



Department of Justice  
The Government of the Hong Kong  
Special Administrative Region

# Introduction to the work of the IDAR Office

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*Commissioner*

*Inclusive Dispute Avoidance and Resolution (IDAR) Office*

*Department of Justice*

**11 July 2019**



# Establishment of the IDAR Office

## (since 2.1.2019)

- (a) To better **coordinate** and **implement** various initiatives in the areas of **dispute avoidance and resolution** (as well as overcoming challenges and harnessing additional opportunities offered by the **Belt and Road Initiative** and the **Guangdong-Hong Kong-Macao Greater Bay Area Plan**);
- (b) To facilitate access to justice and provide equal opportunities for all without boundary, advancing **Goal 16** of the **United Nations 2030 Sustainable Development Goals** - promotion of peaceful and inclusive societies for sustainable development, provision of access to justice for all and building of effective, accountable and inclusive institutions at all levels.



# New and Ongoing Initiatives

- Seek to conclude **cooperation arrangements** with other jurisdictions and international organisations. (e.g. MoC with Japan signed on 9 Jan 2019)
- Organize, support or encourage important **international and regional events and activities** in Hong Kong. (e.g. PPP Conference in Jan 2019)
- Organise events and provide **capacity building** outside Hong Kong
- Arrange **visits** to the Mainland, Asia, Europe and America



# Capacity Building Programmes

- Work with international, regional and local bodies to organise or co-organise **conferences** and **training programmes** with a view to promoting Hong Kong as a **regional capacity building centre for international law and dispute resolution**.
- Through various conferences, forums and capacity building programmes, we anticipate a **network of judicial and legal experts** will be established among participating jurisdictions.

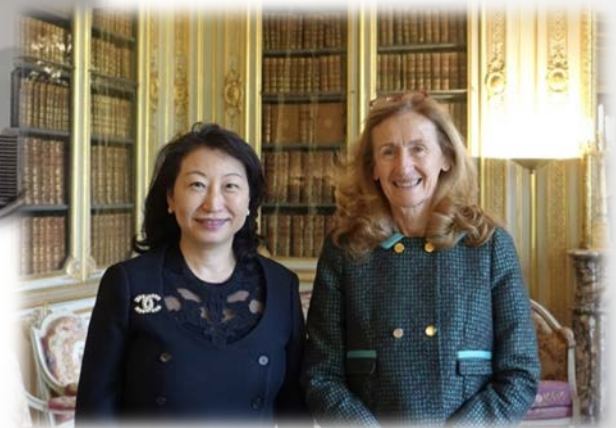


# Capacity Building

- Examples include:
  - (i) biennial **Mediation Conference** held in Hong Kong since 2007
  - (ii) biennial **Mediate First Pledge** event held in Hong Kong since 2009
  - (iii) biennial **UNCITRAL Asia Pacific Judicial Summit** held in Hong Kong since 2015;
  - (iv) annual training session of China-AALCO Exchange and Research Program on International Law;
  - (v) Public-Private Partnerships (PPP) Conference: held in Hong Kong on 16 to 17 January 2019;
  - (vi) Investor-State Dispute Settlement (ISDS) Reform Conference: held in Hong Kong on 13 February 2019;
  - (vii) Workshop on online dispute resolution under auspices of APEC in Santiago, Chile from 3 to 5 March 2019

# Promotional Activities – Overseas

- SJ visited **Bangkok** to promote Hong Kong's legal and dispute resolution services from **6 to 7 March 2019**.
- SJ visited **Paris, Luxembourg, the Hague and Vienna** to promote Hong Kong as a deal-making and dispute resolution services centre from **11 to 18 April 2019**.



# Promotional Activities – Hong Kong

## Upcoming Events

- Belt and Road Summit 2019: 11-12 Sep 2019
- Hong Kong Arbitration Week: 20-25 Oct 2019
- Asia Pacific Judicial Summit 2019: 4-5 Nov 2019
- 32<sup>nd</sup> LAWASIA Conference 2019: 5-8 Nov 2019







# Promotional Activities – Hong Kong

## International Council for Commercial Arbitration (ICCA) Congress (*biennial*)

- Leading event in **international arbitration**.
- April 2018: Sydney
- May 2020: Edinburgh
- **May 2022: Hong Kong**
  - Hong Kong's successful bid was presented by **HKIAC** (with support from the HKSAR Government).
  - This will be a **major event for the Hong Kong arbitration community** not limited to HKIAC.

