

**Belt and Road Forum on Trade and Investment Legal Services –
Development of the Greater Bay Area and China-EU Economic and Trade Cooperation
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(English translation of the speech delivered in Chinese)

Mr Patrick Dransfield, Ms Qiu Ailing, distinguished guests, ladies and gentlemen,

Good afternoon. It is my great pleasure to join you today for this annual In-House Congress on behalf of the Department of Justice (DoJ) of Hong Kong. In-house counsel play a crucial role for enterprises. Apart from rendering assistance in resolving legal disputes when they arise, in-house counsel also help to avoid disputes for enterprises by properly managing the legal risks and ensuring compliance with the relevant laws and regulations when conducting the business, which are by no means simple or straight forward. Likewise, the Inclusive Dispute Avoidance and Resolution (IDAR) Office under my purview established by the Secretary for Justice last January also aims to further promote dispute avoidance and resolution services in Hong Kong.

China-European Union (EU) Economic and Trade Cooperation

2. The topic today is Development of the Greater Bay Area and China-EU Economic and Trade Cooperation. Recent years have witnessed active efforts of China in developing partnership with other economies, in particular Europe. Following President XI Jinping's trip to Europe for his state visits to Italy, Monaco and France in March this year, such issues as China-EU economic and trade cooperation and the Belt and Road Initiative have recaptured extensive global attention¹.

3. The EU has remained China's largest trading partner for 15 consecutive years, whereas China is the EU's second largest trading partner. According to the statistics of the General Administration of Customs of China, the trade volume between China and the EU hit a new record high of over USD 682 (682.2) billion in 2018².

¹ <https://www.yidaiyilu.gov.cn/xwzx/gnxw/83603.htm> (Chinese only)

² <http://english.mofcom.gov.cn/article/newsrelease/press/201904/20190402856213.shtml>;
<http://frankfurt.mofcom.gov.cn/article/xgjg/201903/20190302846394.shtml> (Chinese only)

4. China is a very important economic and trading partner to not just the EU itself but also individual European states. For instance, Germany has topped the list of China's economic and trading partner in Europe for many years while China has been Germany's largest economic and trading partner worldwide for three consecutive years. In 2018, their bilateral trade volume exceeded USD 180 (183.88) billion. In addition, of all EU states, Germany is the largest direct investor in China³.

5. The development of economic and trade ties between China and Europe has brought enormous tangible benefits. Take for example the China-Europe Railway Express (CR Express), an overland freight line launched in 2011. It provides international intermodal container rail services between China and Europe and across the Belt and Road countries, connecting 59 Chinese cities with 50 cities in 15 European countries through its land routes. As at the end of March 2019, the CR Express has made a cumulative of more than 14,000 runs transporting over 1.1 million TEUs⁴. It was reported that delivery of a shipment by sea from China to the European hinterland, such as from Wuhan to Lyon in France, takes more than a month, while the CR Express takes only 15 days for the journey, saving ten days or so on average compared to conventional sea freight and only at a fraction of the cost of air freight⁵. Another case in point is the German city of Duisburg. The fact that Duisburg is the first major en-route stop of the CR Express in Europe has turned the city into Europe's central logistics hub, giving the locals more employment opportunities⁶.

Opportunities in the Guangdong-Hong Kong-Macao Greater Bay Area (Greater Bay Area)

6. With the continuous growth of China-EU economy and trade, a notable concern is how the Greater Bay Area seizes the opportunity and takes part in it. We noted that as China is increasingly opening up, European enterprises have also taken the opportunity to expand their investment in the Mainland. For instance, BMW, the German car manufacturing giant, will invest an additional 3 billion euros to expand its production

³ https://www.fmprc.gov.cn/web/gjhdq_676201/gj_676203/oz_678770/1206_679086/sbgx_679090/ (Chinese version only)
<http://ozs.mofcom.gov.cn/article/zojmgx/date/201903/20190302846188.shtml> (Chinese only)

⁴ TEU stands for Twenty-foot Equivalent Unit. The short form is used as the unit for easy calculation of the number of containers on the basis of each standard-size container measuring 20 feet in length. It is an international container measurement unit.

