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Panel on Administration of Justice and Legal Services

Background brief on the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") Legal Professional Examination and other development opportunities in GBA for the Hong Kong legal profession

Purpose

This paper provides an account of the past discussions of the Legislative Council ("LegCo") Members on matters relating to the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") Legal Professional Examination ("the GBA Examination") and other development opportunities in GBA for the Hong Kong legal profession.

Background

2. According to the Administration, since the promulgation of the "Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area" ("the Outline Development Plan") on 18 February 2019 and with the strong support and active participation of Guangdong, Hong Kong and Macao, the development of GBA has taken substantial steps, and the opening and integrated development of the legal and dispute resolution services also contributed to the progress in the building of the rule of law in GBA. The Hong Kong Special Administration Region ("HKSAR") Government has pledged to continue following the guiding directions in the Outline Development Plan and leverage the distinctive advantage of Hong Kong's legal system under the "one country, two systems" principle, and proactively take forward the development of the GBA and assist the legal and dispute resolution sector to strive for policy innovation and breakthroughs that are needed for exploring the opportunities.

The GBA Examination

3. To facilitate Hong Kong legal practitioners in seizing opportunities from the rapid development in the Mainland, the Department of Justice ("DoJ") has been actively reflecting the views and expectations of the Hong Kong legal sector to the Mainland authorities, including their hope to lower the threshold for legal practitioners to practise in the Mainland apart from the National Unified Legal Professional Qualification Examination. To promote the development of legal services in GBA and respond to the wishes of the Hong Kong legal sector, the Agreement Concerning Amendment to the Closer Economic Partnership Agreement on Trade in Services ("the Amendment Agreement") signed between the Mainland and Hong Kong on 21 November 2019 allows Hong Kong legal practitioners to practise in specified areas of Mainland legal matters upon passing a special examination and obtaining GBA practice qualification.

4. To implement the Amendment Agreement, following the decision adopted by the Standing Committee of the National People's Congress ("NPCSC") on 11 August 2020 regarding the GBA Examination, the State Council issued on 22 October 2020 the pilot measures for Hong Kong and Macao legal practitioners to obtain Mainland practice qualifications and to practise as lawyers in the nine Mainland municipalities in the GBA ("the Pilot Measures"). Hong Kong solicitors and barristers with accumulated practice experience of five years or above are eligible to apply for taking the examination. Upon obtaining a lawyer's practice certificate (GBA), one can provide legal services in the nine Mainland municipalities in the GBA on specified civil and commercial matters (including litigation and non-litigation matters) to which the Mainland laws apply, and enjoy the same privileges and subject to the same obligations as Mainland lawyers.

5. On 6 November 2020, the Ministry of Justice ("MoJ") published a notice providing details on the GBA Examination, including eligibility for the examination, application procedures as well as scope of examination.

6. To promote the GBA Examination, DoJ collaborated with MoJ, the Department of Justice of Guangdong Province and the Legal Affairs Bureau of Macao to co-host a seminar on 19 November 2020 to introduce the relevant examination policies as well as the current position and development opportunities of legal services in the GBA. The seminar attracted overwhelming response with over 700 online participants.

7. Hong Kong legal practitioners have also responded enthusiastically towards the GBA Examination, applicants include barristers, lawyers and legal consultants. According to the Pilot Measures, MoJ arranged legal training for applicants from 21 to 27 December 2020, with the training venue changed from Shenzhen to online training due to COVID-19 pandemic.

8. The Administration is of the view that the GBA Examination will not only provide better facilitation and opportunities to the Hong Kong legal services sector but, more importantly, also provide diversified legal services and safeguards to enterprises in GBA which in turn deepen the connection of the three places. The in-depth participation of the Hong Kong legal services sector in the building of rule of law in GBA can realize the closer integration of legal services in GBA, and effectively promote the development of high-end foreign-related legal services such as international trade, cross-border finance, and internet finance in GBA, thereby enhancing the overall international competitiveness of legal services in GBA.

9. To better prepare the Hong Kong legal practitioners who have passed the GBA Examination to practise in the nine Mainland municipalities in GBA, DoJ plans to cooperate with Mainland organs like the Supreme People's Court to provide practical training courses on Mainland laws for those who have passed the examination. It aims to enhance their practical knowledge on Mainland courts' handling of different areas of civil and commercial matters.

10. The inaugural GBA Examination was originally scheduled to be held on January 30, 2021, but was postponed to 31 July 2021 due to the COVID-19 pandemic.

