

Hong Kong as a Multilateral Bridge Connecting the Mainland and the World under the Pioneering “One Country, Two Systems”

I Introduction

China is now the second largest economy in the world. As the world's freest economy and a premier international financial centre supported by a solid rule of law foundation and a strong legal fraternity with global connections, the HKSAR has been able to fully capitalize on the policy of “one country, two systems” thereby positioning itself well in various major national development initiatives such as the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area (“Greater Bay Area”).

Under the “Outline of the 13th Five-Year Plan for the National Economic and Social Development of the People's Republic of China” (2016) promulgated by the CPG, which serves as a blueprint and action agenda for the country's social and economic development from 2016 to 2020, the unique role of the HKSAR has again been recognized. In particular, the Outline expressly supported the HKSAR to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region, as well as pledging support for the HKSAR to capitalize on its incomparable strengths and enhance its status as an international financial and trade centre, and as a global offshore renminbi (“RMB”) business hub in the opening up and development of the national economy.

This article aims to provide an overview of the “one country, two systems” policy, and discuss various recent initiatives that have been undertaken to ensure the continuing success of Hong Kong as a multilateral bridge connecting the Mainland and

the world, and in particular as an international deal-making and dispute resolution hub.

II “One Country, Two Systems” – Progressive Development of Contemporary International Law

“One country, two systems” is the fundamental policy of the Chinese Government for bringing about the country's reunification. As a matter of history, Hong Kong has been part of the territory of China since ancient times, and it was occupied by Britain after the Opium War in 1840. On 19 December 1984, the Sino-British Joint Declaration on the Question of Hong Kong (“Joint Declaration”) was signed between the Chinese and British Governments. As reflected in the Preamble to the Joint Declaration, the two Governments “agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis”.

As remarked by Judge Shi Jiu-yong, who was involved in the negotiation of the Joint Declaration and is the former President of the International Court of Justice, the Joint Declaration is an unprecedented treatment of invalidity of unequal treaties imposed by big powers in history, representing China's contribution in the process of progressive development of contemporary international law.¹ Judge Shi has further remarked

¹ Speech by Judge Shi Jiu-yong, “One State, Two Systems”, China's Contribution to the Progressive Development of Contemporary International Law, available in the conference proceedings (see pp. 37 – 44) of 2017 Colloquium on International Law: Common Future in Asia organized by the Asian Academy of International Law and the Chinese Society of International Law.



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that “one state, two systems” policy is an innovation by China, which uniquely contributes to such progressive development as well.²

The main text of the Joint Declaration has notably and primarily taken the form of unilateral declarations of the two Governments.³

Paragraph 1 states that “[t]he Government of the People’s Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997”.

According to paragraph 2 of the Joint Declaration, “[t]he Government of the United Kingdom declares that it will restore Hong Kong to the People’s Republic of China with effect from 1 July 1997”.

In paragraph 3 of the Joint Declaration, the Chinese Government declared its twelve basic

policies regarding Hong Kong. Such declaration was made on the own initiative of the Chinese Government, instead of an agreement between the two Governments under the Joint Declaration.⁴ In particular, the Chinese Government has incorporated its unilateral detailed elaboration of the basic policies set out in paragraph 3 into Annex I to the Joint Declaration.

Article 31 of the Constitution of the PRC provides the very foundation for the establishment of special administrative regions within the PRC and the said provision states that “[t]he systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People’s Congress in the light of specific conditions”. In this regard, it should be noted that, among the twelve basic policies declared by the Chinese Government in paragraph 3 of the Joint Declaration, the first one provides that “[u]pholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People’s Republic of China has decided to establish, in accordance with the provisions of Article 31 of the

² Ibid.

³ Ibid.

⁴ Ibid.

Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong".

In accordance with the Constitution of the PRC, the NPC made the Decision to establish the HKSAR and enacted the Basic Law in 1990.⁵ The Basic Law embodies the basic principles regarding Hong Kong as set out in paragraph 3 of the Joint Declaration, including, in particular, the preservation of the legal system, the capitalist economic and trade systems and the way of life previously practised in Hong Kong.

The Basic Law, which serves as the constitutional document of the HKSAR, entrenches and implements "one country, two systems" through the law and translates the policy into reality. This is unique in that while the HKSAR is an inalienable part of the PRC, the HKSAR is authorized to exercise a high degree of autonomy and is vested with executive, legislative and independent judicial power, including that of final adjudication. At the same time, the Basic Law maintains the HKSAR's distinctive systems including its social, economic and legal systems as well as the manner in which private ownership of property and fundamental rights and freedoms are systemically safeguarded constitutionally.