⁵ <http://global.chinadaily.com.cn/a/201904/15/WS5cb3e576a3104842260b631c.html>

⁶ http://m.xinhuanet.com/hb/2018-12/29/c_1123926278.htm (Chinese only)

capacity in Shenyang, turning the city into BMW's largest production base worldwide⁷. Another example is BT, the British telecom company with a history of over 150 years, which announced in January this year that it was the first foreign enterprise awarded a permit for operation of value-added telecom services in China⁸. With the passage of the Foreign Investment Law of the People's Republic of China⁹ in March this year, China has incentivised entry of foreign investments in parallel with efforts to encourage Mainland enterprises to "go global"¹⁰.

7. The Greater Bay Area has the unique strength of one country, two systems and three jurisdictions. The Central Government's official promulgation of the Outline Development Plan for the Greater Bay Area (Outline Development Plan) on 18 February this year, which set out the directions guiding the development of the Greater Bay Area, signified that the development of the Greater Bay Area entered into an important stage of full-fledged implementation. Lying along the forefront of China's coastal economic open zones and stretching into the vast development hinterland of the Pan-Pearl River Delta Region, the Greater Bay Area occupies an important position in the Belt and Road Initiative¹¹.

8. In fact, the Greater Bay Area boasts an area of approximately 56,000 km² and a population of over 68 million people, which means it is bigger than the Netherlands¹² and comparable in population size to the United Kingdom¹³, giving it many advantages to attract foreign investment.

9. Legal and dispute resolution services play a pivotal role in cross-border transactions. Whether for European enterprises "entering the Mainland market" or Mainland enterprises "going global", they inevitably require legal risk management in respect of offshore financing, cross-border mergers and acquisitions, contract negotiation and management, intellectual property protection, recruitment and taxation.

⁷ <http://www.chinadaily.com.cn/a/201810/11/WS5bbf0affa310eff303281dcd.html>;
<http://www.chinatradenews.com.cn/content/201904/08/c61676.html> (Chinese only)

⁸ <http://www.chinadaily.com.cn/a/201901/29/WS5c4fbdfca3106c65c34e70b2.html>;
<http://www.chinatradenews.com.cn/content/201904/08/c61676.html> (Chinese only)

⁹ It will come into force on 1 January 2020.

¹⁰ <http://www.chinatradenews.com.cn/content/201904/08/c61676.html> (Chinese only)

¹¹ See Section 1 of Chapter 1 of the Outline Development Plan.

¹² The Netherlands occupies an area of approximately 41,000 km².
(<https://www.worldatlas.com/webimage/countrys/europe/nl.htm>)

¹³ The population of the United Kingdom is approximately 66 million (2017).
(<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>)

10. A *Survey Report on Chinese Enterprises Going Global*, jointly released by the China Institute of Corporate Legal Affairs and LexisNexis for three consecutive years, pointed out in its 2015-2016 issue that more than half of the Mainland enterprise respondents had been involved in civil litigation or arbitration relating to their overseas investments in the course of going global.

11. For three consecutive years, the surveys have revealed that civil litigation and arbitration have been the main dispute resolution processes while the use of arbitration shows a rising trend¹⁴. Legal issues as to how to effectively protect overseas investment assets and resolve cross-border commercial and investment disputes are of utmost importance.

12. The Outline Development Plan unequivocally supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region, and the centre for investment and commercial dispute resolution services for projects relating to the Belt and Road Initiative¹⁵. I am confident that with the Greater Bay Area cities working together in full cooperation and leveraging on their respective edges, the Greater Bay Area can surely unleash its full potential and provide solid support for the Belt and Road Initiative¹⁶.

Measures recommended for the Greater Bay Area

13. I would like to take the opportunity today to share with you recommendations on the development of the Greater Bay Area made by the Hong Kong legal sector in respect of the following five directions:

i. Wider application of Hong Kong law

14. Under current Mainland laws, two Mainland parties (including wholly owned foreign enterprises and joint ventures set up by overseas investors) who enter into a contract must adopt Mainland law in the absence of any foreign-related elements. Hong Kong is a springboard to enter the Mainland market for numerous foreign enterprises that will first set up companies in Hong Kong before investing in the Mainland. In the context of the development of the Greater Bay Area, given the above situation, it is hoped that Hong Kong law can be chosen as the governing law applicable to a contract. In that case, wholly owned Hong Kong enterprises and joint ventures set up by Hong Kong investors in the Mainland can

¹⁴ *2017-2018 Survey Report on Chinese Enterprises Going Global*, p.13

¹⁵ See Section 2 of Chapter 3 and Section 3 of Chapter 9 of the Outline Development Plan.