ICCA

INTERNATIONAL COUNCIL FOR COMMERCIAL ARBITRATION





# Key Events and Visits

## (January 2019)

Date <i>(* denote exact date not yet confirmed)</i>	Event	Parties
9 Jan 2019	Signing of MOU on cooperation with Japan	DoJ; MOJ, Japan
14 Jan 2019	Ceremonial Opening of Legal Year 2019	The Judiciary
16 Jan 2019	Arbitrators - appointments, conflicts and challenges LCIA - HKIAC Joint Seminar	HKIAC; London International Court of Arbitration
16-17 Jan 2019	PPPs (Public Private Partnerships) Conference	DoJ; UNCITRAL; AAIL
18 Jan 2019	Signing of the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (in Beijing)	DoJ; SPC



# Key Events and Visits

## (February 2019)

Date (* denote exact date not yet confirmed)	Event	Parties
13 Feb 2019	Conference on Mapping the Way Forward for the Reform of Investor-State Dispute Settlement System	DoJ; AAIL
19-22 Feb 2019	HCCH Judgment Project Working Groups meeting	MFA; HCCH; DoJ
21 Feb 2019	AIIB Legal Seminar	HKIAC; AIIB
22 - 24 Feb 2019	LegalRegTechHack in conjunction with Global Legal Hackathon 2019	Asia Capital Markets Institute



# Key Events and Visits

## (March 2019)

Date <i>(* denote exact date not yet confirmed)</i>	Event	Parties
<b>2-3 Mar 2019</b>	APEC ODR Workshop in Santiago	APEC; DoJ
<b>31 Mar 2019</b>	Inaugural Vis East Moot Hong Kong Lecture	DoJ; Vis East Moot Foundation Ltd.
<b>31 Mar – 7 Apr 2019</b>	16th Vis East Moot: Oral Hearing	Vis East Moot Foundation Ltd.



# Key Events and Visits

## (April 2019)

Date (* denote exact date not yet confirmed)	Event	Parties
8 Apr 2019	Challenges and Opportunities for Young Arbitrators	Chartered Institute of Arbitrators (East Asia Branch) Young Members Group
11 Apr 2019	Business luncheon, Legal seminar and Cocktail reception in Paris	DoJ, HKTDC, HKIAC, InvestHK
11-18 Apr 2019	SJ's visit to Europe (Paris, Luxembourg, The Hague, Vienna)	DoJ, HKETO
17 Apr 2019	International Dispute Resolution Conference 2019 – New Era of Global Collaboration	HKMC, UNCITRAL; DoJ as collaborating organisation
25-27 Apr 2019	Belt and Road Forum for International Cooperation (in Beijing)	MFA



# Key Events and Visits

## (May 2019)

<b>Date</b> <i>(* denote exact date not yet confirmed)</i>	<b>Event</b>	<b>Parties</b>
<b>16 May 2019</b>	Global Mediation Forum (in Bangkok)	HKMC; THIAAC
<b>23 May 2019</b>	Spotlight on African and Asian Opportunities –Hong Kong Business and Legal Summit	HKIAC; AALCO
<b>24 May 2019</b>	Mediate First Pledge	DoJ
<b>25 May 2019</b>	Criminal Law Conference 2019	DoJ; Bar Association; Law Society



# Key Events and Visits

## (May to June 2019)

<b>Date</b> <i>(* denote exact date not yet confirmed)</i>	<b>Event</b>	<b>Parties</b>
<b>22-24 May 2019</b>	7 <sup>th</sup> ICAC Symposium	ICAC
<b>22-25 May 2019</b>	Half Year Conference of the International Association of Young Lawyers	International Association of Young Lawyers
<b>31 May – 1 Jun 2019</b>	LAWASIA Risk Management & Professional Indemnity Insurance Conference 2019	LAWASIA



