

# 立法會

## *Legislative Council*

LC Paper No. CB(4)648/20-21(06)

Ref : CB4/PL/AJLS

### **Panel on Administration of Justice and Legal Services**

**Meeting on 22 March 2021**

### **Background brief on recent developments on Hong Kong's legal and dispute resolution services in the Greater Bay Area**

#### **Purpose**

This paper summarizes past discussions of the Legislative Council Members on matters relating to the recent developments on Hong Kong's legal and dispute resolution services in the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA"), including the GBA Legal Professional Examination and other initiatives.

#### **Background**

2. It is one of the initiatives under the Policy Agenda attached to the Chief Executive's 2018 Policy Address to 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 Guangdong-Hong Kong-Macao Greater Bay Area.

3. At its meeting on 25 March 2019, the Panel on Administration of Justice and Legal Services ("the Panel") was briefed by the Administration on how Hong Kong's legal and dispute resolution professionals might leverage opportunities in the development of GBA and introduced the capacity building work carried out by the Department of Justice ("DoJ") and the sector. In its paper, the Administration highlighted the "Outline Development Plan of GBA"

promulgated on 18 February 2019 which 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 GBA.

4. According to the Administration, DoJ met with the legal and dispute resolution sector regularly to obtain their views on the development of Hong Kong's legal profession in GBA so that the legal and dispute resolution services professionals could be brought together to jointly contribute to the development of GBA. The major areas of views received by DoJ included wider application of Hong Kong law in GBA; wider use of Hong Kong as a place of arbitration outside the Mainland; expanding the scope of practice of Hong Kong legal practitioners in GBA; study on the setting up of the GBA Mediation Centre; exploring a unified dispute resolution neutral third party accreditation standards; and developing a capacity building and exchange platform.

5. Subsequently, at its meeting on 29 April 2019, the Panel was briefed by the Administration on the latest development of cooperation between the Hong Kong Special Administrative Region ("HKSAR") and the Mainland on arbitration-related matters, in particular on the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of HKSAR ("the Arrangement") which was signed between DoJ and the Supreme People's Court on 2 April 2019.

6. The Administration stressed that under the Arrangement, HKSAR was the first jurisdiction outside the Mainland where parties to arbitral proceedings seated in Hong Kong might apply to the Mainland courts for interim measures. The Panel was also briefed about DoJ's plans to explore the possibility of introducing an initiative to enable two Mainland parties in GBA to freely choose Hong Kong as the seat of arbitration and the law of Hong Kong as the governing law of a contract, and to promote Hong Kong as a regional capacity building centre for international law and dispute resolution.

7. In September 2019, DoJ and the Higher People's Court of Guangdong Province signed a framework arrangement on exchange and mutual learning in legal aspects in GBA. This framework arrangement aimed to facilitate courts in Guangdong and relevant legal bodies in Hong Kong to launch legal projects on exchanges and collaboration. Under the framework arrangement, DoJ joined forces with the Shenzhen Intermediate People's Court from September to November 2019 and the High People's Court of Guangdong Province in January 2020 in organizing exchange activities, including a series of legal seminars on adjudicating with common law concepts as well as mock trials to help legal professionals from Guangdong, Hong Kong and Macao better understand the legal and judicial systems of the three places.

## **Major views and concerns of Members**

8. The major views and concerns previously expressed by LegCo Members on matters relating to the developments on Hong Kong's legal and dispute resolution services in GBA are set out in the ensuing paragraphs.

### Promotion of Hong Kong as an arbitration centre in the context of Greater Bay Area development

9. At the Panel meeting on 25 January 2016, some members 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 ("BRI") and the GBA 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 on the relevant work. During the examination of the Estimates of Expenditure 2018-2019, 2019-2020 and 2020-2021, 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 BRI and GBA development so as to facilitate their participation in the initiatives.

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 BRI and the GBA 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.

### Application of Hong Kong law in the Greater Bay Area

12. At the Panel meeting on 25 March 2019, members noted that the Mainland laws did not expressly allow wholly owned Hong Kong enterprises or joint ventures set up by Hong Kong investors on the Mainland to apply Hong Kong law for dispute resolution. In this connection, some members asked the Administration how it would explore with the Mainland to allow parties in GBA to freely choose the law familiar to them, e.g. Hong Kong law, as the governing law of contract. The Administration advised that it would discuss the above suggestion, among others, with the Ministry of Commerce and the Ministry of Justice of the Central People's Government under the Mainland and Hong Kong Closer Economic Partnership Arrangement framework.

13. A member also asked how Hong Kong law could be applied in the Mainland courts in GBA given the different jurisdictions and legal proceedings between Hong Kong and the Mainland courts. In response, the Administration explained that "jurisdiction of the court" and "choice of law" were two different concepts. As in the case where Hong Kong courts could handle cases which applied foreign laws, under the current Mainland laws, the relevant parties to a foreign-related contract might expressly choose the law applicable to the case.