III Robust Judiciary and Strong Rule of Law under "One Country, Two Systems"

Under "one country, two systems", the mature and robust legal system of the HKSAR, as buttressed by an independent judiciary and a deep pool of legal talents from all over the world, underpins the success of Hong Kong as an international financial centre and an international legal and dispute resolution services centre.

(A) Legal System under the Basic Law

Under the Basic Law, the HKSAR has maintained its long-standing common law heritage with which the international business community is familiar.

According to BL 18, the laws in force in the HKSAR shall be the Basic Law, the laws previously in force in Hong Kong and the laws enacted by the HKSAR legislature. National laws of the PRC shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law, which shall be confined to those relating to defence and foreign affairs as well as other matters outside the HKSAR's autonomy.

BL 18 must be read together with BL 8, the latter explicitly provides that the laws previously in force, namely the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for those that contravene the Basic Law and subject to the amendments of the HKSAR legislature.

(B) Robust and Independent Judicial System

Not only does the Basic Law preserve the common law system, it also provides a strong foundation for our robust and independent judicial system. Section 4 of Chapter IV of the Basic Law sets out the provisions on the judiciary of the HKSAR. In particular, BL 82 provides that the power of final adjudication of the HKSAR shall be vested in the CFA and BL 85 mandates the independent exercise of judicial power, free from interference, by the courts of the HKSAR. It is also important to note that under BL 92, our judges are appointed based on their judicial and professional qualities.

Furthermore, there is also an "international" dimension in our judicial system under the Basic Law. Under BL 82, the CFA may as required

⁵ See Decision of the NPC on the Establishment of the HKSAR (Adopted at the Third Session of the Seventh NPC on 4 April 1990) and Decision of the NPC on the Basic Law of the HKSAR of the PRC (Adopted at the Third Session of the Seventh NPC on 4 April 1990).



invite eminent judges of the apex courts of other common law jurisdictions to sit as non-permanent judges. The non-permanent judges hear all types of cases, not just civil and commercial, but also constitution-related cases and criminal cases. BL 92 likewise provides that judges and other members of the judiciary of the HKSAR may be recruited from other common law jurisdictions. Besides, BL 84 enables the HKSAR courts to refer to precedents of other common law jurisdictions in adjudicating cases.

The robustness of our independent and professional judiciary under “one country, two systems” is globally recognized. The HKSAR has been performing consistently well with respect to judicial independence in the Global Competitiveness Reports of the World Economic Forum, and the Report in 2019 saw the city rising to the rank of 2nd in the common law world (after New Zealand) for judicial independence and ranking 8th globally.

Furthermore, according to the Worldwide Governance Indicators Project of the World Bank, which provides trends over longer periods rather

than year on year fluctuations only, the HKSAR’s percentile ranking in rule of law has improved from 69.85% in 1996 to 95.19% in 2018, or in other words, a significant leap from a top 70 place to ranking 11th globally in a period of 22 years. These statistics suggest an upward trend for the rule of law of the HKSAR, but the HKSAR has never been complacent and the city continues to strive to be better.

(C) Protection of the Fundamental Rights and Freedoms under the Basic Law

With a strong and robust judicial system in the HKSAR and the prosecutorial independence provided under BL 63, the Basic Law also safeguards the fundamental rights and freedoms of the HKSAR residents as well as those of any other persons in the HKSAR. Such fundamental rights and freedoms are set out in Chapter III of the Basic Law. Moreover, BL 39 provides that the provisions of the ICCPR, the ICESCR, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR, thus providing safeguards to human rights that are on par with international standards.

Generally speaking, these rights and freedoms are not absolute. Restrictions may be imposed and the 4-step proportionality test established in Hong Kong as to the legitimacy of such restrictions is consolidated by the CFA in *Hysan Development Co Ltd v Town Planning Board* (2016) 19 HKCFAR 372. The proportionality analysis involves a 4-step inquiry as to:

- (1) whether the intrusive measure pursues a legitimate aim;
- (2) if so, whether it is rationally connected with advancing that aim;
- (3) whether the measure is no more than necessary for that purpose;
- (4) whether a reasonable balance has been struck between the societal benefits of the encroachment and the inroads made into the constitutionally protected rights of the individual, and in particular, whether pursuit of the societal interest results in an unacceptably harsh burden on the individual.

