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Panel on Administration of Justice and Legal Services

Meeting on 29 April 2019

**Background brief on cooperation between
the Hong Kong Special Administrative Region and the Mainland on
arbitration-related matters**

Purpose

This paper provides background information on the cooperation between the Hong Kong Special Administrative Region ("HKSAR") and the Mainland on arbitration-related matters. It also summarizes the past discussions of the Legislative Council ("LegCo") and its committees, including the Panel on Administration of Justice and Legal Services ("the Panel"), on the matters.

Background

2. According to the Administration, arbitration in Hong Kong had been widely recognized internationally. In an international arbitration survey conducted by the Queen Mary University of London, Hong Kong ranked third following London and Paris in 2015 and ranked fourth in the same survey conducted in 2018.

3. In her 2018 Policy Address, the Chief Executive ("CE") announced that the Administration would continue to enhance the overall coordination of the Department of Justice ("DoJ")'s work concerning mediation, arbitration, etc. through its Joint Dispute Resolution Strategy Office, and step up the promotion of Hong Kong's international legal and dispute resolution services as well as its status as a regional capacity building centre so that enterprises on the Mainland and in jurisdictions along the Belt and Road would use such professional services of Hong Kong in their business development.

4. CE also stated that the Administration would enhance cooperation with the Mainland authorities, local legal profession, and arbitration and mediation institutions in Hong Kong to facilitate the provision of international legal and dispute resolution services on the Mainland by Hong Kong professionals, and strive to consolidate Hong Kong's position and competitiveness as a leading centre for international legal and dispute resolution services in the Asia-Pacific region under the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area.

5. According to the Administration, DoJ established the Inclusive Dispute Avoidance and Resolution Office¹ on 2 January 2019 to better cope with the challenges and to harness the opportunities offered by the Belt and Road Initiative and the Greater Bay Area plan. Under the coordination of the Office which worked directly under the Secretary for Justice ("SJ")'s steer, DoJ would continue to reinforce the promotion of Hong Kong's legal and dispute resolution services on the Mainland (including the Greater Bay Area) and the Belt and Road economies. It would also keep on working with the relevant legal and dispute resolution professional bodies in promoting the attributes of Hong Kong's legal and dispute resolution professions and the services they could provide through forums, seminars and other activities in various Mainland cities (including those in the Greater Bay Area) as well as other places in the Asia-Pacific region.

6. At the Panel meeting on 25 March 2019, the Administration briefed the Panel on how Hong Kong's legal and dispute resolution professionals might leverage opportunities in the development of the Greater Bay Area and briefly introduced the capacity building work carried out by DoJ and the sector.² In its paper, the Administration highlighted the "Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area" ("ODP") promulgated on 18 February 2019 which explicitly supported Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region.

7. According to the Administration, ODP encouraged the strengthening of judicial and legal exchanges and cooperation among Guangdong, Hong Kong and Macao, promoting the development of a multi-faceted dispute resolution mechanism that was based on wide consultation, joint contribution and shared benefits, and providing quality, effective and convenient judicial and legal services and safeguards for the development of the Greater Bay Area.

¹ The Inclusive Dispute Avoidance and Resolution Office was the former Joint Dispute Resolution Office renamed.

Major views and concerns of Members

8. The major views and concerns expressed by LegCo Members in recent years on the cooperation between Hong Kong and the Mainland on arbitration-related matters are summarized in the ensuing paragraphs.

Promotion of Hong Kong as an arbitration centre in the context of the Belt and Road Initiative and the Greater Bay Area development

9. Some members of the Panel expressed the view that Hong Kong had lagged behind other jurisdictions in the development of international arbitration and dispute resolution services, and urged the Administration to expedite its work in that respect. In that regard, they considered that the Administration should seize the opportunities of the Belt and Road Initiative and the Greater Bay Area development to promote Hong Kong's arbitration services.

10. Some members also urged that the Administration should formulate strategic plan to ensure that Hong Kong would become the arbitration centre for contracts on major or international infrastructural projects, and closely liaise with law schools and arbitral institutions in Hong Kong and join hands with the Mainland side on the relevant work. During the examination of the Estimates of Expenditure 2018-2019 and 2019-2020, Members asked what specific work would be undertaken by DoJ in that respect and whether the Administration, together with the relevant sectors, had specifically explored how to develop Hong Kong as an international arbitration centre for the Belt and Road Initiative so as to facilitate their participation in the Initiative.

11. In response, the Administration advised that one of its key efforts in promoting legal services was to promote the use of Hong Kong law as the applicable law and Hong Kong as the place for dispute resolution. It would continue to work together with relevant stakeholders to promote on the Mainland the strengths of Hong Kong's international legal and dispute resolution services and the role such services could play in the Belt and Road Initiative and the Greater Bay Area development. Such promotional activities might take the form of visits, seminars and conferences as well as the major biennial Hong Kong Legal Services Forum held on the Mainland. On the other hand, DoJ's major work on arbitration was to enhance Hong Kong's arbitration regime in a timely manner in response to the latest international developments, and to actively assist the profession in promoting arbitration services in Hong Kong.

12. The Administration added that a Task Force on Belt and Road Dispute Resolution ("the Task Force") had been established in mid-2018. Headed by SJ with DoJ representatives and experts from Hong Kong's legal and dispute resolution sectors as members, the Task Force considered and advised DoJ on the introduction of dispute resolution rules and/or how to establish "a Belt and

Road dispute resolution body" for the resolution of international disputes concerning Belt and Road projects, and any matters incidental thereto, with a view to capitalizing on the opportunities arising from the Belt and Road Initiative and consolidating Hong Kong's status as a leading international legal and dispute resolution services centre.

