principles of continuity has been recited and analyzed in the recent Court of Final Appeal Case FACV 6 to 9/2020.¹ The fact of containing article facilitating operation of business in the Basic Law does not suffice. A practical implementation of this legislative intention is also very important. In fact, the success of the implementation of Basic Law depends much on the insistence of the HKSAR on maintaining an independent judiciary which has been highly praised worldwide for the upholding of the principle of rule of law, a corruption-free and also efficient public administration, and last but not least, a stable and secure social environment. We should understand that everything about the “one country, two systems” policy is to resolve the issue of Hong Kong and Macau, and realize the peaceful reunification of the country – it's people-centered. Indeed, the Central Government has emphasized repeatedly over time that the Government of the HKSAR has the responsibility and obligation to develop its economy and improve people's livelihood

1 *Kwok Wing Hang & Others v Chief Executive in Council & Another* (2020) 23 HKCFAR 518.

and the city's prosperity. It is desirable from the special policies practiced by the Central Government in Hong Kong and the high degree of autonomy granted by the Basic Law that one of the key purposes is to make the life of Hong Kong residents better, and even better after the reunification with the Motherland, not the other way round.

In addition, Hong Kong, on the one hand, serves as a bridge between eastern and western culture, our nation and the rest of the world. And on the other hand, we act as a gateway for the foreign enterprises who want to establish business in the Mainland. Such a unique arrangement and cooperation in fact shape the unique financial and economic status of Hong Kong. Let's talk something about the Greater Bay Area, which is mainly what I'm working for China Resources now, on the Greater Bay Area Business.

Regarding the Greater Bay Area, generally speaking, there is a certain consensus in Hong Kong on the development of the Greater Bay Area; believing that it can open up new spaces for development and new opportunities to Hong Kong, not only in the business field, but for the young people, for different aspects in the society. However, in the face of the unstable global situation and the increasingly common phenomenon of anti-globalization, we need to have a deeper understanding of the international situation so that we can think more about how Hong Kong can give full play to its own strengths, and to link in development direction closely with the country.

In my view, about the role of China Resources, as Guangdong, Hong Kong and Macau deepen their cooperation and as the construction of the Greater Bay Area continues to progress, it is expected that the demand for professional services from enterprises in the Greater Bay Area and other regions will definitely increase. Hong

Kong should take up the important role of going out from Mainland enterprises and become the preferred platform for enterprises in the Greater Bay Area to expand their business overseas.

Hong Kong and the whole Greater Bay Area are presented with historic opportunity: China's major strategy judgement of a dual circulation and the long-term focus of change brought about by the long-standing changes in the international political and economic situation. To explain this issue, we must first clarify and have a correct understanding of China's remarkable economic construction and achievements over the past 40 years which have been based on the introduction of global technology, capital and markets.

In the future, China will definitely go out more deeply and will establish deeper economic links with other countries around the world that lead technology, capital and markets. Nowadays with the opening of the dual circulation and development of China's more profound going out, Hong Kong will also have the opportunity to serve China's going out and to serve a deeper, more efficient and fairer globalization. We may be surrounded by the trade disputes between the US and China or the wave of anti-globalization. But we must believe that the globalization is a global trend, and that is only a small adjustment and wandering in the development path of globalization. In such a progress, recognising a new and significant historical opportunity and finding a place for Hong Kong and the whole Greater Bay Area will give us the next strategic and systematic opportunities.

I firmly believe that these are opportunities for Hong Kong and all the cities in the GBA to integrate deeply and for Hong Kong to become a bridgehead for China's going out. Comparing with the world's three largest bay areas, the GBA is the only *de facto* regional development community where two systems under the "one country"

principle are well implemented. Hong Kong should make good use of the advantages of the “one country, two systems” to serve the need of the country with Hong Kong’s strengths, create border development prospects and write a brand new chapter in the regional cooperation.

I, as an academic scholar, a lawmaker and a professional from the commercial sector, give me the ability to understand the value of Hong Kong’s special status and attractiveness. We have to treasure such opportunity under the framework of the “one country, two systems” as provided in the Basic Law; the GBA development together with the Belt and Road Initiative, relying on our independent judiciary, efficient public administration and also social and political stability. We can strike to attain a new level as an international metropolis for financial trading, a regional hub for dispute mediation and arbitration and a global center for creative innovations. Thank you very much.