In fact, the protection of human rights in Hong Kong has also been widely acclaimed by the international community. In the Human Freedom Index 2019, Hong Kong was ranked 1st in Asia, and 3rd globally.⁶

IV International Financial Centre and Deal-making Hub under “One Country, Two Systems”

Our robust judicial system, strong rule of law tradition and the “one country, two systems” policy provide the foundation and catalyst for the continuing success of the HKSAR as an international financial centre and a deal-making hub.

(A) Financial and Monetary Systems of the HKSAR under the Basic Law

Riding on the strength of “two systems”, BL 5 preserves the HKSAR’s capitalist system and BL 109 gives the HKSAR a mandate to provide an appropriate economic and legal environment for the maintenance of its status as an international financial centre. Section 1 of Chapter V of the Basic Law further provides that, the HKSAR, shall on its own, formulate monetary and financial policies, safeguard the free operation of financial business and financial markets, and regulate and supervise them in accordance with law, and has its own currency, the Hong Kong dollar, that is pegged to the US dollar at a rate of approximately HK\$7.8 to US\$1, thus providing stability to the economic and financial systems of the HKSAR.

Importantly, BL 112 expressly provides that no foreign exchange control policies shall be applied in the HKSAR, the Hong Kong dollar shall be freely convertible, and that the free flow of capital within, into and out of the HKSAR shall be safeguarded. Given that there are still foreign exchange control measures and restrictions on the flow of capital in the Mainland, the aforesaid feature of the financial system of the HKSAR under the Basic Law has further solidified its role as an international financial centre and allowed the HKSAR to play the role as the largest offshore RMB business hub, with a total deposits of RMB638.8 billion as at end July 2019 and approximately 76% of the world’s RMB payments transactions processed via the HKSAR as of February 2019.

(B) Free Trade Policy and Investment Protection

BL 114 and BL 115 ensure that the status of the HKSAR as a free port is maintained, the policy of free trade is to be pursued and the free movements of goods, intangible assets and capital shall be safeguarded. Furthermore, it is of paramount

⁶ Cato Institute, Fraser Institute, and Friedrich Naumann Foundation for Freedom, “The Human Freedom Index 2019 – A Global Measurement of Personal, Civil, and Economic Freedom”, available at <https://www.cato.org/human-freedom-index-new>.



importance for the role of the HKSAR as a deal-making hub that the Basic Law provides that the HKSAR shall be a separate customs territory and continues to participate in the international trade community as a member of the World Trade Organization.

BL 106 and BL 108 also provide that the HKSAR shall have independent finances and an independent taxation policy. In this regard, the HKSAR is considered the world's most business friendly tax system in the Paying Taxes Report 2019 by the PricewaterhouseCoopers LLP and the World Bank Group. Moreover, with the general authorization provided under the Basic Law, the HKSAR has concluded Comprehensive Avoidance of Double Taxation Agreements with over 40 tax jurisdictions, which include our major trading partners.

From the perspective of investment protection, BL 6 provides that the right of private ownership of property shall be protected in accordance with law and BL 105 further provides that the right of individuals and legal persons to the acquisition,

use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property shall be protected in accordance with law. Furthermore, it is also made expressly clear under the Basic Law that the ownership of enterprises and the investments from outside the HKSAR shall be protected by law. This provides comfort to investors making investments in or via the HKSAR and laying the foundation for the HKSAR to serve as a global investment hub, in particular for inbound and outbound investments of China.

(C) Benefits of "One Country, Two Systems" to Financial Industry, Trade and Investment

In the 22 years since its return to the Motherland, the HKSAR has been making very good use of its distinct strengths and unique systems. On the one hand, under "one country", the proximity with the Mainland offers unrivalled market access opportunity for the HKSAR. On the other hand, under "two systems", its distinctive economic, monetary and trade systems, financial autonomy and business essentials provided under the Basic

Law have won the HKSAR fame as the world's freest economy for 25 years in a row since the Heritage Foundation published the Index of Economic Freedom in 1995.⁷

In fact, the wisdom of "one country, two systems" does not only benefit the HKSAR, but also contributes to the rapid development of the national economy. The HKSAR has continued to serve the important and strategic function of being a two-way platform for the Mainland to attract foreign investments and for Mainland enterprises to "go global" as well as for raising capital for