# Key Events and Visits

## (July to August 2019)

Date (* denote exact date not yet confirmed)	Event	Parties
15-18 Jul 2019*	SJ's visit to Indonesia	DoJ, HKETO
15-16 Jul 2019	AAIL Annual Colloquium	AAIL
28 Jul 2019	Opening of CAERP: China AALCO Training (in Beijing)	MFA, AALCO
12-16 Aug 2019	CAERP: China AALCO Training	MFA, AALCO, AAIL
15-16 Aug 2019	Annual Colloquium	AAIL





# Key Events and Visits

## (September to October 2019)

Date (* denote exact date not yet confirmed)	Event	Parties
Sep 2019*	HCCH Event	DoJ; HCCH Asia Pacific Regional Office
11-12 Sep 2019	Belt and Road Summit 2019	HKTDC
19-20 Sep 2019	“Think Asia, Think Hong Kong” event (in Los Angeles)	HKTDC
22-27 Sep 2019	IBA Conference (in Seoul)	IBA
20-25 Oct 2019	Hong Kong Arbitration Week	HKIAC
Oct 2019*	ICC International Commercial Mediation Competition – Hong Kong	ICC-HK



# Key Events and Visits

(November to December 2019)

Date (* denote exact date not yet confirmed)	Event	Parties
4-5 Nov 2019	Third UNCITRAL Asia Pacific Judicial Summit	DoJ; UNCITRAL; AAIL
5-8 Nov 2019	LAWASIA Annual Conference	LAWASIA; Law Society
6-8 Nov 2019	Conference of Chief Justices of Asia and the Pacific	LAWASIA; The Judiciary
5-6 Dec 2019	Business in IP Asia Forum	HKTDC; IPD



# Key Events and Visits

## (2020 and beyond)

Date (* denote exact date not yet confirmed)	Event	Parties
2020*	CISG Conference	DoJ; UNCITRAL; AAIL
2020*	Mediation Conference	DoJ
2020*	Legal Services Forum (in the Mainland)	DoJ; HKTDC
2022*	ICCA Congress	DoJ; ICCA



# Promotion of Hong Kong as a leading hub for Deal-making and Dispute Resolution

- *Deal Making*
- *Dispute Resolution*
  - ✓ **Arbitration**
  - ✓ **Mediation**





# Arbitration

## Hong Kong as an ideal venue for arbitration

- “... whilst Hong Kong is no doubt **geographically convenient**, it is also a well-known and respected arbitration forum with **a reputation for neutrality**, not least because of its **supervising courts**.”
  - The High Court of England and Wales in *Shagang South-Asia (Hong Kong) Trading Co Ltd v. Daewoo Logistics* [2015] EWHC 194 (Comm) per Hamblen, J.(now Hamblen, L.J.)
- “Hong Kong is a well-established seat for arbitration **conveniently located in the heart of Asia**, with a **sophisticated legal system** and an **independent pro-arbitration judiciary**.”
  - The Chairman of the Hong Kong International Arbitration Centre (HKIAC), Matthew Gearing, QC



# Arbitration

## An Open and Inclusive Environment

- Freedom to appoint **arbitrators** from **anywhere in the world**
- No restrictions on engaging **lawyers** from **outside Hong Kong** to **advise** or **represent** a party in arbitral proceedings
- A person not qualified to practise Hong Kong law may undertake arbitration-related work in Hong Kong (as long as that the nature of such work falls under the descriptions in section 63 of the Arbitration Ordinance)
- **No restrictions** (by reason of **nationality** or **professional qualifications**) on choice of **advisers** or **experts**
- An expansive pool of **multilingual and multinational professionals** from which parties in arbitration may choose



# Arbitration

## 2015 and 2018 International Arbitration Surveys

(conducted by Queen Mary University of London, sponsored by White and Case LLP)

- Hong Kong is one of the **top 5 preferred seats** of arbitration



- Most important factors for choosing seat of arbitration:
  - General **reputation** and recognition
  - **Neutrality** and impartiality of the legal system
  - **Arbitration law**





