

**Netherlands Hong Kong Business Association (NHKBA) –
Seminar, Cocktail Reception & Dinner**

**The Greater Bay Initiative
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Good evening. It gives me great pleasure to join you tonight at this gala dinner co-organised by the Netherlands Hong Kong Business Association (NHKBA), Brussels ETO, HKTDC and InvestHK. NHKBA has been playing an important role in fostering the long-standing relationship between Netherlands and Hong Kong, as well as that with Guangdong and Macao¹. We already have an interesting and informative seminar earlier today on the Greater Bay Area and I would like to take this opportunity to share with you on behalf of the Department of Justice on the opportunities arising from the Greater Bay Area development from the perspective of Hong Kong as an ideal hub for dealing making and dispute resolution.

Greater Bay Area

2. To recap, the Greater Bay Area Initiative is a brand new development plan at the national level. It was first introduced by our Premier Li Keqiang in March 2017 in his Report of the Work of the PRC Government.
3. On 18 February this year, the Central People's Government promulgated the Outline Development Plan for the Greater Bay Area (Outline Development Plan), which sets out the directions guiding the development of the Greater Bay Area. This also signifies that the development of the Greater Bay Area has entered into an important stage of full-fledged implementation.
4. In fact, the Greater Bay Area boasts an area of approximately 56,000 km² and a population of over 69 million people in 2017², which means it is bigger than the Netherlands and comparable in population size to the United Kingdom. Moreover, the Greater Bay Area has a GDP of around US\$1.5 trillion which is equivalent to that of South Korea or Russia³. On the employment front, more than 44 million people were employed in the Greater Bay Area in 2017 and the

1 <https://www.nhkba.nl/about/>

2 <https://www.dsec.gov.mo/BayArea/Data.aspx>

3 <https://www.investopedia.com/insights/worlds-top-economies/>

unemployment rate of each city held steady at a relatively low level between 2% and 3.1%⁴.

The Outline Development Plan

5. The Greater Bay Area is one of the most open and economically vibrant regions in China. It will facilitate the building of a new system of open economy in line with international standards and the development of a new platform for high-level international co-operation. Under the Outline Development Plan, the Greater Bay Area has a distinctive cluster advantage and complementary strengths in resources. For example, the highly developed financial and professional services sectors in Hong Kong and Macao, the high-tech manufacturing and innovative industries in Shenzhen, as well as the manufacturing and other strengths in the remaining cities in Guangdong province can all play a significant role and provide distinctive incentives for investors.

6. The Greater Bay Area Initiative is also closely linked to China's Belt and Road Initiative. From a geographical perspective, the Greater Bay Area sits at the forefront coastal area of China with the Pan-Pearl River Delta Region as its hinterland. As the Greater Bay Area develops, it can also act as a catalyst for the Belt and Road Initiative by serving as a key link connecting countries along the Belt and Road.

HK/China-Netherlands relation

China-Netherlands relation

7. We have in recent years witnessed active efforts of China in developing closer economic 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, topical issues such as China-EU economic and trade co-operation and the Belt and Road Initiative have recaptured extensive global attention⁵.

8. Speaking of the Netherlands, our Premier Li Keqiang visited the Netherlands in October last year and both countries signed a series of agreements worth close to US\$10 billion. It definitely ushered new confidence that the Sino-Dutch trade and investment ties will continue to thrive.

9. Let me highlight some statistics to show the close ties between China and the Netherlands. For instance, the Netherlands is the second largest trading

4 <https://www.dsec.gov.mo/BayArea/Data.aspx>

5 <https://www.yidaiyilu.gov.cn/xwzx/gnxw/83603.htm>

partner of China in Europe⁶ and China is the largest importer of the Netherlands⁷. In terms of foreign investment, China has become the second largest source of foreign investment in the Netherlands for six consecutive years⁸. Chinese companies have also established more than 680 direct investment companies in the Netherlands, creating more than 15,000 jobs for the local area⁹.

10. The development of economic and trade ties between China and the Netherlands has brought mutual tangible benefits, in particular in terms of the Netherlands being the “gateway to Europe,” playing a key role as a connective logistics hub¹⁰. Take for example the first rail shuttle between China and the Netherlands “Chengdu-Tilburg-Rotterdam-Express” launched in November 2016. The train can load 41 containers and takes 15 days. It was reported to be one-third faster than a ship and at a quarter of the cost of air freight. Many of the goods are forwarded to Scandinavia or Southern Europe via Rotterdam¹¹.

11. Addressing the great demand of rail freight service, the railway service connecting Amsterdam and China’s Yiwu was launched on 7 March 2018. Yiwu is located in the Eastern China’s Zhejiang province which is known as “the world’s largest wholesale market for daily commodities”¹². A block train departed from the Port of Amsterdam on its 11,000-kilometer journey through Germany, Poland, Belarus, Russia and Kazakhstan¹³, it takes 16 days to arrive Yiwu¹⁴.