⁷ In the 2019 Index of Economic Freedom published by the Heritage Foundation, Hong Kong was once again ranked 1st globally as the world's freest economy. The city's financial autonomy and business essentials have been highly applauded by the Index, which stated that "[a]n exceptionally competitive financial and business hub, Hong Kong remains one of the world's most resilient economies. A high-quality legal framework provides effective protection of property rights and strongly supports the rule of law. There is little tolerance for corruption, and a high degree of transparency enhances government integrity. Regulatory efficiency and openness to global commerce undergird a vibrant entrepreneurial climate". The Index also remarked that "[b]usiness freedom [in Hong Kong] is well protected within an efficient regulatory framework. Transparency encourages entrepreneurship, and the overall environment is conducive to the start-up of businesses".

investment projects. Such important and strategic function is evidenced by the fact that according to the World Investment Report 2019 by the United Nations Conference on Trade and Development, the HKSAR ranked 3rd globally for foreign direct investment inflows and ranked 4th globally for foreign direct investment outflows in 2018.⁸

The fact that the HKSAR, with the presence of 77 of world's 100 largest banks, is the world's 6th largest stock market with a market capitalization of US\$4,099 billion by end July 2019 and ranked 1st globally for initial public offering funds raised in 2018, is a testimony to the great success of the HKSAR as an international financial centre and a deal-making hub under "one country, two systems". In this regard, with the PRC taking forward the Belt and Road Initiative and launching the Greater Bay Area, upholding the "one country, two systems" policy and the Basic Law to ensure the continuing success of the HKSAR becomes even more important.

V International Legal and Dispute Resolution Services Centre under "One Country, Two Systems"

The Greater Bay Area is a key national development strategy for an area as large as 56,000 square kilometres with a population of around 70 million consisting of the HKSAR, the Macao Special Administrative Region ("Macao SAR") and nine municipalities in the Guangdong province. The recent promulgation of the "Outline Development Plan of the Greater Bay Area" (2019) by the CPG in February 2019 further pledged support for the HKSAR to establish itself as the centre for

international legal and dispute resolution services in the Asia-Pacific region. The Greater Bay Area is widely expected by the international business community to be an enormous opportunity. The HKSAR is uniquely placed to capitalize on this national policy.

With the Belt and Road Initiative and the Greater Bay Area, cross-border economic activities involving enterprises in the Mainland, the HKSAR and countries along the Belt and Road are bound to flourish in the years to come.

Transactions and disputes, and hence the demand for legal services, in the region would inevitably witness rapid and remarkable growth. In fact, this development will again play to the strength of the HKSAR as an international legal and dispute resolution services centre.

To harness new opportunities arising from the Belt and Road Initiative and the Greater Bay Area, the HKSARG has set up the Belt and Road Office and the Greater Bay Area Office. The Department of Justice of the HKSAR ("DoJ") also established the Inclusive Dispute Avoidance and Resolution Office ("IDAR Office") in January 2019 to formulate a comprehensive and sustainable strategy to raise the international profile of the HKSAR in deal-making and dispute resolution. In particular, the IDAR Office emphasizes "inclusiveness" and is tasked with the mission of facilitating access to justice and providing equal opportunities for people from all walks of life and for all sectors of the economy without boundary, advancing Goal 16⁹ of the United Nations 2030 Sustainable Development Goals in this region and beyond.

⁸ At a meeting with the delegation from Hong Kong and Macao on 12 November 2018, Present Xi Jinping fully recognized the contributions made by Hong Kong and Macao in the reform and opening-up of China over the past four decades. He expressed the hope that Hong Kong and Macao could continue tapping on their distinctive strengths under "one country, two systems" and taking the lead in attracting foreign capital, technology and talents. In this regard, it is worthy to note that according to the figures released by the Ministry of Commerce of the PRC in September 2019, Hong Kong remains the dominant gateway for foreign investments to enter Mainland China in the first eight months of 2019. During the 8-month period, Mainland China received US\$62.9 billion in foreign direct investments via Hong Kong, accounting for around 70 % of the total inflows into the Mainland.

⁹ Goal 16 emphasizes the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all and the building of effective, accountable and inclusive institutions at all levels.



The HKSAR has a mature and sophisticated legal system that is conducive to the use of diversified dispute resolution mechanisms, a robust and efficient judicial system and a strong legal fraternity with global connections, all of which are the essential attributes as a leading international legal and dispute resolution services centre in the Asia-Pacific region.¹⁰ In this regard, it is worth noting that since 2015, the HKSAR has been one of the top five most preferred seats of arbitration globally according to the international arbitration surveys conducted by the Queen Mary University of London.¹¹ Furthermore, the HKSAR ranked 3rd globally for efficiency of legal framework in settling disputes in the Global Competitiveness Report 2019 by the World Economic Forum.¹²

(A) Legal and Judicial Co-operation Arrangements with the Mainland in Civil and Commercial Matters

To leverage on the unique advantages provided by the “one country” and taking into account the differences in the legal systems between the Mainland and the HKSAR under “two systems”,

the HKSAR has taken inspiration from arrangements in the international regimes and concluded a number of innovative arrangements with the Mainland in the area of legal and judicial co-operation in civil and commercial matters.