# Arbitration

## Worldwide Recognition and Enforcement of Arbitral Awards

- Arbitral awards made in Hong Kong can be enforced in over 150 State parties to the **New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**
- **Reciprocal arrangements** for enforcement have been implemented:
  - between Hong Kong and **Mainland China** (*since 1999*)
  - between Hong Kong and the **Macao SAR** (*since 2013*)



# Arbitration Ordinance (Cap. 609)

- Re-enacted and came into effect in **June 2011**

《仲裁條例》

(第 609 章)

Arbitration Ordinance

(Cap. 609)

版本日期

Version date

1.2.2019

經核證文本

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((《法例發布條例》)(第 614 章)第 5 條)

(Legislation Publication Ordinance (Cap. 614), section 5)

- Based on 2006** amended version of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law (**UNCITRAL Model Law**)
- Updated from time to time (**amended** in **2013**, **2015** and **2017**) in order to keep abreast of the latest developments in the international arbitration community



# Arbitration

## A Pro-Arbitration Judiciary that respects Party Autonomy

- It is **mandatory** under Arbitration Ordinance (Cap. 609) for the court to **order a stay of court proceedings** if it is established that the action is brought in a matter which is **the subject of an arbitration agreement**
  - *Bluegold Investment Holdings Ltd v. Kwan Chun Fun Calvin*, HCA 1492/2015 (4 March 2016) per Madam Justice Chan
- “... **Unmeritorious challenges** to an arbitration agreement, and the use of court proceedings when the parties have agreed to have their rights and disputes resolved by arbitration cannot be conducive to the underlying objectives of the Civil Justice Reform, bearing in mind the duties of the parties, and their lawyers, to assist the Court in the **cost-effective and efficient resolution of a dispute**, and to ensure the **fair distribution of the resources of the Court**.”
  - *Chimbusco International Petroleum (Singapore) Pte Ltd v. Fully Best Trading Ltd*, HCA 2416/2014 (3 December 2015) per Madam Justice Mimmie Chan



# Arbitration

## A Pro-Arbitration Judiciary that respects Party Autonomy

- In *Arjowiggins HKK2 Limited v. Shandong Chenming Paper Holdings Limited*, HCCT 25/2015 (19 January 2018),
  - The Court of First Instance, in clear recognition of the negative aspect of an arbitration agreement, was prepared to **restrain court proceedings outside the jurisdiction even after the conclusion of arbitral proceedings** in order to guard against attempts to re-litigate matters already determined.
  - The Honourable Madam Justice Mimmie Chan granted an **anti-suit injunction** in favour of Arjowiggins, stating that the new proceedings fell within the scope of the arbitration agreement.



# Arbitration

## Arbitration with state-owned enterprises

- Can an **arbitral award** be **enforced** in the HKSAR against a wholly **state-owned enterprise (SOE)**, the sole shareholder or investor of which is the State-owned Assets Supervision and Administration Commission (SASAC) of the State Council of the Central People's Government (CPG)?
- Can the concept of “**Crown immunity**” against execution be asserted?



# Arbitration

## Arbitration with state-owned enterprises

- The HK & Macao Office stated that the SOE:
  - was an **independent legal entity** carrying out activities of production and operation on its own, with **no special status or interests superior to any other enterprises**
  - was not considered as a part of the CPG, nor was it deemed as performing functions on behalf of the CPG when **carrying out commercial activities**, save for in **extremely extraordinary circumstances** where the conduct was performed **on behalf of the state** via appropriate **authorisation**.
- Accordingly, the Court rejected the assertion of Crown immunity:
  - The SOE has **autonomy** and **extensive independence** in **carrying out its business** which autonomy is in fact expressly provided for and protected under the relevant PRC law and regulations.



# Arbitration

## World Class Arbitration Institutions

### Hong Kong International Arbitration Centre (“HKIAC”)

- Established in **1985**
- Totally **independent** and free from interference or control
- In **November 2015**, HKIAC was the **first international arbitration institution** to open a **representative office** in **Mainland China**, which is located within the Shanghai Pilot Free Trade Zone.
- On **4 April 2019**, HKIAC became the **first international arbitration institution** permitted to function as a **permanent arbitral institution** (PAI) in **Russia**, allowing it to administer international disputes seated in Russia.