Allan Zeman: Thank you very much, Simon. One thing for sure when it comes to GBA, you’re definitely the man to see. We’ll get to you a lot about the GBA for more information. I think that’s the future of Hong Kong for sure. And our last speaker we have here, Mr Toni Younes. He is the founder and CEO of Paul Lafayet. And any of you that have French pastry must know Paul Lafayet. It’s a pastry chain. Paul Lafayet was founded in 2010 by Toni and his son, longing for a taste of home and the fond memories of their favorite patisserie in France. As fine patisserie in Hong Kong were limited to five-star hotels back then, Toni saw an opportunity to fill a gap in the market, and he shifted the business from five-star and made it more accessible to the public. He opened the first store in 2010 in K11 Art Mall and then having nine boutiques in Hong Kong and four in the Mainland cities of Shenzhen and Shanghai now. They plan to open

10 to 15 more boutiques in the GBA including Macau, Shenzhen and Guangzhou as part of its China expansion plan. And Toni is an example of what Hong Kong is all about: attracting international people from all over the world and opening businesses in Hong Kong, flourishing because of our Basic Law, because of all the “one country, two systems”, the lure of China. That’s just while we’re part of China today, 1.4 billion people, and that gives entrepreneurs the dream to open in Hong Kong and expand your business. So, Toni, up to you.

Toni Younes: Okay. Thank you Allan for introducing me. And I would like to thank the Department of Justice for their invitation for this esteemed event. Thanks for the audience and dear colleagues. So I am Toni, as Allan said, the founder of Paul Lafayet. Paul Lafayet is a Hong Kong born company. It is a SME in 2010. So maybe you may ask me why Hong Kong? I used to travel to Asia in the 90s and since then I realized the stopover to Hong Kong was the way to China at that time, that Hong Kong is an Asian flagship window. Hong Kong really has a very good infrastructure, Hong Kong has a robust law legal system. Hong Kong has a lot of talents.

We are SME, but Hong Kong has around 340,000 SMEs. Over 95% of the Hong Kong companies are SMEs. And they employ over 1.5 million people. So it has a lot of entrepreneurial spirit. Really, it’s like a magnet, it attracts you. I don’t know if Allan agrees with me on this magnet of Hong Kong so I can say I was attracted. And moreover, it is a very safe city. So why not? And by today I am happy to say Hong Kong is proudly where I can call it home.

So our story about Paul Lafayet, when I used to travel to Hong Kong in the 90s, before 2000, there was no single coffee chain. Sorry, in Hong Kong, if you need a dessert, a coffee, maybe you have to go to some five-star. I had an office design and trading business like many

who came to Hong Kong in that time. Maybe I came late, but late is better than nothing. So I saw the ladies here together, they started consuming coffee, consuming cakes, consuming wine. I realized that it's a shift in the lifestyle. So what do you do? There is a gap and we can fill the gap. So the idea came and I was in other business, design and trading. I was in love with food, but I am not a chef. But I like this concept. So I realized that it's time to launch a chain. K11 was just under preparation in 2009, so we have a little tiny shop in K11 at that time. We start in January 2010 with K11 and we're still in the same shop. So we decide at that time we need to offer an affordable luxury cake at a reasonable price because not everybody at the time can afford five-star. So this is how the idea came and we started by a central kitchen. A French chef built a team and we opened in 2010. Since then, maybe I can correct Allan, we have ten shops going to be twelve this year in Hong Kong and four in China.

So can I say how was the journey now from 2010 to 2022? Twelve years ago it was a passion. It was fun, it was a lot of hard work. Hong Kong really can offer a chance to someone to build something from nothing. Honestly, if you work hard and you have a strategy, Hong Kong has all the tools, the Government helps and you have a lot of tools in Hong Kong, you have a lot of talent, a lot of hard-working people. You can do something but you have to be focused, you have to be consistent. And also, if you are in the food industry, to last long, you have to be "quality", "quality", "quality". So these are the most important things.

There were very good days, we moved from one shop to ten shops and I can say in 12 years we did around over 15 million macarons. We are very famous for our creme brulee it's a French egg tart. I don't know if somebody has tried here. We have around 86 people in Hong

Kong and I will go to China later. And we can say, people ask us what we do, we offer happiness because you see, for food, you have to have breakfast, lunch and dinner. But for dessert and birthday, it is a happy time. So somehow it is a business of happiness. But is this business of happiness always happy? Not always.