Since 1 July 1997, the HKSARG has concluded a total of seven innovative arrangements with the Mainland relating to legal co-operation in civil and commercial matters between the Mainland and HKSAR in accordance with BL 95, covering a wide array of mutual juridical assistance.¹³

Among the seven arrangements entered into with the Mainland, two of them were lately signed in the first half of 2019.

The Arrangement on Reciprocal Recognition and Enforcement of Civil and Commercial Matters between the Courts of the Mainland and the HKSAR concluded on 18 January 2019 seeks to

¹⁰ According to an international arbitration survey conducted by the Queen Mary University of London in 2018, “general reputation and recognition of the seat” (14%) was the top reason why respondents preferred a certain seat of arbitration, closely followed by “neutrality and impartiality of the local legal system” (13%) and “national arbitration law” (12%).

¹¹ 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration (www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf)
2018 International Arbitration Survey: The Evolution of International Arbitration (www.arbitration.qmul.ac.uk/research/2018/)

¹² The Global Competitiveness Report 2019 (www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf)

¹³ The seven arrangements with the Mainland in the area of legal and judicial co-operation in civil and commercial matters are as follows:

- (i) Arrangement for Mutual Service of Judicial Documents in Civil and Commercial Proceedings between the Mainland and Hong Kong Courts (signed in January 1999);
- (ii) Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR (signed in June 1999);
- (iii) Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR Pursuant to Choice of Court Agreements between Parties Concerned (signed in July 2006);
- (iv) Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters between the Courts of the Mainland and the HKSAR (signed in December 2016);
- (v) Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the HKSAR (signed in June 2017);
- (vi) Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR (signed in January 2019); and
- (vii) Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR (signed in April 2019).



establish a bilateral and comprehensive legal mechanism with greater clarity and certainty for recognition and enforcement of judgments in a wide range of civil and commercial matters between the Mainland and the HKSAR. Not only does this Arrangement closely resemble the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Judgments Convention”) of the Hague Conference on Private International Law (“Hague Conference”) concluded on 2 July 2019, it has taken a step further by covering some of the intellectual property related judgments, such as those on contractual disputes involving intellectual property rights, and tortious claims for infringement of certain intellectual property rights. This special treatment could only be achieved within “one country” as it will still be sometime before the same agreement can be reached globally.

On 2 April 2019, the Supreme People’s Court (“SPC”) and the HKSARG further signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitration Proceedings by the Courts of the Mainland and of the HKSAR. Before that, the Mainland courts had no power to grant interim measures, such as evidence and

property preservation measures, in support of arbitrations seated outside of the Mainland. With the Arrangement for interim measures having come into effect on 1 October 2019, the HKSAR is the first and only jurisdiction outside the Mainland where, as a seat of arbitration, parties to arbitration proceedings administered by eligible arbitral institutions would be able to apply to the Mainland courts for interim measures. This game-changing Arrangement will reinforce the position of the HKSAR as the leading arbitral seat in the Asia-Pacific region.

The HKSAR is only able to secure these groundbreaking arrangements with the Mainland pursuant to BL 95 to the exclusion of other jurisdictions primarily because we are two systems within one country.

(B) Provision of Legal Services under the CEPA Framework

The Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”) signed in 2003 is a “building-block” style framework that offers preferential and favourable treatment for Hong Kong businesses and investors in respect of trade



in goods, trade in services and investment that go far beyond those offered by the Mainland to other countries and regions.

Taking the legal services market as an example, specific liberalization measures under the CEPA framework includes allowing HKSAR residents to sit the National Unified Legal Professional Qualification Examination as well as permitting the setting up of partnership associations by HKSAR and Mainland law firms to provide HKSAR and Mainland legal services as well as approved foreign legal services in the PRC pursuant to the CEPA Agreement on Trade in Services.

