

LCQ14: The measures of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" and "allowing Hong Kong-invested enterprises to choose for arbitration to be seated in Hong Kong"

\*\*\*\*\*

Following is a question by the Hon Erik Yim and a written reply by the Secretary for Justice, Mr Paul Lam, SC, in the Legislative Council today (October 8):

Question:

The Second Agreement Concerning Amendment to the Mainland and Hong Kong Closer Economic Partnership Arrangement Agreement on Trade in Services (Amendment Agreement II) brings the addition of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" and "allowing Hong Kong-invested enterprises to choose for arbitration to be seated in Hong Kong" as facilitation measures for Hong Kong investors, supports Hong Kong-invested enterprises registered in the pilot municipalities of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) to adopt Hong Kong law or Macao law as the applicable law in their contracts, and supports Hong Kong-invested enterprises registered in the nine Pearl River Delta municipalities in the GBA to choose Hong Kong or Macao as the seat of arbitration. In addition, the Supreme People's Court and the Ministry of Justice jointly issued the Opinion on Fully Leveraging the Functions of Arbitration to Serve the High-Quality Development of the Guangdong-Hong Kong-Macao Greater Bay Area in February this year to propose the extension details of the two measures. In this connection, will the Government inform this Council:

(1) regarding the addition of the measures of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" and "allowing Hong Kong-invested enterprises to choose for arbitration to be seated in Hong Kong" under Amendment Agreement II, whether the Government will clearly specify their scopes of application, including the industries and types of cases covered; if so, when the relevant details will be announced;

(2) given the views that at present there are differences in the arbitral proceedings between the Mainland and Hong Kong (such as the emergency arbitrator system and application procedures for interim measures), how the Government will take part in formulating the relevant arbitration rules in implementing the measure of "allowing Hong Kong-invested enterprises to choose for arbitration to be seated in Hong Kong", and whether it will promote the adoption of internationally accepted standards; and

(3) given that Guangdong, Hong Kong and Macao have agreed to jointly establish the Panel of GBA Arbitrators, how the Government will ensure that the professional qualifications of local arbitrators align with the standards adopted in the Mainland; whether it will further enhance the various talent admission schemes to attract more international arbitration experts to come to Hong Kong for development?

Reply:

President,

In response to the enquiry raised by the Hon Erik Yim, the reply is as follows:

(1) The measure of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" has been piloted in Qianhai, Shenzhen, since 2020 whereas the measure of "allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration" has been in trial implementation since 2017 in Chinese Mainland's Pilot Free Trade Zones. Both measures have been well received by stakeholders.

In October 2024, Hong Kong Special Administrative Region (SAR) and the Chinese Mainland signed the Second Agreement Concerning Amendment to the Mainland and Hong Kong Closer Economic Partnership Arrangement Agreement on Trade in Services, which, for the first time, incorporated the above two measures into the Mainland and Hong Kong Closer Economic Partnership Arrangement. The amendments support the expansion of the applicable scope of these two measures in the Guangdong-Hong Kong-Macao Greater Bay Area, reflecting the Central Government's emphasis and support for Hong Kong's legal system.

The extension of both measures has been in force since February 14, 2025. Details such as the applicable scope are set out in: (1) the Supreme People's Court's "Official Reply on the Issues concerning the Validity of the Adoption of Hong Kong or Macao Law as the Applicable Law of Contracts or the Designation of Hong Kong or Macao as the Seat of Arbitration by Hong Kong or Macao-Invested Enterprises Registered in the Mainland Part of the Guangdong-Hong Kong-Macao Greater Bay Area" (Fa Shi No. 3 [2025]); and (2) "Opinion on Fully Leveraging the Functions of Arbitration to Serve the High-Quality Development of the Guangdong-Hong Kong-Macao Greater Bay Area" jointly issued by the Supreme People's Court and the Ministry of Justice.

According to the two documents issued by the Supreme People's Court and the Ministry of Justice, the details of the expansion are as follows:

- The "allowing Hong Kong-invested enterprises to adopt Hong Kong law" measure is extended from Qianhai, Shenzhen to the whole of Shenzhen and Zhuhai municipalities. After the expansion, where either party or both parties are Hong Kong-invested enterprises registered in Shenzhen or Zhuhai, the parties may agree to choose Hong Kong or Macao law as the law applicable to the contract;
- The "allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration" measure, previously applicable to Pilot Free Trade Zones in the Chinese Mainland, is further extended to nine Mainland municipalities in the GBA. After the expansion, where either party or both parties are Hong Kong-invested enterprises established and registered in any of the said municipalities, the parties may agree to choose Hong Kong or Macao as the seat of arbitration even in the absence of "Hong Kong/Macao-related elements"; and

- The definition of "Hong Kong-invested enterprise" is broadened: enterprises which are wholly or partially invested by natural persons, enterprises or other organisations from the Hong Kong SAR and are established and registered in the Chinese Mainland in accordance with its laws, may benefit from these measures.