# Arbitration

## International Arbitral Institutions with offices/centres in Hong Kong (or in collaboration with Hong Kong)

### International Chamber of Commerce (ICC)

- Secretariat of the International Court of Arbitration:  
2008



### China International Economic and Trade Arbitration Commission (CIETAC): 2012



### China Maritime Arbitration Commission (CMAC): 2014



### Permanent Court of Arbitration (PCA)

headquartered at Hague, the Netherlands: 2015

- Signed Host Country Agreement with the Government of the PRC
- Signed Memorandum of Administrative Arrangements with the HKSAR

(With effect from 2015, dispute resolution proceedings administered by the PCA can be conducted in the HKSAR on an *ad hoc* basis and provided with the required facilities and support services)





# Arbitration (latest developments)

## Third Party Funding for Arbitration and Mediation

- On **7 December 2018**, the **Code of Practice on Third Party Funding of Arbitration** was issued to provide for the practices and standards with which third party funders are ordinarily expected to comply.
- On **1 February 2019**, the new provisions on **third party funding of arbitration** has come into operation.
- It aims at **clarifying** that **third party funding of arbitration and mediation** is **not prohibited** by the common law doctrines of maintenance and champerty.





# Arbitration (latest developments)

## Arrangement with the Mainland on Interim Measures in aid of Arbitral Proceedings

- Hong Kong becomes **the first jurisdiction outside the Mainland** where, as a seat of arbitration, parties to arbitral proceedings **administered by its designated arbitral institutions** would be able to apply to the Mainland courts for interim measures.
- Interim measure include property preservation, evidence preservation and conduct preservation. It aims at **preventing** one of the parties to arbitral proceedings from deliberately **destroying the evidence or transferring the property** and also **ensuring** that the **arbitral proceedings can be carried out effectively**.



# Mediation

- A structured process subject to agreement, mediation sessions can be conducted by **telephone calls**, **video conferencing** or **other electronic means**
- One or more **impartial** individuals, the mediator(s), **without adjudicating** the dispute or any aspect of it, assist the parties to:
  - **Identify** the **issue** in dispute;
  - Explore and generate **options**;
  - **Communicate** with one another;
  - **Reach an agreement** regarding the resolution of the whole or part of the dispute.



# Mediation Ordinance (Cap.620)

- Enacted in June 2012 and came into operation on **1 January 2013**.
- Its objects include:
  - Promoting, encouraging and facilitating the resolution of disputes through mediation by providing a **regulatory framework** for the conduct of mediation without hampering its **flexibility**;
  - Providing a statutory basis to **protect** the **confidential nature** of **mediation communications** unless disclosure is permitted by the exceptional circumstances stipulated in law or with the leave of the court.



# Mediation

## Accreditation System for Mediators

### Hong Kong Mediation Accreditation Association Limited (HKMAAL)

- Established in **2012**.
- The premier accreditation body for mediators in Hong Kong, discharging **accreditation** and **disciplinary** functions.
- Candidates shall complete **training** and **assessment** requirements, and are subject to **continuing professional development (CPD)** requirements after accreditation.
- As at 29 April 2019, HKMAAL has:
  - 1,654 **General Mediators**
  - 213 **Family Mediators**
  - 49 **Family Mediation Supervisors**



香港調解資歷評審協會有限公司  
Hong Kong Mediation Accreditation  
Association Limited



# Mediation

## West Kowloon Mediation Centre

- Opened in **November 2018**.
- A unique facility dedicated to mediation.
- Operated by the **Joint Mediation Helpline Office** (JMHO), an independent co-ordinator appointed by the Government.
- **Pilot Mediation Scheme** was launched for mediation services to be provided to litigants of **Small Claims Tribunal cases** that are suitable for mediation and other suitable cases (disputed amount not more than **HK\$75,000**).
- Parties to suitable cases will be required to pay a **nominal, all-inclusive application fee** of **\$200** each.