### Business opportunities for Hong Kong legal services in Greater Bay Area

14. At the Panel meeting on 25 March 2019, members noted that only 11 out of the more than 900 local law firms had set up associations with Mainland law firms in the form of partnership. Some members reckoned that it was due to the fact that the majority of solicitor firms in Hong Kong were medium and small-sized and many Hong Kong legal practitioners faced difficulty in finding Mainland law firms of similar size to be the partner in setting up partnership associations. Members hoped that the Administration would actively explore with the Mainland ways to allow more Hong Kong solicitors and barristers with training in common law to participate in appropriate cases concerning Hong Kong as advocates in the courts in GBA. The Administration advised that DoJ had received similar views from the legal sector and would reflect the concerns of medium and small-sized law firms to the Mainland authority as appropriate.

15. During the examination of the Estimates of Expenditure 2020-2021, a Member asked how would DoJ work in tandem with the "Qianhai's Action Plan of Policies and Measures to Benefit Hong Kong and Macao Residents suggested in the Meeting held by the Leading Group for Development of Guangdong-Hong Kong-Macao Greater Bay Area" under the "early and pilot implementation" approach.

16. In response, the Administration advised that the policy suggestions on legal services include relaxing the current condition that a law firm in Hong Kong or Macao must have been engaged in the operation of legal services for

five full years in order to apply for the establishment of a partnership association, allowing more than one Mainland law firm to jointly establish a partnership association with law firms in Hong Kong or Macao, and expanding the scope of legal practice in the partnership association of Hong Kong and Macao residents who have obtained Mainland legal professional qualification. According to the Administration, DoJ would maintain close contact with the relevant authorities in the Qianhai District with a view to early implementation of these pilot measures in order to provide more business opportunities for Hong Kong legal services sector.

### Simplified accreditation standard for Hong Kong lawyers to practise in Greater Bay Area

17. The Panel noted the legal profession's view that a simplified accreditation system could be established for Hong Kong solicitors and barristers who would like to practise in GBA through, for example, assessment through oral examination or interview, or exempting those who had proven track record in specialized legal field from taking the Mainland examinations. The Panel also noted The Law Society of Hong Kong's suggestion that Hong Kong solicitors who had more than 15 years' experience in a specialized field, e.g. cross-boundary investment cases, could be exempted from taking any Mainland examination or allowed to take a special examination so as to be qualified for limited practice in GBA.

### Study on the setting up of the Greater Bay Area Mediation Platform

18. At the Panel meeting on 25 March 2019, some members indicated support for the Administration to study the feasibility of establishing the GBA Mediation Platform as it would establish a unified mediators' accreditation system and mediation rules for member organizations and provide a platform for learning and exchanges for the mediation sector with the GBA. A member considered that the establishment of the GBA Mediation Platform would have a positive impact on professions other than the legal sector, such as the engineering sector.

19. A member was concerned about whether there was a clear difference between "mediation" and "arbitration" in the Mainland and Macao, and whether "mediation" and "arbitration" in the Mainland and Macao carried the same meaning as that of Hong Kong. The Administration responded that mediation had been adopted in the Mainland and Macao for quite some time. In the Mainland, while mediation for resolving disputes was undertaken by the courts and People's mediation commissions in early years, some mediation institutes providing such service had been established in recent years. As for Macao, there was a center which promoted dispute resolution through mediation and there was a pool of mediators registered under the center.

20. The Administration advised that it would actively pursue the relevant work and discuss the proposal of setting up the GBA Mediation Platform with the Mainland and Macao authorities. The Administration was requested to report progress to the Panel.

#### Capacity building work

21. At the Panel meeting on 25 March 2019, some members pointed out that the subject of GBA was quite new to Hong Kong people. To equip law graduates with knowledge in this regard, it was suggested that knowledge about GBA and the scope of legal practice allowed there for qualified Hong Kong practitioners could be included in the law school curriculum. In addition, more exchange activities between the law schools in Hong Kong and those in the Mainland should be arranged, such as summer internship programmes.

22. DoJ undertook to actively pursue the exchanges between the legal sector, which could include law students, in Hong Kong and that in GBA, as well as the development of Hong Kong as the capacity building centre of GBA.

23. In relation to DoJ's initiative in exploring the setting up of a platform for training of judges and lawyers, the Panel noted at its meeting on 29 April 2019 that the three law schools in Hong Kong had been offering programmes on arbitration for years. The Panel and Hong Kong Bar Association shared a similar concern that many people who had obtained the qualification of an arbitrator were not practising as arbitrators, and urged the Administration to provide more opportunities for these arbitrators to handle arbitration work and involve them in the development of Hong Kong's arbitration services.