Other initiatives relating to the development of the legal profession in GBA

11. Aside from the arrangement of the GBA Examination, the Administration has also rolled out a series of initiatives to promote the development of the legal profession in GBA encompassing a wide range of areas such as promoting employment for young legal practitioners in GBA, development of arbitration and dispute resolution services, widening the use of Hong Kong law in GBA etc. Details on these initiatives are set out in LC Paper No. CB(4)648/20-21(05).

Major views and concerns of Members and relevant stakeholders

12. At its meeting on 22 March 2021, the Panel on Administration of Justice and Legal Services ("the Panel") discussed issues relating to the GBA Examination and other development opportunities in GBA for the legal profession. The Hong Kong Bar Association ("HKBA") and The Law Society of Hong Kong ("the Law Society") were also represented at the meeting to give views on the subject. The major areas of deliberations on the subject are set out in the ensuing paragraphs.

The GBA Examination

13. The Law Society hailed the implementation of the Pilot Measures, which was a breakthrough after years of endeavour made by DoJ and the Law Society.

The Law Society wished that the measures would continue after the pilot stage and, besides GBA, Hong Kong legal practitioners obtaining the lawyer's practice certificate (GBA) would be allowed to practise in other Guangdong's cities outside GBA, and to the whole country progressively.

14. The Law Society further advised that as Hong Kong legal practitioners would be precluded from handling criminal and administrative cases even after they had obtained the lawyer's practice certificate (GBA), the legal profession had suggested that the subjects for examination under the GBA Examination should exclude those topics. There was also a view that, since the GBA Examination was targeted at the more experienced Hong Kong lawyers, a simplified accreditation standard could be adopted to enable Hong Kong lawyers who had accumulated more than 10 or 15 years of practice experience in a specialized field to be qualified for limited practice in GBA in the relevant field without taking the GBA Examination.

15. In response to members' enquiry, the Administration advised that according to MoJ, there were 655 Hong Kong legal practitioners (including 588 solicitors and 67 barristers) who enrolled in the inaugural GBA Examination.

16. Members were concerned whether there was any roadmap on the future development of the legal and dispute resolution services in GBA after the pilot period, such as whether a quota would be set on the number of lawyer's practice certificates (GBA) to be issued annually. The Administration responded that according to the decision adopted by NPCSC on authorizing the State Council to implement the Pilot Measures, the way forward regarding the GBA Examination would depend on the outcome of the actual implementation in the three-year pilot period.

Business opportunities for Hong Kong barristers in the Greater Bay Area

17. Members and HKBA expressed the view that the Outline Development Plan and "Outline of the 14th Five-Year Plan for National Economic and Social Development of the People's Republic of China and the Long-Range Objectives Through the Year 2035" had clearly demonstrated the Central People's Government ("CPG")'s staunch support for HKSAR and its professional sectors. However, it was not easy for Hong Kong barristers to seize the opportunities in GBA. HKBA pointed out that owing to the difference in nature of the practices of barristers and solicitors, the benefits of the above initiatives and measures for barristers were less obvious than those to the solicitors. In this connection, some members enquired whether the Administration had any plan in the pipeline, including discussion with MoJ, on measures to facilitate Hong Kong barristers in setting up chambers in the Mainland, which was currently not possible. Members also urged the Administration to offer more practical assistance to Hong Kong

barristers, including the provision of information about what opportunities for cooperating with the Mainland law firms were available to them.

18. In reply, the Administration explained that various measures including the GBA Examination and measures relating to arbitration put in place were to benefit both Hong Kong solicitors and barristers. Furthermore, the Administration had taken heed of HKBA's suggestion and sought CPG's agreement to allow Hong Kong legal practitioners (including barristers) to be retained as legal consultants by one to three Mainland law firms simultaneously, and to replace the approval requirements with filing procedures. Hong Kong barristers who have passed the GBA Examination could also be retained by Mainland law firms in GBA.

19. Some members disagreed with the view that solicitors would benefit more from the Pilot Measures than barristers and said that barristers could also be providing arbitration services in the Mainland. It was also pointed out that Hong Kong legal practitioners with barrister background had been invited to participate as legal experts in court hearings of some civil and commercial cases having common law elements in Qianhai.

20. Some members requested that HKBA should clarify whether Hong Kong barristers, if they were engaged as legal consultants by the Mainland law firms, would violate the Direct Access Rule under the Code of Conduct of the Bar of HKSAR. Furthermore, it was noted that while a list of barristers being engaged as legal consultants in the Mainland was provided on HKBA's website, it had not been updated since 2016. Members opined that HKBA should provide more assistance to barristers on this front.