¹⁶ See paragraph 1 of Chapter 9 of the Outline Development Plan.

choose to adopt Hong Kong law, which is more familiar to them, thus giving investors better confidence and protection in doing business in the Mainland.

ii. Wider use of Hong Kong as a place of arbitration outside the Mainland

15. Some views suggested that Mainland parties must choose to submit a dispute for arbitration in the Mainland in the absence of any foreign-related elements. Given the increasingly important role of arbitration in dispute resolution, it is hoped that any two Mainland parties to a civil and commercial contract or case in the Greater Bay Area would still be allowed to submit a related dispute for arbitration in Hong Kong under mutual agreement even in the absence of any foreign-related elements. This is absolutely attractive to foreign enterprises since Hong Kong has put in place a well-developed arbitration law which is amended from time to time to keep abreast of international developments while our courts also support the use of arbitration for dispute resolution.

iii. Expanding the scope of practice of Hong Kong legal practitioners

16. In light of growing economic and trade activities between Hong Kong and the Mainland, especially in the course of developing the Greater Bay Area, cases concerning Hong Kong will increase. Taking the Qianhai Court as an example, the number of cases it received concerning Hong Kong ranks the top nationwide. To better and more effectively resolve such cases, we recommend implementing a pilot scheme where Hong Kong and Mainland legal practitioners may jointly appear for their clients at the hearing in appropriate cases concerning Hong Kong (e.g. cases where Hong Kong law is applicable) in courts of the Greater Bay Area (e.g. the Qianhai Court) so that they can present the legal points of Hong Kong law to the Mainland courts. It is believed that this can assist Mainland courts in gaining a more accurate understanding of the legal issues in cases concerning Hong Kong, and enhancing efficiency in the resolution of cases and the credibility of judgments.

iv. Setting up a Greater Bay Area mediation platform and exploring a unified dispute resolution neutral third party accreditation standard

17. Arbitration aside, we also advocate the use of mediation for dispute resolution. For instance, the Mainland and Hong Kong signed the investment agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement, allowing Hong Kong investors to use mediation as a means to resolve disputes arising in the course of their investments in the Mainland.

18. Given the many distinctive provisions in the laws and regulations of the Mainland, Hong Kong and Macau, together with the considerable differences among their legal systems, the use of mediation for dispute resolution is highly preferable. However, there are discrepancies in the development of mediation in the three jurisdictions in terms of mediation systems and models, roles and qualification requirements of mediators and mediation rules.

19. Therefore, we recommend setting up a Greater Bay Area mediation platform under a unified mediators' accreditation system and mediation rules to promote the use and development of mediation in the Greater Bay Area. The platform may be co-founded by leading mediation institutions of Hong Kong, Macau and those within the Greater Bay Area. It can serve the functions of not only governing and standard setting, but also establishing a panel of Greater Bay Area mediators.

20. A mediator could be enrolled to the panel of mediators after satisfying the unified mediators' accreditation system. Under the unified standard, mediations of each jurisdiction will be conducted by member organisations in accordance with their local laws and regulations. This can, within the Greater Bay Area, enhance the confidence of mediation users, facilitate the use of mediation and support the development of dispute resolution.

v. Developing a capacity building and exchange platform

21. The Greater Bay Area enjoys the unique feature of one country, two systems and three jurisdictions, which is distinct from any other bay areas in the world. The legal sectors in the three jurisdictions should acquire a better understanding of their counterparts in order to complement one another and provide necessary support to the development of the Greater Bay Area. We recommend developing a capacity building and exchange platform to enable regular exchanges among professionals in the three jurisdictions and practitioners in jurisdictions along the Belt and Road so they can better understand the different legal systems and business environments in the Greater Bay Area. This can help promote the rule of law in the Greater Bay Area and jurisdictions along the Belt and Road.

22. I believe that the above recommendations can become the propellants of the Greater Bay Area, helping the cities therein to bring their strengths and potential into full play in contribution to the China-EU economic and trade co-operation and the Belt and Road Initiative.

23. In closing, I wish today's forum a great success.