I can say from the journey 2010 till now, it was some tough time in the middle, too much competition. And the landlord was a bit – “price”, “price”, “price”, and “lease”, “lease”, “up”. But I can say 2019 was very tough and it was directly connected to COVID. Early 2020 was really a very difficult time. There are some issues we can control, some are out of our control, and for sure the pandemic is out of control. So we agree with the staff, maybe we need to make some effort on the salary. Nobody was fired and they stayed. It was hard time with the landlord, but it took some time for the landlord to accept and negotiate. But finally they did and we appreciate it. The Government did different plans like ESS (Employment Support Scheme), like bank loan guarantee. It helps a lot. But if I can say something, the bank loan was guaranteed by the Government but the banks were too slow, asking too many things over, so maybe to think about it. So somehow it was a tough time, we made it over and by 2020 in the second part, the business improved, and 2021 was an excellent year.

So maybe I can summarize – it is like a bamboo theory. We bent but we did not break because we are quite small and flexible. So this is the life of SME. From this part, what can we learn? We learn that in Hong Kong even though the landlords are very powerful, but also they are willing to negotiate. You can find always the Government when it's tough time and they will give help. So there are a lot of tools, if you know how to use it, you can move on in your business.

But if your business is not consistent and you don't have a strategy, it's difficult time for everyone.

From Hong Kong, let's go now maybe to China and to the GBA area. When we opened our first shop in 2010, I wanted to open in the heart of Tsim Sha Tsui; I didn't want Happy Valley; I didn't want the Mid-Levels because I wanted to open a shop for Hong Kong and for China. It was the basics that people who know of me and they know of the brand in 12 years, and so we started there. And after a few years of success, we moved to Shanghai and opened a flagship and three shops. We opened a shop by 2019 and it is at head office of China Resources in Shenzhen Bay, but unfortunately to us, it was tough 2019 and tough 2020 till now. We couldn't travel for two years and a half. So our plan in China was to extend to other major cities. But I do think for the GBA area, now Hong Kong is connected to Macau, to Zhuhai, it is easy to go to Shenzhen and I used to go to Shenzhen every Tuesday, it is very well connected to Guangzhou. I mean, we have a hub with around 80 million people with a GDP over US\$1.7 trillion, maybe going to US\$2 to 3 trillion later in the coming years. So it's a mix of finance and service, a mix of entertainment, a mix of trading and industry in Guangzhou, a mix of super technology in Shenzhen.

In Shenzhen, the average age of our target customers is around 30 years and it is exactly the profile of our customers 24, 25 to 45 and 70% are ladies. We are happy for it because they love our sweets. So somehow we plan for this, I think there is a big potential in the GBA area and once its border is more flexible to open, we can deliver from our central kitchen to Macao and Shenzhen. So we have a team here of French chef and our 12 people, maybe I need to say something I didn't say before. Really, we offer all our know-how and many people

here and in China who learnt from our chefs, a few years later they open their own shop and grow their business. So, for the GBA area and for China, we plan from now to the five years to come to open around 100 shops and we expect around 35% will be in the GBA area. Do we believe? Yes, we believe in China, we believe in the future of Hong Kong, it's no doubt. For sure the whole circumstances in the last two or three years were exceptional, it was global, but I think humanity is not at the end, things will come slowly to have a solution. You have to be patient and also when you do business in China, you have to be patient. Time is different. So I think this is a happy business we do, we have around in Hong Kong 85 staff. In China, we have 35 and for sure we will grow. It's like a social and group-team. The staff is teamwork and without this teamwork, I didn't think we could succeed and last till today. So this is what I would like to share with you all. This is our story and feel free for any question, Allan. Thank you very much.

Allan Zeman: Thank you, Toni. Toni is a perfect example of every company, everybody's setting up their base here, who started as a small entrepreneur in Hong Kong and grew not just in Hong Kong, Hans Michael, his company, Toni, myself, many, many people, we've been able to expand using Chinese Mainland and Hong Kong as one. And that's basically how the Basic Law and the security law have really helped Hong Kong, to build Hong Kong, and build Hong Kong to the strong super connector that we are between the West and the East, the East and the West, and all based on our Basic Law system. So we'll go to Hans Michael, we don't want to forget you. Michael, basically, you've done a lot of business in Chinese Mainland for many years and Hong Kong, what advice would you give to people in Hong Kong or even international overseas people that want to do

business in China? What difficulty will they face and how can they be successful like you seem to have mastered all those problems.

Hans Michael Jebesen: Well, I would say consistency is really what matters. Of course, we need all the things we need everywhere else. This is due diligence, this is sound mind, this is a business approach, etc. But consistency matters and it matters to really build up, you know, a sincere relationship with people on all levels. In China, it's business between corporates but individuals do matter and there's a long memory and there's also a long memory for the good things that have happened which I've seen time and time again. So I think spend time and really apply your mind and be aware that China is different. It's not just a mother country. No, it is a culture and it has some very different, you know, value systems and lots of sensitivities. So I think we need to ask a lot of questions and listen before we talk. And we need friends and it's a good place to make friends. My personal experience really is that it's always great when you have things that interest you that are beyond just the dollar sign, right? I mean, of course we are in business and business is business, but at the same time, it's also our life commitment. And we have seen that in our company, why can we attract good people? I think because of the CSR (Corporate Social Responsibility) part, reaching out to the communities, being really part of it and not just the commercial part. This interface I think is important that it's very enriching. So consistency and you know, be real, be sincere and really involve yourself.