# Mediation

## “Mediate First” Pledge



- Launched in **2009**.
- To encourage companies to make the Mediate First Pledge and **commit to use mediation** in resolving disputes **before** resorting to **other dispute resolution processes** including court litigation.
- Pledges can **display** the **Mediate First Pledge Logo** at their shops or adopt the Logo in their **letterheads**.
- Furthermore, **34 pledgees** who take part in **promoting or supporting mediation** to resolve dispute and have met certain criteria had been awarded a **Star Logo** in the "Mediate First" Pledge Event 2019.



# Mediation

## “Mediate First” Pledge Event 2019



- Held on **24 May 2019** with the theme **“Mediate First: Unlocking Potential”**.
- Featured a **mediation forum** for renowned international and local speakers to share the latest developments and trends on **sports mediation** and **deal mediation**, as well as mediation experience sharing among certain local industries.
- Furthermore, a **signing ceremony** of the "Mediate First" Pledge by **new pledgees** was been held.

# Mediation

## “Mediate First” Pledge Event 2019



- Followed by a **"Mediate First" Pledge Reception** dedicated **social media platforms** to promote the department's mediation initiatives.
- **The IDAR Office** has set up accounts on different social media platforms including **Facebook**, **LinkedIn** and **Weibo**.
- The **public** can **receive** the department's **news on mediation promptly and conveniently**.

# Cooperation with other Jurisdictions

- On **9 January 2019**, the Hong Kong Department of Justice and the Ministry of Justice of Japan signed a **Memorandum of Cooperation** to strengthen **Hong Kong-Japan** collaboration on international **arbitration and mediation**.



*Ms Teresa Cheng, SC, Secretary of Justice and  
Mr Takashi Yamashita, Japanese Minister of Justice, signing the  
Memorandum of Cooperation.*



# LawTech: Online Dispute Resolution

- Hong Kong would be able to provide efficient and cost-effective **online dispute resolution services (ODR)**.
- The Department of Justice would further promote and provide funding support to the **Electronic Business Related Arbitration and Mediation (eBRAM) platform** which is currently under development by a non-governmental organisation.
- The Department of Justice would also assist with the formulation of the framework of **e-Mediation Rules** by making reference to the UNCITRAL Technical Notes on Online Dispute Resolution.
- The development of LawTech, including that of the eBRAM platform, is one of the initiatives under the **Chief Executive's 2018 Policy Address**.



# Liberalisation of Mainland Legal Services Market

- **Record of Meeting** signed with **Ministry of Justice** in **January 2019**
- **“Agreement on Trade in Services” under CEPA**: with effect from **1 March 2019**, the geographical scope of **setting up partnership associations** by Hong Kong and Mainland law firms has been **extended** from Guangzhou, Shenzhen and Zhuhai to the **entire Mainland**.
- Seeking further **liberalisation** in the **Greater Bay Area**





# Legal Cooperation with Mainland in Civil Matters

- The Arrangement on Reciprocal Recognition and Enforcement of **Judgments in Civil and Commercial Matters** by the Courts of the Mainland and of the HKSAR was signed on **18 January 2019**.
- **Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area** was promulgated on **18 February 2019**
- The Arrangement Concerning Mutual Assistance in **Court-ordered Interim Measures in Aid of Arbitral Proceedings** by the Courts of the Mainland and of the HKSAR was signed on **2 April 2019**.



