

Hong Kong Arbitration Week 2020
Workshop organised by Davis Polk & Wardwell
“Greater Bay Area (Including the Belt & Road Initiative) - The Role
of Hong Kong and International Arbitration”
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Keynote Speech by Dr James Ding, Commissioner of Inclusive
Dispute Avoidance and Resolution Office,
Department of Justice of HKSAR on “Opportunities for legal and
dispute resolution professionals in the Greater Bay Area”

The Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, which sets the directions guiding the development of the Greater Bay Area, was promulgated by the Central People’s Government on 18 February 2019. It explicitly supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region, recognising the distinctive advantages of Hong Kong’s legal system under the “One Country, Two Systems” principle and Hong Kong’s vital role in the development of the Greater Bay Area. The development of the Greater Bay Area has opened up vast opportunities for various sectors including the legal and dispute resolution services sector in Hong Kong which is well placed to seize such opportunities. The HKSAR Government has been striving to seek more liberalisation measures and implement new initiatives relating to legal and dispute resolution services in the Greater Bay Area. In his keynote speech, Dr James Ding, Commissioner of Inclusive Dispute Avoidance and Resolution Office, Department of Justice of the HKSAR will provide an overview of some recent measures and initiatives relevant to the legal and dispute resolution professionals.

1. Distinguished guests, ladies and gentlemen, good afternoon. It is my great pleasure to join you at this workshop and I would like to thank the organiser for including a workshop on the Greater Bay Area (GBA) and the Belt & Road Initiative during the Hong Kong Arbitration Week.

The Greater Bay Area

2. Today, I would like to share with you opportunities for legal and dispute resolutions professions in the GBA. For those who are not familiar with the GBA, I would like to give you a quick introduction while I would leave the details to the next speaker Mr. Nicholas Kwan from HKTDC who will have more information about GBA for you.
3. The GBA development is one of the major policy initiatives of the Central People's Government¹. On 18 February 2019, the Central People's Government promulgated the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area ("**GBA Outline Development Plan**"), which sets the directions guiding the development of the GBA. This also signifies that the development of the GBA has entered into an important stage of full-fledged implementation.
4. The GBA has an area of approximately 56,000 km² (three times the size of San Francisco Bay Area) and a population of over 72 million people with the GDP of USD1,679.5 billion as at the end of 2019. It is therefore not difficult to see why the GBA is of immense potential and opportunities.
5. The GBA development is also closely linked to the Belt and Road Initiative. 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 GBA occupies an important position in the Belt and Road Initiative² by serving as a key link connecting countries along the Belt and Road regions.

Hong Kong's role in the Greater Bay Area

6. The GBA has the unique strength of one country, two systems and three jurisdictions (Hong Kong, Mainland and Macao). The GBA Outline Development Plan explicitly supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the

¹ See LegCo panel paper CB(3)665/18-19(04) : <https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20190325cb4-665-4-e.pdf>

² see Section 1 of Chapter 1 of the Outline Development Plan.

Asia-Pacific region , and the centre for investment and commercial dispute resolution services for projects relating to the Belt and Road Initiative³, recognising the distinctive advantages of Hong Kong’s legal system under the “One Country, Two Systems” principle and our ability to assume a vital role in the development of the Greater Bay Area.

7. Hong Kong is the only common law jurisdiction in China and our legal system is familiar to the international business community. Our comprehensive legislation and case law can provide sound legal protection for the transactions and investments in the GBA. Our judiciary is also world famous for its quality, independence and impartiality, as well as its support of arbitration and mediation. According to the Global Competitiveness Report 2019 published by the World Economic Forum, Hong Kong ranked 8th in judicial independence globally. Hong Kong’s legal and dispute resolution professionals are also highly regarded for their rich experience in various specialised areas of law and can provide comprehensive professional services for commercial transactions in the GBA, ranging from deal structure planning, due diligence to contract negotiations and drafting. Hong Kong’s highly recognised and mature legal system can certainly provide confidence to enterprises and facilitate investment in the GBA.
8. Hong Kong also has unique strengths in respect of dispute resolution services. For instance, Hong Kong’s legislation on arbitration and mediation is at the forefront of the sector and our courts also support the use of arbitration and mediation to resolve disputes. Arbitration in Hong Kong has been widely recognised internationally, consistently ranked top 5 globally in recent years⁴.

Initiatives for the Greater Bay Area

9. Now, I would like to share with you some of the recent initiatives in the GBA which would open up vast opportunities for the legal and dispute resolution services sector.

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

⁴ See surveys conducted by Queen Mary University of London and School of International Arbitration, sponsored by White and Case LLP in 2015 and 2018.