Whether an enterprise can benefit from the above two measures depends on its place of registration and whether it is Hong Kong-invested as defined above. There are no restrictions on industry or case type. In other words, any Hong Kong-invested enterprise registered in a qualifying location can benefit from the respective measures.

(2) As the only common law jurisdiction in China, Hong Kong has a mature and modern arbitration system that is highly aligned with international best practice. In terms of legal framework, Hong Kong's Arbitration Ordinance (Cap. 609) is based on the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, providing a basic legal framework for arbitration including judicial safeguards and support.

Under the principle of party autonomy, parties are free to choose the arbitral institutions, arbitration rules, etc to govern their specific arbitral proceedings. Arbitral institutions operate independently and are not subject to government interference.

According to the latest International Arbitration Survey conducted by Queen Mary University of London, Hong Kong is ranked the second most preferred seat of arbitration globally, along with Singapore. This reflects the maturity and comprehensiveness of Hong Kong's arbitration legal framework, which is recognised by the international business community. Furthermore, the Hong Kong International Arbitration Centre Rules is ranked the second most preferred set of arbitration rules globally in the same survey, demonstrating the trust and willingness of parties from various jurisdictions to conduct arbitral proceedings in Hong Kong.

(3) Regarding the professional qualifications of arbitrators

To establish the Panel of Guangdong-Hong Kong-Macao Greater Bay Area Arbitrators (Panel of GBA Arbitrators), the Department of Justice (DoJ) and the legal departments of Guangdong and Macao, have jointly promulgated the Working Guidelines on the Panel of GBA Arbitrators (Working Guidelines) on July 30, 2025. The Working Guidelines set out the criteria recognised by the three places for nominating arbitrators to ensure the professionalism of GBA arbitrators.

The criteria for nomination of GBA arbitrators include: (1) upholding 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, the Basic Law of the Macao Special Administrative Region of the People's Republic of China; (2) possessing good professional ethics with no record of disciplinary action for negative reputation or professional misconduct; (3) being included in the list of arbitrators by arbitral institutions in two out of the three places, namely Mainland, Hong Kong and Macao; (4)

possessing more than five years of experience as an arbitrator; (5) having served as an arbitrator and drafted awards for at least five arbitration cases, of which at least three were cross-jurisdictional arbitration cases; (6) proficient in Putonghua (or Cantonese) and at least one language other than Chinese.

The Guangdong-Hong Kong-Macao Greater Bay Area Legal Departments Joint Conference (Joint Conference) may, depending on the actual circumstances of the nominated arbitrator, exercise its discretion to exempt one or more of the requirement(s) among items (3) to (6) above. The legal departments of the three places may, having regard to their local actual circumstances, impose additional local criteria for nomination in addition to the above-mentioned unified criteria for nomination, and report to the Joint Conference for record.

The DoJ is actively liaising with the relevant authorities in Guangdong and Macao, aiming to establish the Panel of GBA Arbitrators before the end of this year, and to encourage the use of arbitration in the GBA and provide greater convenience for users.

Regarding talent admission mechanisms

The Government is committed to strengthening Hong Kong's position as an international legal and dispute resolution services centre and has introduced a series of policies to attract and facilitate international arbitration experts to conduct arbitration-related work in Hong Kong.

The Government promulgated the first Talent List of Hong Kong in 2018, aiming to attract high quality talents more effectively and in a focused manner to support Hong Kong's high value-added and diversified economy. The Talent List has been continuously updated and refined. Under the current Talent List, arbitrators specialising in resolving international commercial, financial and investor-state disputes are already included in the category of Dispute Resolution Professionals.

The Government has also regularised the Immigration Facilitation Scheme for Persons Participating in Arbitral Proceedings in Hong Kong (Scheme) with effect from March 1, 2025. Under the Scheme, relevant individuals are allowed to participate in arbitral proceedings in Hong Kong as visitors without the need to obtain an employment visa if they are in possession of a letter of proof issued by a designated arbitral and dispute resolution institution or venue provider proving that they are eligible persons participating in arbitral proceedings in Hong Kong.

This refined Scheme covers five categories of persons: (1) arbitrators; (2) expert and factual witnesses; (3) counsel in the arbitration; (4) parties to the arbitration; and (5) other persons directly related to or involved in the arbitration such as tribunal secretaries, tribunal-appointed experts.

The Government will continue to closely monitor the implementation of the relevant policy initiatives, and review and refine them in a timely manner.

Ends/Wednesday, October 8, 2025