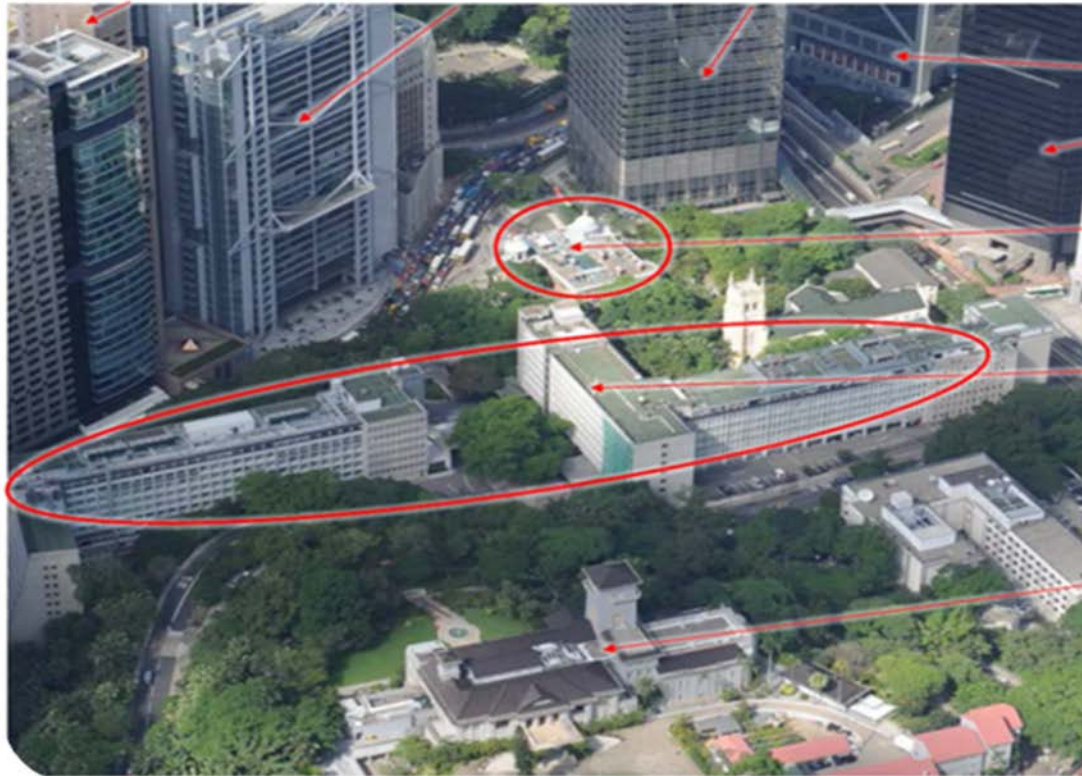


# Looking Forward: Creating a Legal Hub

STANDARD CHARTERED  
BANK BUILDING

HSBC HQ

CHEUNG KONG CENTER



BANK OF  
CHINA TOWER

CHAMPION AND ICBC TOWERS

FORMER FRENCH MISSION  
BUILDING  
*(housed the Court of Final  
Appeal until September 2015)*

JUSTICE PLACE  
*(formerly the Central  
Government Offices)*

GOVERNMENT  
HOUSE  
*(The Chief Executive's  
residence)*



# Looking Forward: Creating a Legal Hub

- **Stage 1** allocation: A total of 17 Law-related Organisations, based on the relative merits of their applications, were recommended for provision of space (expected to be available to them starting from around mid-2019) , including:
  - Asia Pacific Regional Office of the Hague Conference on Private International Law (HCCH)
  - Secretariat of the International Court of Arbitration of the International Chamber of Commerce Asia Office (ICC – ICA)
  - China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center (CIETAC – HK Arbitration Center)
  - China Maritime Arbitration Commission Hong Kong Arbitration Center (CMAC – HK Arbitration Center)
  - Chinese Arbitration Association, Taipei (CAA, Taipei)
  - Hong Kong Mediation Accreditation Association Limited (HKMAAL)
  - Centre for Effective Dispute Resolution Asia Pacific Limited (CEDR)
  - Hong Kong Mediation Centre Limited
  - Mainland – Hong Kong Joint Mediation Center
  - Financial Dispute Resolution Centre (FDRC)
  - Chartered Institute of Arbitrators (East Asia Branch) (CIArb East Asia Branch)
  - Hong Kong Institute of Arbitrators (HKIArb)
  - Vis East Moot Foundation Limited (Vis East Moot)
  - Hong Kong Advocacy Training Council Limited
  - International Advocacy Training Council Limited
  - Asian Academy of International Law Limited (AAIL)
  - The Legal Education Fund Limited
- **Stage 2** exercise: Open application concluded on 28 December 2018





**THANK YOU!**