Allan Zeman: Okay. That makes sense. For Eric, learning from your sharing, how would you encourage the business sector to embrace the valuable opportunities and maximize the benefits of the national strategies and integration with the Mainland? How can we

strengthen the integration with the Mainland and integrate Hong Kong people into the Mainland using all the national strategies we have?

Eric Ma Siu-cheung: I think that's a very good question. I think a lot of the business sector would like to leverage on the connection between Hong Kong with the Mainland. I think Hong Kong is very unique. I think in Asia we may not be the only clean and efficient common law system city in the world, but we are very unique. Behind us, we got the Mainland with a market of 1.4 billion people and even within the GBA area, we have 90 million population within. So we are very highly connected and in the past years the governments of the two sides have been enhancing the connectivity between both places.

So now in Hong Kong we have the high-speed rail, we can just connect to Mainland cities and go to Guangzhou in just less than an hour, even to neighbor Shenzhen in less than half an hour. So it's very highly connected and gives us all this accessibility. And also in Hong Kong, we got a very good connection between both sides and we have this surplus, enabling in particular for those professional service sectors. They got "a big door opened already" and we are now waiting for the sector to open their small door, to build their operations in those areas. So, like SME, I think that's great opportunities because we have all these opportunities and the framework laid down, and after the pandemic, I think we need to launch a series of re-launching, to re-establish the role of Hong Kong, make the international community know about Hong Kong's advantage, like tourism, trade, the financial sector. All these are very important for Hong Kong and as a bridge between the Mainland and Hong Kong. So I think it's a very good place.

Allan Zeman: It's a very good answer, Eric. And hopefully the Hong Kong Government's listening about re-branding Hong Kong

after this virus leaves us finally and really getting back to where we were and who we are. For yourself, Simon, we all know you're a well-respected scholar and you know the Basic Law very well. Is there any way we can help overseas investors to understand the Basic Law in a more vibrant and pragmatic approach based on your experience in educating the younger generation?

Simon Lee Ho-ey: Well, it's a good question, and we are working on it for more than a decade already. I think it's not a very good way to just talk to them. You can't just mention what Article 1 is talking about and Article 2 and Article 3 etc. and it is too boring and not every young people is going to have their research or academic research on Basic Law. I think the best way is giving them an opportunity to try or to go into the Mainland or experience different kind of things. I think of an example for sharing here, I have a program called "Beyond Your Dream"; trying to give opportunity to the young people and participants to learn how to make their own coffee and then have a training and internship in our cafe, Pacific Coffee. And then we do a business plan with them. If we find a very good business plan and team, we will make investment in them. And there are two shops now opening in Shenzhen already. That is an experience to them. I think it is the best way to let them experience everything; not only in the GBA and also knowing more about the "one country, two systems" and also the Basic Law; not only about talking or giving them a speech; but experience is the best way.

Allan Zeman: I think that of course, experience is always the best thing because of course reading about the Basic Law can be quite boring.

Simon Lee Ho-ey: Not boring to me.

Allan Zeman: For the average person it's not, you know, and so of course experience is always the best thing that I've always found in my career. Just for a while, one last question and a quick one since we're running out of time. For the GBA, Mr Chan was up here earlier and had a very interesting case for Hong Kong and the GBA to work very well. It's "one country, two systems" for sure but two different systems. How do you integrate the borders, the finance, the banks, everything in order to make this great project that we think it will be? We know it will be.

Simon Lee Ho-ey: Let's put it this way; think about why we have the GBA. If we are just talking about cities and cities, they are cooperation. We don't have the necessity to have the GBA. But the uniqueness of the GBA, it is very unique in the world, it is because we have the "one country, two systems" and three places including Guangdong, Macau and Hong Kong. How we can integrate the best system, or the best system to be the whole system in the GBA, is the key to the success of the GBA. For example, when we talk about some construction between Hong Kong, Macao and Guangdong, they have different kind of criteria and principles and systems on which system will be used as the construction criteria. We choose the best one to be the criteria that is an integration. And therefore why we can say that the GBA will have the best system in the world is because after comparing the Hong Kong system, Macao system and the Mainland system, of course the Guangdong system, they have the best system as the system for the GBA and that is an integration. And also of course, we can see that in the legal field, we have the Qianhai lawyer as this is another example that is choosing the best criteria and system for the whole area and region.