#### Interim measures from Mainland Courts available to parties to institutional arbitrations seated in Hong Kong

24. At the Panel meeting on 29 April 2019, members noted that pursuant to the Arrangement, parties to arbitral proceedings seated in Hong Kong and administered by eligible arbitral institutions which had been designated would be able to apply to the relevant Mainland court for interim measures including property preservation and conduct preservation in aid of such arbitral proceedings. Members considered that it would greatly enhance the competitiveness of Hong Kong arbitrators against their Mainland counterparts.

#### Article 11.2 of the Hong Kong International Arbitration Centre Administered Arbitration Rules

25. At the Panel meeting on 29 April 2019, some members relayed the concern of the legal and arbitration services sector regarding Article 11.2 of the Hong Kong International Arbitration Centre ("HKIAC") Administered Arbitration Rules ("HKIAC Rules") which stated that "... as a general rule,

where the parties to an arbitration under [the HKIAC Rules] are of different nationalities, a sole or presiding arbitrator shall not have the same nationality as any party unless specifically agreed otherwise by all parties". With the above restriction, if at least one party to an arbitration case was from the Mainland, an arbitrator holding an HKSAR Passport could not handle the case as he/she was also having Chinese nationality.

26. In response, the Administration said that DoJ had liaised with HKIAC on the above concern. According to HKIAC, a Practice Note on Appointment of Arbitrators ("Practice Note") came into force at the same time the latest version of the HKIAC Rules came into effect in 2018. Among other things, the Practice Note stated that, considering HKSAR's status with a legal system separate from that of Mainland China under the "one country, two systems", in cases in which at least one party was from Mainland China, the holder of a HKSAR passport might be appointed as sole or presiding arbitrator, provided that none of the parties object within a time limit set by HKIAC.

27. The Panel and Hong Kong Bar Association were aware that notwithstanding the Practice Note, Article 11.2 remained part of the HKIAC Rules. Since an arbitrator holding HKSAR Passport was still having the same nationality to one of the parties who was from the Mainland, he/she could not be appointed as a sole or presiding arbitrator unless specifically agreed by all parties to the arbitration, and it was difficult to obtain such mutual agreement in practice as the parties would have little incentive in engaging Hong Kong's arbitrators.

28. The Panel members urged the Administration to consider whether the relevant restriction should be removed or an alternative solution should be made to address the problem facing arbitrators holding HKSAR Passports. The Administration undertook that DoJ would discuss with HKIAC on whether the Practice Note was effective to address the concern.

### **Latest position**

29. The Administration will provide an overview of the recent developments on Hong Kong's legal and dispute resolution services in GBA, including the GBA Legal Professional Examination and other initiatives, at the Panel meeting to be held on 22 March 2021.

**Relevant papers**

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

Council Business Division 4  
Legislative Council Secretariat  
16 March 2021



**Recent developments on Hong Kong's legal and dispute resolution services  
in the Greater Bay Area**

**List of relevant papers**

<b>Meeting</b>	<b>Date</b>	<b>Item</b>	<b>LC Paper No.</b>
Panel on Administration of Justice and Legal Services	25.1.2016 (Item III)	<u>Minutes of meeting</u>	CB(4)1268/15-16
	29.1.2018 (Item I)	<u>Minutes of meeting</u>	CB(4)445/18-19
	30.4.2018 (Item III)	<u>Background brief</u>	CB(4)965/17-18(04)
		<u>Minutes of meeting</u>	CB(4)510/18-19
	29.10.2018 (Item IV)	<u>Minutes of meeting</u>	CB(4)589/18-19
	25.3.2019 (Item IV)	<u>Administration's paper</u>	CB(4)665/18-19(04)
		<u>Minutes of meeting</u>	CB(4)1176/18-19
	29.4.2019 (Item III)	<u>Administration's paper</u>	CB(4)782/18-19(02)
		<u>Background brief</u>	CB(4)782/18-19(03)
		<u>Minutes of meeting</u>	CB(4)1177/18-19
	24.02.2020 ( <i>Re-scheduled</i> )	<u>Administration's paper</u>	CB(4)318/19-20(02)
	-	<u>Information 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>	CB(4)725/18-19(01)

<b>Meeting</b>	<b>Date</b>	<b>Item</b>	<b>LC Paper No.</b>
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. SJ057, SJ063, SJ068 and SJ075)</u>	-
	7.4.2020	<u>Examination of Estimates of Expenditure 2020-2021 (Reply Serial Nos. SJ055, SJ056, SJ083, SJ111)</u>	-

Council Business Division 4  
Legislative Council Secretariat  
16 March 2021