

Perfecting the Legal Interfaces Between the Greater Bay Area and Hong Kong – Generating New Development Opportunities

By Horace Cheung Kwok-kwan, Deputy Secretary for Justice



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2021 marks the centenary of the founding of the Communist Party of China. Over the past hundred years, the country had realised the First Centenary Goal of building a moderately prosperous society in all respects. This means that it has put an end to absolute poverty and is now marching towards the Second Centenary Goal of building a great modern socialist country. This also means we have entered a new starting point, a new stage and a new journey towards the rejuvenation of the Chinese nation.

In the midst of the hundred years' of great change, both the country's comprehensive strength and international situation have undergone profound changes, making everything quite different from the early days of reform and opening up. At that time, when cities in the Pearl River Delta (PRD) region were just starting to develop, Hong Kong naturally played the role as an important bridge and window connecting the motherland with the rest of the world. It brought in capital, technology and talents to the Mainland, drove the economic growth in the PRD region through "front shop, back factory" mode of business operation, and benefited from the development of the country. Readers may recall the time when many Hong Kong industrialists went north to set up production plants and successfully made use of the low land prices and affordable labor force in the Mainland to make a fortune.

With the rapid development of the country at "China speed", industries in Guangdong have long been upgraded and transformed. Shenzhen and Guangzhou have gone past Hong Kong in terms of GDP. Many factories, set up by industrialists who went north in the early years, have already stopped production, or have been transformed, rented out or repurposed. As time changes, so does Hong Kong. It can no longer stick to the old ways. It should map out its future development with a broad picture in mind. Having said that, how should Hong Kong pursue its path under the new development framework of the country?



Chaired by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan (back row, third right), the Department of Justice's Guangdong-Hong Kong-Macao Greater Bay Area Task Force held its second meeting in late June.
由律政司副司長張國鈞（後排右三）擔任主席的律政司「粵港澳大灣區專責小組」於六月底舉行第二次會議。

Since the 19th National Congress of the Communist Party of China, President Xi Jinping has repeatedly pointed out that in the face of the profound and complex changes present in both the domestic and international context, the country needs to embark on a path of becoming more independent and self-reliant, implement a higher level of reform and opening up, and accelerate efforts to foster a new pattern of development that is centered on the "dual circulation" economic strategy.

Against this backdrop, the 14th Five-Year Plan - the blueprint and action plan for the country's social and economic development in the next five years - explicitly supports the development of Hong Kong as a leading center for international legal and dispute resolution services in the Asia Pacific region. It also proposes to strengthen exchanges and cooperation between the Mainland and Hong Kong in various fields, and for the first time includes the Shenzhen-Hong Kong Loop in the Greater Bay Area (GBA) major cooperation platforms. Hence, there is no doubt that high-quality development of the GBA will be the way forward for Hong Kong.

The development of the GBA will be the best entry point for Hong Kong SAR to

dovetail with the national development strategies. During his visit to Guangdong in April, President Xi stated that the GBA has an important strategic position in the new development pattern of the country, and must be put as a top priority so as to make it a strategic node for the new development pattern, a demonstration area for high-quality development and a pioneering area of the Chinese modernisation. According to the economic data released by relevant statistics departments of Guangdong, Hong Kong and Macao, the total economic volume of GBA has exceeded RMB 13 trillion in 2022 meaning that the GBA, which occupies less than 0.6% of the country's total area, has contributed to about 12% of the national GDP. If viewed as an individual economy, it has surpassed Canada and Korea, ranking 9th in the world. The rapid development and economic volume of the GBA will bring unlimited opportunities to the business sectors in Hong Kong and overseas. The complete industrial and supply chains in the GBA will be able to support Hong Kong in establishing strategic emerging industry systems.

The GBA enjoys the distinctive advantage of "one country, two systems and three jurisdictions", which is unique in the world. The common law regime and

the rule of law of Hong Kong SAR are highly regarded by the international community as the signature signboard of Hong Kong's success. In light of the international community's strong interest in the opportunities brought by the GBA, enhancing the convergence of legal practices and advancing the practice of mutual legal assistance between the two places will open up new channels that can lead to irreplaceable contributions to the development of the GBA.

Firstly, with the strong support of the Central Government, Hong Kong and the Mainland have concluded a total of nine arrangements on mutual legal assistance in civil and commercial matters. A comprehensive and targeted mutual legal assistance mechanism has been established, covering mutual assistance for a wide range of civil and commercial matters, including procedural matters, arbitration, mutual recognition and enforcement of judgments relating to matrimonial and family matters, bankruptcy or liquidation, etc. Such a wide coverage in mutual legal assistance in civil and commercial matters with the Mainland is an advantage of Hong Kong that other jurisdictions can hardly compete with. The Department of Justice is striving to implement the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance enacted last year as soon as possible, so as to provide a more comprehensive and effective mechanism for mutual recognition and enforcement of civil and commercial judgments between the two places. Overseas business sector will also benefit from the mutual legal assistance mechanism established between Hong Kong and the Mainland for greater convenience and wider legal protection in arbitration and court proceedings conducted in Hong Kong.