21. Some members pointed out that, since the proposed measures to facilitate the development of Hong Kong legal and dispute resolution services in GBA were still at the pilot stage of implementation, it was understandable that the Mainland would have reservations on expanding Hong Kong lawyers' scope of practice too quickly. Nevertheless, all Hong Kong lawyers should get prepared to seize the opportunities for the legal profession in GBA. Otherwise, they might lose the competition with legal practitioners from other jurisdictions who were vehement in entering the Mainland market.

Promoting Hong Kong Special Administrative Region as an international centre of legal and dispute resolution services, including in the Greater Bay Area

22. Citing the costs involved in arbitration being one possible hindrance discouraging the use of arbitration services, the Law Society suggested that the Administration might consider, as an incentive, subsidizing the costs of businesses which adopted arbitration for dispute resolution. Alternatively, consideration might be given to provide direct subsidies to arbitration institutions so that the costs for arbitration would be lowered to increase its attractiveness. While some

members concurred that subsidizing arbitration institutions might be merited, they had reservations about subsidizing parties to arbitrations and cautioned that, if the latter suggestion was pursued, LegCo Members would have the added responsibilities of scrutinizing against any abuse or waste of public money incurred.

23. The Law Society also opined that the Administration might consider setting up in GBA institutions similar to the Financial Dispute Resolution Centre in Hong Kong which provided specific types of dispute resolution services through arbitration and mediation. It also urged the Administration to help provide more practising opportunities for junior arbitrators to nurture their skills and practical experience.

Reciprocal recognition and enforcement of judgments in civil and commercial matters between Hong Kong and the Mainland

24. Some members requested the Administration to provide the number of cases handled by the courts in Hong Kong relating to the reciprocal recognition and enforcement of civil and commercial judgments between Hong Kong and the Mainland which had come into effect.¹ They considered that, as the number of cross-border disputes to be handled by Hong Kong practitioners practising in GBA was expected to increase, the figures requested could reflect the effectiveness of the reciprocal recognition and enforcement of judgments between the Mainland and Hong Kong which were important for the legal profession's reference. According to the information provided by the Judiciary Administration through the Administration, there were 123 applications for enforcement of Mainland judgments in Hong Kong as at 28 February 2021.

Further measures on partnership associations in the Greater Bay Area

25. To enhance the business sector's understanding of the advantages of arbitration and its acceptance, the Law Society suggested that future seminars on arbitration should be industry-based and focusing on specific topics, targeting the needs and concerns of particular businesses or industries such as construction, properties, international trade, logistics, financial technologies, insurance, etc. Furthermore, promotion of the arbitration and its benefits to the general public should also be stepped up.

¹ Including the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) which has come into effect in 2008; and the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of HKSAR Pursuant to Choice of Court Agreements between Parties Concerned, which is the sixth arrangement with the Mainland on mutual legal assistance in civil and commercial matters, was signed on 18 January 2019.

26. Members noted that, notwithstanding the liberalisation measures which had been implemented, such as the removal of the minimum capital injection ratio of 30% by Hong Kong partner firms in partnership associations set up between Hong Kong and Mainland law firms, the number of partnership associations which had been set up in Guangdong Province had remained stagnant at 12 for quite some time. They considered that, while capital requirement was an important consideration, lack of understanding about the operation of legal profession in the Mainland was also an obstacle for the small and medium-sized law firms in deciding whether to set up partnership associations in the Mainland.

27. In this connection, some members suggested that other opportunities for collaborating with the Mainland law firms (e.g. working on joint projects) should be provided to small and medium-sized law firms so that they could gain a better understanding about operating in the Mainland before making the final decision of forming partnership associations. In response, the Administration advised that in addition to the 12 partnership associations set up in Guangdong Province, some Hong Kong law firms had in fact set up partnership associations outside Guangdong Province, e.g. Hainan Province. As a stepping stone, the small and medium-sized law firms might consider establishing representative offices in the Mainland or arranging secondment of staff to work in Mainland law firms to gain practical experience. The Administration welcomed any views and suggestions from the legal sector on measures to tap into the GBA market.

Latest position

28. The Administration will report on the examination arrangement for the inaugural GBA Examination held on 31 July 2021 and brief the Panel on other development opportunities in GBA for the Hong Kong legal profession at the Panel meeting to be held on 31 August 2021.

Relevant papers

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

The Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") Legal Professional Examination and other development opportunities in GBA for the Hong Kong legal profession

List of relevant papers

Meeting	Date	Item	LC Paper No.
Panel on Administration of Justice and Legal Services	22 March 2021 (Item IV)	<u>Administration's paper</u>	CB(4)648/20-21(05)

Council Business Division 4
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