Hong Kong-Netherlands relation

12. Apart from the above, Hong Kong, in particular, has a very close relationship with the Netherlands. The Netherlands is the 15th largest trading partner of Hong Kong, with a total trade of HK\$925 million in 2018¹⁵ and is the 4th largest source of foreign investment in Hong Kong¹⁶. It is also reported that there are thousands of Dutch people working or living in Hong Kong, making it one of the largest Dutch communities in Asia.

6 <http://ozs.mofcom.gov.cn/article/zojmgx/date/201903/20190302846188.shtml>

7 <http://ozs.mofcom.gov.cn/article/zojmgx/date/201903/20190302846188.shtml>

8 <https://www.jfdaily.com/news/detail?id=103772>

9 <https://www.jfdaily.com/news/detail?id=103772>

10 <https://www.china-briefing.com/news/china-netherlands-trade-investment-strong-new-opportunities/>

11 <https://www.portofrotterdam.com/en/news-and-press-releases/chengdu-tilburg-rotterdam-express-has-been-making-three-trips-per-week-since?subsite=asia>,

<https://china.investinholland.com/%e8%8d%b7%e5%85%b0%e9%b9%bf%e7%89%b9%e4%b8%b9%e6%b8%af%e5%8a%a0%e5%85%a5%e4%b8%ad%e6%ac%a7%e7%8f%ad%e5%88%97%e6%88%90%e9%83%bd-%e8%92%82%e5%b0%94%e5%a0%a1%e8%b7%af%e7%ba%bf/>

12 http://www.xinhuanet.com/english/2018-10/31/c_137570309.htm

13 <https://www.railfreight.com/specials/2018/03/07/amsterdam-added-to-new-silk-road-with-new-rail-freight-line/>

14 <https://asia.nikkei.com/Politics/International-relations/China-s-shrewd-bet-on-intercontinental-rail>

15 https://www.tid.gov.hk/mobile/tc_chi/trade_relations/mainland/trade.html

16 <https://www.capital-hk.com/feature/feature/te-bie-jie-mu-he-lan-ri-tan-suo-feng-fu-wen-hua>

13. Most of you present today are experienced businessmen or advisers to enterprises who are no stranger in conducting business in China, including Hong Kong. You will appreciate that there are a few key factors that one should consider before deciding where to conduct a deal. For instance, the legal risk of conducting business, the prospect of maximising profit, the availability of financing and the overall business environment should be among the top of the list.

14. If your business or your client is looking to invest in the Greater Bay Area, Hong Kong will be a natural choice given that it is an international one-stop shop that can provide all the services you need for the whole investment cycle, which at the same time gives you direct access to the manufacturing base and the fast-growing market in Mainland China.

Hong Kong's roles and advantages in the Greater Bay Area

Robust legal system

15. The Greater Bay Area has the unique strength of one country, two systems and three jurisdictions. Hong Kong's strengths are deeply rooted under "one country, two systems". The status as a special administrative region allows Hong Kong to adopt a different legal system from the rest of China. The Greater Bay Area is the only bay area in the world that comprises three different legal jurisdictions operating in the same country. To illustrate, the nine cities in Guangdong province operate under the Chinese civil law system and Macao's legal system is broadly based on the Portuguese continental civil law system.

16. Hong Kong is the only place in China where the common law system is adopted. Such system may be more familiar to the international business community. Our comprehensive legislation and case law can also provide sound legal protection for the transactions and investments in the Greater Bay Area.

17. Our judiciary is world famous for its quality, independence and impartiality, as well as its support of arbitration and mediation. According to the Global Competitiveness Report 2018 published by the World Economic Forum, Hong Kong ranked 8th in judicial independence out of 140 countries and economies and the 1st in Asia¹⁷.

18. A familiar and highly recognised legal system will certainly provide confidence to the overseas enterprises when using Hong Kong as the deal-making hub for investment in the Greater Bay Area.

17 <http://reports.weforum.org/global-competitiveness-report-2018/competitiveness-rankings/#series=EOSQ144>

19. I would also like to reassure you that Hong Kong's legal professionals have rich experience in handling international trade. They can provide comprehensive and professional services throughout the whole investment process, ranging from deal structure planning, due diligence to contract negotiations and drafting.

Effective dispute resolution

20. Everyone should prepare for a rainy day. Apart from formulating risk management policies and their dispute avoidance measures in the early stage of investment, one should also ensure that there is an effective dispute resolution mechanism, when a dispute arises.

21. It has been the steadfast policy for Hong Kong to enhance its status as a leading international legal and dispute resolution services centre in the Asia-Pacific region and beyond. My office, Inclusive Dispute Avoidance and Resolution (IDAR) Office, established by the Secretary for Justice this January also aims to further promote dispute avoidance and resolution services in Hong Kong.