Another arrangement made under the CEPA framework which merits attention is the Investment Agreement concluded in June 2017, which offers Hong Kong investors with more preferential investment access to the Mainland than that enjoyed by investors from other countries and regions. The CEPA Investment Agreement has also made a breakthrough in respect of resolution of cross-border investment disputes by introducing a dedicated investment mediation mechanism. Such investment mediation mechanism has indeed set the trend of the greater use of mediation for amicable settlement of investment disputes amid discussions of reform in the international community in respect of the dispute settlement mechanism between investors and the host jurisdictions of the investments.

(C) Legal Services in the Greater Bay Area

Furthermore, given that the “Outline Development Plan of the Greater Bay Area” has explicitly encouraged the strengthening of judicial and legal co-operation among Guangdong, the HKSAR and the Macao SAR, it is believed that there will be further breakthroughs in enhancing legal and judicial co-operation between the HKSAR and the Mainland in the future, thereby providing unique opportunities to the HKSAR.

In fact, the DoJ together with the Department of

Justice of Guangdong Province and the Office of the Secretary for Administration and Justice of the Macao SAR held the first Guangdong - Hong Kong - Macao Bay Area Legal Departments Joint Conference in Hong Kong on 12 September 2019.

The three legal departments have reached a consensus that the joint conference mechanism will be hosted in the three locations alternately to discuss work progress on specific proposals, such as the establishment and implementation of a mediation platform in the Greater Bay Area and widening the application of Hong Kong law, and research priorities on strengthening legal exchanges and collaboration, in accordance with the guiding directions set out in the “Outline Development Plan for the Greater Bay Area”.

VI Connecting with the World under “One Country, Two Systems”

Benefiting from the policy of “one country, two systems” and the Basic Law, the HKSAR, as a cosmopolitan city, is renowned for its strong ability and rich experience to connect with the world and excel. The unique arrangements under “one country, two systems” enshrined in the Basic Law have enabled the HKSAR to maintain its status as a global player in the world stage, and to participate in and contribute meaningfully to the international rule-making processes.

(A) The Framework for Conducting External Affairs under the Basic Law

The Basic Law, through BL 13(1), reserves to the CPG the responsibility over the foreign affairs relating to the HKSAR. Congruent with the HKSAR's high degree of autonomy, BL 13(3), on the other hand, expressly provides that the CPG “authorizes the HKSAR to conduct relevant external affairs on its own in accordance with [the Basic] Law”. There are a number of provisions in the Basic Law (in particular, its Chapter VII) which are concerned with the external affairs of the HKSAR. The HKSAR, acting under the general authorization of the



Basic Law (in particular, BL 151) or the specific authorization of the CPG, as the case may be, has been actively maintaining and developing relations with foreign States and regions, and has entered into a broad range of international agreements in various fields such as the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields. In this regard, it is worth noting that, with the aforesaid authorizations, the HKSAR has entered into 21 Investment Promotion and Protection Agreements and 7 Free Trade Agreements with foreign economies.

Moreover, to further promote the HKSAR's economic and trade interest and enhance the city's cooperation with foreign economies, BL 156 provides that the HKSAR, may, as necessary, establish official or semi-official economic and trade missions ("ETOs") in foreign countries. So far, the network of the HKSAR's ETOs covers the major cities in the world including Brussels, London, New York, Toronto, Tokyo and Sydney.

BL 152 is unique in that it provides for the participation by representatives of the HKSARG

in international organizations and conferences. Specifically, BL 152(1) states that for those international organizations and conferences in appropriate fields limited to States and affecting the HKSAR, representatives from the HKSARG may participate as members of the Chinese delegation. In that capacity, the HKSAR participates in the work of various international organizations such as the World Health Organization and the International Civil Aviation Organization. The arrangement under BL 152 is particularly significant because, despite its status of being a city, the HKSAR is given the opportunity to participate in an appropriate capacity and contribute meaningfully to the international rule-making processes.

As explained in the following sections, it is worth noting that the participation of the HKSAR, in the capacity as authorized under the Basic Law, in the work of the United Nations Commission on International Trade Law ("UNCITRAL"), a core legal body of the United Nations system, with the mandate of furthering the progressive harmonization and modernization of the law of international trade, as well as the Hague



Conference, a permanent inter-governmental organization seeking to harmonize private international law around the world, has been particularly active.

(B) Participation and Collaboration in the Work of the UNCITRAL

UNCITRAL's working groups prepare legislative and non-legislative instruments within their purview, which include dispute resolution, international contract practices, sale of goods, electronic commerce and insolvency instruments, through negotiations among States. In this regard, the representatives of the HKSARG, thanks to the arrangement under BL 152, have been participating in some of these groups as members of the Chinese delegation and working closely with the CPG to contribute to such rule-making.