Secondly, the initiative for Hong Kong-invested enterprises to adopt Hong Kong law has been implemented in Qianhai, Shenzhen, enabling such enterprises registered in Qianhai to choose Hong Kong law as the applicable law for civil

and commercial contracts in the absence of any "foreign-related elements". Meanwhile, Hong Kong-invested enterprises in the China (Guangdong) Pilot Free Trade Zone may choose Hong Kong as the seat of arbitration. Such enterprises registered in the zone may refer commercial disputes to arbitration seated outside the Mainland, such as Hong Kong. These initiatives provide more options for the parties and enhance the confidence of the business sector to invest and conduct businesses in the Mainland. Many foreign businesses may not, however, be aware that, pursuant to the Mainland and Hong Kong Closer Economic Partnership Arrangement, they may also benefit from these initiatives by investing in the Mainland through a Hong Kong company. The Department of Justice is now actively exploring with the relevant Mainland authorities the possibility of orderly extending the measures to cover the entire GBA, in order to enhance professional cooperation and cross-fertilisation in the legal and dispute resolution services in the GBA.

Thirdly, Hong Kong's strength in foreign-related legal services will help the GBA build a pool of high-quality talent in legal services and provide strong support in terms of rule of law. As the only common

law jurisdiction in the country, Hong Kong has a deep pool of experienced legal professionals specialised in cross-border transactions and dispute resolution as well as international legal matters. They can provide strong support in legal and dispute resolution services for cross-border transactions so as to safeguard the lawful rights of foreign investors in Hong Kong SAR and the GBA.

It is evident from the above that the development of the GBA will enable Hong Kong to further dovetail with the national development strategies and better grasp the opportunities brought by the national development. Hong Kong's legal and dispute resolution services can make significant contributions to the GBA's development. The most pressing task now is to expedite the convergence of different rules, standards and legal practices in the GBA, and promote the implementation of mutual legal assistance. For this purpose, the Department of Justice set up the Guangdong-Hong Kong-Macao Greater Bay Area Task Force chaired by myself at the beginning of this year to timely take forward the relevant work. On the other hand, in order to speed up, improve the efficiency and better interface with relevant Mainland authorities, I have recently led a delegation of the



The Deputy Secretary for Justice, Mr. Cheung Kwok-kwan (right), visited the Shenzhen Court of International Arbitration (SCIA) in Shenzhen, and was briefed by its President, Mr. Liu Xiaochun (left), on the operation of SCIA.
律政司副司長張國鈞（右）在深圳參觀深圳國際仲裁院，並聽取仲裁院院長劉曉春（左）簡介該院運作。

Department of Justice to visit Guangzhou, Shenzhen and Qianhai. I discussed with the senior officials of the Department of Justice of Guangdong Province, the Shenzhen Municipal People's Government, the Shenzhen Qianhai Cooperation Zone People's Court and the Shenzhen Court of International Arbitration on the further taking forward of the work of the working group on

Guangdong-Hong Kong co-operation on legal and dispute resolution services and the working group on Hong Kong-Shenzhen legal co-operation established by the Chief Executive.

I am convinced that as long as all sectors are united with a clear vision, support each other while embracing the differences, and keeping in mind the country's top

priorities, Hong Kong SAR will definitely be able to come out fine in the midst of great changes unseen in a century. We will continue to leverage Hong Kong's distinctive advantages of enjoying strong support of the Motherland and being closely connected to the world to make contributions to the Motherland and bring a new scene to Hong Kong! ■

DoJ's GBA Task Force takes forward a number of recommendations

During the meeting this June, the Task Force, chaired by the Deputy Secretary for Justice, Mr Cheung Kwok-kwan, discussed and agreed to take forward a number of specific recommendations.

The key ones include:

1. the establishment of an information platform to facilitate the easy access by the people and businesses to information on legal and dispute resolution services in the GBA and other related areas; and the setting up of a high-level platform to facilitate the conduct of regular exchanges and research on mutual legal assistance in civil and commercial matters, etc;
2. actively seeking the expansion to Mainland cities in the GBA the measures for Hong Kong-invested enterprises to choose Hong Kong law as applicable law and to choose Hong Kong as the seat of arbitration, and enhancing the promotion of the measures' advantages and benefits for the development and construction of the GBA;
3. the enhancement of the existing arrangements for mutual legal assistance in civil and commercial matters, including the improvement of the mechanism for the service of judicial documents in civil or commercial cases, so as to provide further convenience and benefits to the people and businesses; and
4. the establishment of a mediator panel for the GBA and the setting up of an online mediation platform for use in the GBA, thereby facilitating collaboration in mediation.