22. As you may know, agreeing on the dispute resolution clause is not an easy task in contract negotiation, especially when the parties come from different backgrounds. For example, when a Dutch enterprise enters into a contract with a Chinese counterpart, the Dutch party may prefer London or Paris as the seat of arbitration, while the Chinese party may prefer the arbitration to be seated in Beijing. Hong Kong can be the perfect middle way solution as it can serve as a neutral venue for both parties. The Chinese party can benefit from the bilingual language skills and international arbitration experience possessed by the dispute resolution professionals in Hong Kong. On the other hand, the Dutch party can resolve the dispute in a jurisdiction using arbitration rules which they are more familiar and comfortable with.

23. Hong Kong has an arbitration friendly legal system. Our legislation on arbitration and mediation are at the forefront of international developments and amendments are made regularly to keep in line with the latest international standard.

24. In terms of enforcement of arbitral awards, Hong Kong arbitration awards can be enforced locally, in Mainland China and Macao, as well as in other 150 countries that are parties to the New York Convention. Besides, arbitration awards from non-Convention countries can be enforced in Hong Kong following similar enforcement procedure. I am also delighted to share with you all that Mainland and Hong Kong signed an arrangement on interim measures in April

this year, making Hong Kong the first jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitral proceedings administered by designated arbitral institutions in Hong Kong will be able to apply to the Mainland courts for interim measures under the arrangement. This marks Hong Kong's strengths under the principle of "one country, two systems" and enhances Hong Kong's competitiveness in international arbitration services and further strengthens Hong Kong's status as the centre for international legal and dispute resolution services in the Asia-Pacific Region.

25. Legal and dispute resolution services play a key role in cross-border transactions. 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 Initiatives¹⁸. Hence, Hong Kong is the ideal place that you can look to when planning your investment in the Greater Bay Area or in other parts of China.

Proposed Initiatives for the Greater Bay Area

26. Finally, I would like to share with you about some proposals from the Hong Kong legal sector for the development of the Greater Bay Area:

i. Wider application of Hong Kong law

27. Under current Mainland laws, companies set up in the Mainland by foreign investors including Dutch and Hong Kong investors are regarded as Chinese legal persons. Contracts concluded by such Chinese legal persons should apply the Mainland Chinese law in the absence of any foreign-related elements. In the context of the development of the Greater Bay Area, we propose that such Chinese legal persons be allowed to choose Hong Kong law as the governing law of a contract whether or not there is any foreign-related elements. In that case, Mainland companies set up by Dutch and Hong Kong investors can choose to adopt Hong Kong law, which is more familiar to them, thus giving investors better confidence and protection in doing business in the Greater Bay Area.

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

28. Foreign-related elements are also needed if parties to a contract want to submit their dispute to arbitration outside the Mainland. We propose that regardless of the absence of any foreign-related elements, parties to a civil and commercial contract in the Greater Bay Area would be allowed to submit a dispute for arbitration in Hong Kong under mutual agreement. We believe this will provide more options to contracting parties. Further, Hong Kong is an ideal

¹⁸ See Section 3 of Chapter 9 of the Outline Development Plan.

place for resolution of disputes as I have just briefly explained.

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

29. To resolve disputes invoking Hong Kong investors and businesses in the Mainland more effectively, we recommend implementing a pilot scheme where Hong Kong and Mainland legal practitioners may jointly represent their clients at the hearing in appropriate cases involving Hong Kong parties (e.g. cases where Hong Kong law is applicable) in courts of the Greater Bay Area.

iv. Setting up a Greater Bay Area mediation platform and exploring a unified accreditation standard

30. Arbitration aside, we also advocate the use of mediation for dispute resolution. For instance, the Mainland and Hong Kong signed an Investment Agreement under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement, allowing Hong Kong investors to use mediation as a means to resolve disputes for their investments in the Mainland.

31. Given the many different provisions in the laws and regulations of the Mainland, Hong Kong and Macao, coupled with the considerable differences among their legal systems, the use of mediation for dispute resolution is highly preferable in the Greater Bay Area. However, there are variations in different aspects of the mediation mechanism in the three jurisdictions such as mediation systems and models, roles and qualification requirements of mediators and mediation rules.

32. Therefore, we propose setting up a Greater Bay Area mediation platform with a unified mediators' accreditation system and mediation rules so as to promote the use and development of mediation in 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. Foreign investors can make good use of this mediation platform once it is established.

33. 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. Within the Greater Bay Area, this can 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

34. As I mentioned, 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 hope to develop 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, which will make the Greater Bay Area a more attractive place for foreign investment.

35. I believe that the above proposals from the Hong Kong legal sector would be useful for all the investors and businesses in the Greater Bay Area, which could also contribute to the HK/China-Netherlands economic and trade co-operation. Meanwhile, let's have a warm and enjoyable evening!

36. Thank you very much.