10. It has been the policy objective of the Department of Justice to strengthen and enhance Hong Kong's status as a leading centre for legal and dispute resolution services. To enhance our efforts towards this end, the Inclusive Dispute Avoidance and Resolution (IDAR) Office under the direct steer of the Secretary for Justice has been established since January last year, which, among others, is tasked to facilitate our legal and dispute resolution services sector in seizing the opportunities arising from the GBA development. To this end, we have been actively liaising with the relevant Mainland authorities to take forward various liberalisation measures and initiatives relating to legal and dispute resolution services in the GBA.

(i) Association in the form of partnership

11. To begin with, I would like to share with you recent measures on the set up of partnership associations between Mainland and Hong Kong law firms in the Guangdong Province.

12. In August 2019, the Guangdong Province implemented the *Trial Measures*⁵, which introduced further liberalisation measures in relation to the set up of partnership associations by Mainland and Hong Kong law firms, including the removal of the minimum capital injection ratio of 30% by Hong Kong partner firms in the partnership associations and allowing Mainland and Hong Kong lawyers to be employed in the name of the partnership associations.

13. With the *Trial Measures*, it is anticipated that more Mainland and Hong Kong law firms, especially small or medium size law firms, would consider establishing partnership associations, providing one-stop cross-border legal services in the Guangdong Province.

(ii) Expanding the scope of practice of Hong Kong legal practitioners

⁵ Trial Measures of the Department of Justice of Guangdong Province on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Guangdong Province (2019 Revision)

14. Another recent measure relates to the expansion of the scope of practice of Hong Kong legal practitioners to practice in the GBA.

15. On 11 August 2020, the Standing Committee of the National People's Congress passed a *Decision*⁶ allowing eligible Hong Kong legal practitioners to, upon passing a special examination, obtain the practice qualifications to practice in specific areas of Mainland law in the GBA. The *Decision* puts into effect the *Agreement Concerning Amendment to the CEPA Agreement on Trade in Services* signed by the Mainland and Hong Kong in November last year. The measures will be implemented on a three-year pilot basis and details of implementation will be announced by the State Council in due course.

16. I believe that the pilot measures would be conducive to the expansion of professional service by Hong Kong's legal sector in the GBA and I also strongly encourage our legal professionals to seize such opportunities.

(iii) Wider application of Hong Kong law and use of Hong Kong as a place of arbitration outside the Mainland

17. An important initiative in the GBA that we are pursuing relates to the wider application of Hong Kong law in the Mainland and the wider use of Hong Kong as the place of arbitration.

18. Under current Mainland laws, companies set up in the Mainland by Hong Kong investors (including Wholly Owned Hong Kong Enterprises (WOKE) and joint ventures) are regarded as Chinese legal persons. Contracts concluded by such Chinese legal persons may only apply the Mainland law in the absence of any foreign-related elements. However, there has been some recent breakthroughs in this area.

19. On 26 August 2020, some Qianhai Regulations were passed allowing WOKE established in Qianhai to choose Hong Kong law, to be the applicable law of their contracts, even in the absence of foreign-related

⁶ See *Decision on authorising the State Council on the implementation of pilot measures for Hong Kong and Macao legal practitioners to obtain Mainland practice qualifications to practice as lawyers in the nine Pearl River Delta municipalities in the Greater Bay Area.*

elements⁷. While this new measure is only applicable to a specific area in Qianhai, it is still a significant leap forward and a stepping stone for future liberalisation measures.

20. Similarly, at present, Mainland parties (including WOKE) may not freely choose to submit a dispute to an arbitral institution outside the Mainland (for instance, arbitral institutions in Hong Kong) in the absence of any foreign-related elements⁸. Opinions issued by the Supreme People's Court of the Mainland in the recent years have relaxed such restriction in some areas⁹ especially for free trade zones. We have also proposed to the relevant Mainland authorities, regardless of the absence of any foreign-related elements, Mainland parties (including WOKE) to a civil and commercial contract in the GBA would be allowed to submit a dispute for arbitration in Hong Kong under mutual agreement.

21. Going forward, we will continue to work with the Mainland authorities in taking forward this proposal, as well as to strive to expand the application of Hong Kong law to cover the GBA, and beyond in the long-run. I believe that our initiatives would not only create more business opportunities for Hong Kong's legal and dispute resolution services sector, but it will also facilitate their mutual exchange and understanding of the laws and practices of the three jurisdictions, thereby promoting collaborative development of the GBA.

(iv) Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR

22. Speaking about arbitration, I must also not forget mentioning the Arrangement Concerning Mutual Assistance in Court-ordered Interim

⁷ see 《深圳經濟特區前海深港現代服務業合作區條例》，第 57 條。Companies set up in Qianhai by Macao, Taiwan or foreign investors also enjoy such entitlement under the provision.