In this regard, HKSARG's participation in UNCITRAL Working Group III on the reform of investor-State dispute settlement is one of the recent examples of the HKSAR contributing, under "one country, two systems", to the international rule-making process, benefiting the international community, the Mainland as well as the HKSAR itself.

During the 3rd UNCITRAL Asia Pacific Judicial Summit on 4 November 2019, the HKSAR, with the support from the CPG, signed a memorandum of understanding with the United Nations to facilitate collaboration with UNCITRAL, including the co-organization of the Judicial Summits on a biennial basis, in respect of promoting the development and greater understanding of international trade law and the use of arbitration and other forms of dispute resolution to resolve disputes in international trade, commerce and investments, thereby promoting the rule of law in the Asia-Pacific region.

To actively support legal professionals to enhance co-operation and exchanges at the regional and international levels, legal experts of DoJ have been seconded to UNCITRAL's Regional Centre for Asia

and the Pacific in the Republic of Korea. Similar arrangements are being pursued with the support of the CPG for placement in UNCITRAL's office in Vienna.

(C) Contribution to the Work of the Hague Conference and the Asia-Pacific Regional Office in the HKSAR

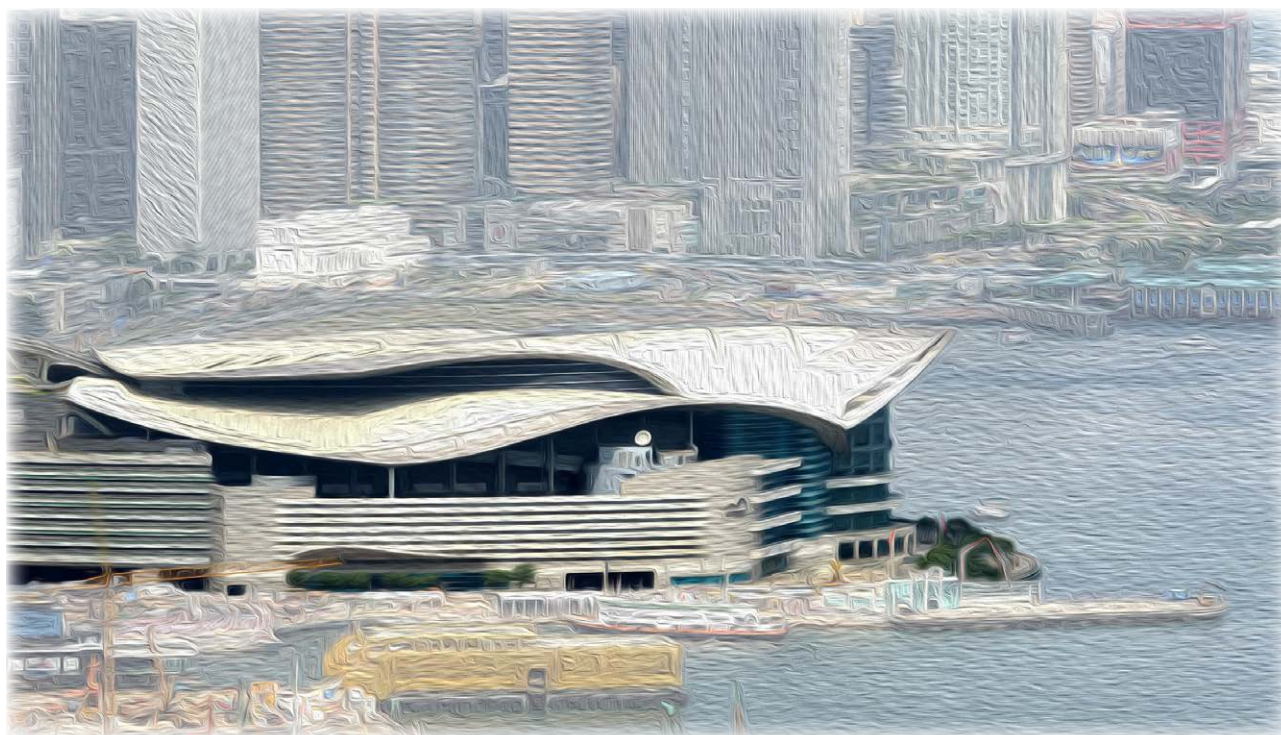
Since 1998, representatives from the HKSARG have been participating actively in meetings of the Hague Conference as part of the Chinese delegation pursuant to BL 152.