Allan Zeman: Thank you. Okay, Toni, you've had an aggressive expansion plan in China, especially in the GBA. And what challenges do you face or opportunities do you see in the regions? What are the challenges you face when you're opening new shops in China and for the GBA?

Toni Younes: I think China as a whole is very open in the GBA or in Chengdu or some other. I think maybe there was something we did wrong in the beginning. If you open in one area, in some operation it is better to have somebody from this area because he knows better. It's a local market and this is the first learning. Maybe the second learning is you have to spend time in China, it is not in one go and when we open a shop, it is a more long-term period. The other learning is: it's a country with one language so it is one market. For the GBA, I think as Simon just said, you have four biggest hubs and it's around 80 million people plus in total. So it's almost ten times Hong Kong and it is a very big market for us. But I may come to you later. Like us, we are based with big central kitchen in Hong Kong. Are we willing to ship to Macau and ship to Shenzhen, or do we have to open another structure in Shenzhen? So this depends on how the structure will be later, how the transport will be between Hong Kong and the GBA area. If it's very fluid, I think it is very good that we can expand faster. And I think many teams from Hong Kong can work in the GBA and main team from the GBA can come to Hong Kong. If it is not it may take some time, but I think in both ways we are willing to go for it.

Allan Zeman: Okay. We still have a little time left and I'll try to make it quick because I know it's getting late. Just going back to Eric for a minute. Well, Hong Kong is recovering from the epidemic. How do you see the city's future prospects and economic development, its


opportunities and challenges? And how do you think it might differ from the existing business environment?

Eric Ma Siu-cheung: I think looking ahead, certainly we have confidence in Hong Kong's people. We've got all the talents here. And you can see over the years, even after these two years in the COVID situation, still the expected population is still roughly maintained and they have confidence in here. So, the most important thing, moving ahead, we need to have trust in ourselves and need to work together. As we already mentioned, as you mentioned earlier, we need to relaunch ourselves, in particular looking at the role of Hong Kong. We are a very unique place in meeting the culture between East and West and we are the link bridge in between. So we should emphasize on the role but not just the business. We need to have our culture, we need to work together and relaunch to the international community: Hong Kong is coming back after the COVID.

Allan Zeman: Good. Good to hear that since it is now 6 pm and I know people are here for a long time. Since I'm the moderator, I'm just going to have the final say for everyone. And so I would just like to say that how important these last 25 years have been, on the 25 year anniversary of the Basic Law, the "one country, two systems". And I feel that in the 1980s, Mr Deng Xiaoping had this idea that people were very nervous I remember I was here and people were very nervous about Hong Kong going back to China. And the first thing Mr Deng Xiaoping said in the 80s, was don't worry, I have an idea "one country, two systems" and this will carry us through. Now, this is an experiment that was never done anywhere else in the world. And these last 25 years, all of you that have been here for 25 years, we have been living the experiment and we've had ups and downs. We've people leaving Hong Kong in 1997. We had the Asian financial

crisis, we had “Occupy Central 2014” and finish-to-start with, of course the COVID virus that everyone else in the world experienced. So we’ve had some very good years, some difficult years.

The one thing we learned is that the Basic Law and actually the security law in 2020 really did help the stability of Hong Kong, help businesses in Hong Kong to prosper and help Hong Kong to prosper. And then, of course, China, understanding, learning about the problems we had in the past and fixing it. 2019 was the combination of the problems, being able to fix it whereby selecting patriots to be in LegCo and patriots to be on the election committee. Like-minded people that can get bills passed because everything in the past was filibustered and that’s why people suffered in Hong Kong because LegCo’s the engine that drives Hong Kong and the bills could not get passed. There was too much division in the LegCo, it took three months, four months, five months sometimes to pass a bill that should take a few days.

In essence, these last 25 years have brought us to where we are today, a safe city, a great city and we will overcome all the problems. And I can tell you in the next 25 years, this will only be up for Hong Kong. We’ll only get stronger and stronger as China continues to grow. And this is my own personal opinion. I just figure that we have a few more minutes and I would end the conference. It’s been a very great day and I just end on these high notes so everyone can have confidence and you can tell all your overseas people who are doubting Hong Kong to come and see Hong Kong. It’s the best it’s ever been and will only get stronger and stronger. So thank you very much everyone for being here and thank you to all the speakers. 

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