⁸ Such restriction also applies to companies set up in the Mainland by Taiwan, Macao or foreign investors.

⁹ See the "Opinion of the Supreme People's Court on the Provision of Judicial Safeguards for the Development of the Pilot Free Trade Zones" (Fa Fa [2015] No. 34) and the "Opinion of the Supreme People's Court on the Provision of Judicial Service and Safeguards for Comprehensively Deepening Reform and Opening Up of Hainan" (Fa Fa [2018] No. 16) issued by the Supreme People's Court of the Mainland.

Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR which came into operation on 1 October 2019. Hong Kong is the only jurisdiction which has signed an arrangement with the Mainland on interim measures in aid of arbitral proceedings. It marks our strength under "one country, two systems" and enhances Hong Kong's status as the centre for international legal and dispute resolution services. As of 5 October this year, the Hong Kong International Arbitration Centre has processed 30 interim measures applications to preserve evidence, conduct or assets worth RMB 10 billion in total, and court orders preserving RMB 8.7 billion worth of assets have been made. This Arrangement will be of immense value and potential for seeking interim measures in the GBA.

(v) *Promoting the development of mediation in the Greater Bay Area*

23. In addition to arbitration, we also have various mediation related initiatives. In 2017, the Mainland and Hong Kong signed an *Investment Agreement* under the framework of CEPA, allowing Hong Kong investors to use mediation as a means to resolve disputes for their investments in the Mainland.
24. More recently, we have been working with the Mainland authorities to promote the greater use of mediation in the GBA. To take forward this area of work, the first Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference was held in September last year. During the Joint Conference, the legal departments of the three places set the directions for promoting the use of mediation in the GBA, including promulgating a set of unified mediators' accreditation standards in the GBA, best practices for mediation rules and best practices for mediators' code of conduct, for the reference of mediation institutions and mediators in the GBA.
25. It is hoped that these measures would enhance the confidence of mediation users, facilitate the use of mediation, and support the development of dispute resolution in the GBA. The Department will continue to actively pursue more in-depth discussions with the legal departments in the Guangdong Province and Macao to take forward this area of work.

(vi) *ODR and COVID-19 ODR Scheme*

26. Apart from traditional arbitration and mediation, the Department has been actively promoting the use of online dispute resolution (ODR) in the GBA and along the Belt and Road routes. In June this year, we have launched the Covid-19 ODR Scheme which aims to provide a speedy and cost-effective means, by deploying ODR, to resolve global and local COVID-19 related disputes.
27. The Scheme is independently operated by eBRAM Centre, a local non-governmental organisation founded by the legal and IT sectors, and supported by the Government. It covers COVID-19 related disputes in which the claim amount is not more than \$500,000, and either one of the parties to the dispute is a Hong Kong resident or company. To make use of ODR services under the Scheme, parties are required to enter into an ODR agreement and each pay \$200 as a registration fee only. Parties will then attempt to resolve disputes online through a multi-tiered dispute resolution mechanism comprising negotiation, mediation and arbitration. We expect that some of the cases under the Scheme may be cross-border disputes involving parties in the GBA and the Belt and Road countries as well.

Enhancing legal exchange and collaboration in the Greater Bay Area

28. Finally, I should also mention about the training opportunities in the GBA. As I have mentioned, the GBA enjoys the unique feature of one country, two systems and three jurisdictions, which is distinct from any other bay areas in the world. To unleash the full potential of the GBA, the legal and dispute resolution services sectors in the three jurisdictions should deepen understanding of their counterparts so that they may complement one another and provide necessary support for the development of the GBA.
29. To this end, the Department has been working together with authorities in the GBA to establish various platforms to facilitate legal exchange and collaboration. For instance, in September 2019, the Department and the Higher People's Court of Guangdong Province signed a *Framework*

Arrangement on exchange and mutual learning in legal aspects. Under the *Framework Arrangement*, a series of legal seminars have been organised to facilitate two-way exchange of legal professionals of the two places. In January this year, the Department also participated in the first GBA Judicial Case Seminar organised by the Higher People's Court of Guangdong Province. The seminar provided a useful platform for judges, lawyers, experts and academics of the three jurisdictions to explore and deepen their understanding of the three legal and judicial systems.

30. In the days ahead, the Department will continue to work with authorities in the GBA to facilitate further training and legal exchanges.

Concluding Remarks

31. I hope that I have given you a quick overview of the relevant developments in the GBA which would open new doors for our legal and dispute resolution services sector.

32. In the days ahead, the Department of Justice will continue to actively develop and take forward new initiatives, and in joining hands with the legal and dispute resolution services sector, contribute to the development of the GBA.

33. On this note, I wish today's event a great success. Thank you.