Given the rapid increase in cross-border transactions and the mobility of people in the Asia-Pacific region, the work of the Hague Conference has been growing in relevance to the needs of the region. In 2012, with the support of the CPG, the Hague Conference formally established the Asia-Pacific Regional Office in the HKSAR.

The establishment of the Asia-Pacific Regional Office is a vote of confidence in the HKSAR's legal system and a milestone in the HKSAR's development into a global legal services centre. Since its official opening in December 2012, the Regional Office has staged a series of major events including the Hague Conference's 125th Anniversary Conference in 2018. The HKSAR also hosted the inaugural global conference on 9 September 2019 to mark the adoption of the Judgments Convention of the Hague Conference.

VII Towards a Bright and Prosperous Future under "One Country, Two Systems"

"One country, two systems" is a holistic concept. "One country" means that the HKSAR is an inseparable part of the PRC. It is the premise and basis of the "two systems". In fact, the various initiatives discussed above – with the HKSAR being provided with the perfect stage to showcase its strengths under the "two systems" in the Belt and Road Initiative and the Greater Bay Area, CEPA



providing unparalleled preferential treatment for the HKSAR in respect of trade and investments, the exclusive and ground-breaking legal cooperation arrangements with the Mainland in civil and commercial matters and the many opportunities provided to the HKSAR to participate in appropriate capacity in the work of international organizations – would not have been achievable without the fundamental perspective of “one country”.

As it has been described by President Xi Jinping in a most figurative way,¹⁴ “[t]he destiny of Hong Kong is intricately bound with that of the Motherland”. In the report delivered at the 19th National Congress of the Communist Party of China on 18 October 2017, President Xi remarked that since Hong Kong’s return to the Motherland, the practice of “one country, two systems” has been a resounding success and it should be ensured that “the principle of “one country, two systems” remains unchanged, is unwaveringly upheld, and in practice is not bent or distorted.” During the 70th anniversary of the PRC, President Xi has again emphasized that “one

country, two systems” will be sternly upheld to ensure the long term prosperity of the HKSAR.

With the PRC further liberalizing its economy, moving towards the centre of the world stage and taking a more active role in international rule-making, enormous opportunities emerge for the HKSAR to unlock and seize through the proper implementation of “one country, two systems”.

The salient initiatives to be taken forward by the DoJ include promoting the development of an online dispute resolution and smart contract platform, attracting international legal bodies to establish presence in the HKSAR, strengthening the HKSAR’s role as a legal capacity building centre, enhancing international co-operation through entering into arrangements with other jurisdictions and international organizations, intensifying regional legal co-operation and harmonization efforts such as setting up a mechanism with the SPC for cross-boundary assistance on corporate insolvency matters, and exploring the wider

¹⁴ Present Xi Jinping’s speech delivered on 1 July 2017 at the Meeting Celebrating the 20th Anniversary of Hong Kong’s Return to the Motherland and the Inaugural Ceremony of the Fifth Term of the HKSARG.



application of Hong Kong law and use of the HKSAR as a place for dispute resolution in respect of transactions in the Greater Bay Area.

Besides, the DOJ has taken the lead to develop a legal hub in the West Wing of the former Central Government Offices (now renamed as Justice Place) and the nearby French Mission Building to reinforce the HKSAR's position as a prime global legal and dispute resolution services centre. It is anticipated that reputable local, regional and international organizations, including the Asia-Pacific Regional Office of the Hague Conference, Asian Academy of International Law Limited, Vis East Moot Foundation Limited, Chartered Institute of Arbitrators (East Asia Branch) and the Secretariat of the International Court of Arbitration of the International Chamber of Commerce Asia Office, will proceed to move into the legal hub from 2020 onwards. The establishment of the legal hub at the heart of the HKSAR's central business district would further bolster the HKSAR's status as a leading legal and dispute resolution services centre.

"One country, two systems" has proven itself to be an innovative policy contributing to the long term success and prosperity of both the HKSAR and the

Mainland. It has allowed the HKSAR to maintain and strengthen its status as an international financial centre, a deal-making hub and international legal and dispute resolution services centre that is supported by rule of law and a robust and independent judicial system. Such policy has also provided a solid foundation for the HKSAR to function as a multilateral bridge connecting the Mainland and the world.

With the further advancement of "one country, two systems", it is beyond doubt that the HKSAR and the Mainland shall continue to complement and reinforce each other, and together we shall achieve greater heights in the years to come.