Cooperation of Hong Kong Special Administrative Region and the Mainland on arbitration-related matters

13. The Panel expressed concerns about the progress of the Administration in exploring with the relevant Mainland authorities the viability of allowing Hong Kong arbitral institutions to administer arbitration cases domestically in Mainland China. In reply, the Administration advised that the relevant work was in progress. It added that the form of conducting arbitration on the Mainland was governed by Mainland law relating to arbitration, and there were special requirements of handling arbitration cases involving parties outside the Mainland.

14. The Panel noted the feedback given by the legal and dispute resolution sector to the Administration that the HKSAR Government could further explore with the Mainland on the sector's two suggestions. First, to allow parties in the Greater Bay Area to freely choose the law which was familiar to the parties as the governing law of a contract, e.g. allowing wholly owned Hong Kong enterprises to choose Hong Kong law as the governing law of a contract. Second, to allow Hong Kong solicitors and barristers to participate in appropriate cases concerning Hong Kong (e.g. cases where Hong Kong law is applicable) as advocates in the courts of the Greater Bay Area (e.g. Qianhai Court). The Panel shared and agreed to the suggestions made by the legal and dispute resolution sector.

Development of a talent pool under the Belt and Road Initiative and the Greater Bay Area development

15. Members noted that it was one of the Administration's initiatives to explore the setting up of a Greater Bay Area legal cooperation platform for the legal sectors of the three places to effect mutual notification, exchange information, provide training and develop a talent pool. According to the Administration, these initiatives were to step up efforts in proactively promoting Hong Kong as an international legal and dispute resolution services centre for the Belt and Road Initiative and the Greater Bay Area development, and to encourage the legal sectors of HKSAR and the Greater Bay Area to enhance their level of cooperation. Members expressed concerns about the specific measures to develop the talent pool.

16. DoJ advised that it had invited Mainland authorities to work together to develop a platform for exchange between Mainland enterprises and Hong Kong's legal sector in order to foster mutual and regular exchanges and cooperation. For example, Hong Kong's legal sector might, through the exchange platform, organize law lectures, training seminars, practice sharing sessions, etc. in Mainland cities on a regular basis to advise Mainland enterprises on various topics, including arbitration.

17. The Panel was concerned whether the Administration would make ready resources for training up arbitration talent in Hong Kong. There was also a view that the Administration should facilitate less experienced lawyers in developing their career as arbitrators by giving them opportunities to gain relevant working experience after receiving arbitration training.

18. In response to a Member's question raised during the examination of the Estimates of Expenditure 2018-2019, the Administration advised that the manpower training for the arbitration sector in Hong Kong was mainly taken up by the law faculties of universities, arbitration professional bodies and arbitration institutions. There were no statutory requirements to be met for qualification as an arbitrator in Hong Kong. Those interested in becoming arbitrators would take up a course offered by the Chartered Institute of Arbitrators ("CIArb")³ or the Hong Kong Institute of Arbitrators, or a recognized university course before becoming a member of the institute on passing the relevant assessment.

19. The Administration further advised that the Hong Kong International Arbitration Centre ("HKIAC") had been running an internship programme since the early 2000s, which offered interns, inter alia, the opportunity to attend hearings at its hearing facilities and work on arbitration proceedings administered by HKIAC. Similar internship programmes were run by the Hong Kong Arbitration Center of the China International Economic and Trade Arbitration Commission and the Secretariat of the International Court of Arbitration of the International Chamber of Commerce (Asia Office), which was also based in Hong Kong. Moreover, since December 2015, HKIAC had regularly run tribunal secretary training programmes in Hong Kong and elsewhere. Where necessary, DoJ would work with the professional institutions based in Hong Kong to ensure that the training needs of aspiring arbitrators could be addressed by relevant and updated training courses and programmes to be organized.

³ Headquartered in London, UK, CIArb has branches around the world. In March 2018, CIArb (East Asia Branch) in Hong Kong is the branch with the largest membership worldwide.

Latest position

20. On 12 April 2019, SJ and the Vice-president of the Supreme People's Court signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and Hong Kong. According to the Administration, Hong Kong was the only jurisdiction which had signed an arrangement with the Mainland on interim measures in aid of arbitral proceedings which marked the strengths under the "one country, two systems", enhanced Hong Kong's competitiveness in international arbitration services and further strengthened Hong Kong's status as the centre for international legal and dispute resolution services in the Asia-Pacific Region.

21. The Administration would provide an overview of the cooperation between Hong Kong and the Mainland on arbitration-related matters and new developments, including new measures and capacity-building events at the Panel meeting to be held on 29 April 2019.

Relevant papers

22. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
24 April 2018

**Cooperation between
the Hong Kong Special Administrative Region and the Mainland
on arbitration-related matters**

List of relevant papers

Meeting	Date	Paper
Council	18.6.2014	<u>Hon Dennis KWOK raised a question on HK as centre for international legal and dispute resolution services in Asia-Pacific region</u>
Panel on Administration of Justice and Legal Services	25.1.2016 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	30.10.2017 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	29.1.2018 (Item I)	<u>Agenda</u> <u>Minutes</u>
	30.4.2018 (Item III)	<u>Agenda</u> <u>Minutes</u>
	29.10.2018 (Item IV)	<u>Agenda</u> <u>Minutes</u>
	25.3.2019 (Items III and IV)	<u>Agenda</u>

Meeting	Date	Paper
	-	<u>Paper on Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region</u>
Finance Committee	16.4.2018	<u>Examination of Estimates of Expenditure 2018-2019 (Reply Serial Nos. SJ047, SJ050, SJ053 and SJ057)</u>
	8.4.2019	<u>Examination of Estimates of Expenditure 2019-2020 (Reply Serial Nos. SJ045, SJ055, SJ057, SJ063, SJ064, SJ067, SJ068 and SJ075)</u>

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