

For discussion on
14 March 2025

**Legislative Council Panel on
Administration of Justice and Legal Services**

**The Latest Development of the Extension of the Measures of
“Allowing Hong Kong-Invested Enterprises to Adopt Hong Kong Law” and
“Allowing Hong Kong-Invested Enterprises to Choose Hong Kong as
the Seat of Arbitration”**

Purpose

This paper seeks to brief Members on the latest progress of the extension of the measures of “allowing Hong Kong-invested enterprises to adopt Hong Kong law” and “allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration”.

Background

2. Consolidating and enhancing the competitiveness of Hong Kong’s legal and dispute resolution services, actively encouraging the industry to dovetail with the national development strategy, and taking forward the construction of rule of law in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) has all along been an important policy objective of the Department of Justice (DoJ) and one of key policy initiatives under the Chief Executive’s Policy Addresses. In this regard, the DoJ has been actively reinforcing cooperation with stakeholders to promote Hong Kong’s robust legal system to the business communities in Hong Kong, the Mainland and beyond, and to encourage enterprises to make use of Hong Kong’s international legal and dispute resolution services.

3. In order to fully utilise the unique advantages of “one country, two systems, three jurisdictions” in the GBA and promote the construction of rule of law therein, the DoJ has been striving for the extension of the measures of “allowing Hong Kong-invested enterprises to adopt Hong Kong law” and “allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration”. In April 2024, DoJ issued the *Action Plan on the Construction of Rule of Law in the Guangdong-Hong Kong-Macao Greater Bay Area*. The Action Plan sets out the policy initiatives of the DoJ

in relation to the construction of the rule of law in the GBA, and among them, seeking to extend the two measures to GBA Mainland cities are important initiatives. It is also one of the key initiatives under the Chief Executive's Policy Address 2024.

The Two Measures before Extension

4. In gist:

“Allowing Hong Kong-invested enterprises to adopt Hong Kong law”

- (1) “Allowing Hong Kong-invested enterprises to adopt Hong Kong law” refers to the measure allowing Hong Kong-invested enterprises to choose Hong Kong law as the law applicable to their civil and commercial contracts in absence of “foreign-related element”.¹
- (2) “Applicable law of the contract” means the law of the country or region to which the rights and obligations of the parties to the contract are subject.
- (3) Before its extension, the measure has been in force in the Qianhai-Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen Municipality since 2020.²

¹ Generally speaking, according to the relevant laws and regulations in the Mainland, unless there is any “foreign-related element”, for example when at least one party is a foreign citizen or legal person, or when the subject matter is outside the territory of the People's Republic of China, the parties are generally not allowed to choose any law other than the Mainland law as the law applicable to their contracts, or choosing to arbitrate any contractual dispute outside the Mainland. (Please refer to the *Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships* and *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the “Law of the People's Republic of China on the Law Applicable to Foreign-Related Civil Relationships” (I)*)

² Implemented since October 2020, Article 57 of the *Regulations of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone* allows that when either party or both parties to a civil or commercial contract is a Hong Kong-, Macao-, Taiwan- or foreign-invested enterprise registered in the Qianhai Cooperation Zone, the parties may by mutual agreement choose the law applicable to their contract.

“Allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration”

- (4) The measures allows Hong Kong-invested enterprises to choose Hong Kong as the place of arbitration (or referred to “seat of arbitration” in legal terms) for commercial disputes, and the Mainland courts will not find the relevant arbitration agreement invalid on the ground of absence of “foreign-related element”³.
- (5) “Seat of arbitration” is a legal concept and is not referring to the physical venue at which the arbitral hearing is to take place, but the legal jurisdiction governing the arbitral proceedings. It determines the law of the country or region which has supervisory jurisdiction over the arbitral proceedings, for example, the parties may apply to the court with supervisory jurisdiction for interim measures, setting aside an arbitral award, etc.
- (6) Prior to the extension, the measure has been piloted in the Mainland’s Pilot Free Trade Zones⁴ since 2017 and such include the China (Guangdong) Pilot Free Trade Zone (i.e Guangzhou Nansha New Area, Qianhai-Shekou Area of Shenzhen and Hengqin Area of Zhuhai).⁵

5. Both measures provide Hong Kong-invested enterprises registered in the relevant area with greater freedom to choose Hong Kong law as the law applicable to the contract and to choose Hong Kong as the seat of arbitration by making the relevant provisions in the contract. However, the content and terms of a contract are generally not available to the public. Only when a party commences proceedings in court

³ See Footnote 1.

⁴ In 2017, the SPC issued the “Opinion of the Supreme People’s Court on the Provision of Judicial Safeguards for the Development of the Pilot Free Trade Zones” (Fa Fa [2016] No.34). Article 9 of the Opinion provides that “where the wholly foreign owned enterprises registered in the pilot free trade zones agree to submit a commercial dispute to arbitration outside the Mainland, the relevant arbitral agreement shall not be considered invalid solely because the dispute lacks any foreign-related elements.....”.

⁵ Other Pilot Free Trade Zones in the Mainland include Shanghai, Tianjin, Fujian, Sichuan, Beijing and Xinjiang etc.

regarding a dispute arising from such a contract may the contractual provisions (e.g. the choice of applicable law) be disclosed during the proceedings. If the parties instead resolve the relevant contractual disputes through arbitral proceedings, the contractual provisions such as the choice of the seat of arbitration (and the nature and content of the dispute) are generally not disclosed to the public given the confidential nature of arbitral proceedings.

6. For the above reasons, we have no information on the number of Hong Kong-invested enterprises registered in the relevant areas of the Mainland which have made such choices in their contracts since the two measures are in place. We understand that there are no such statistics in other public sources. Nevertheless, it does not prevent us from understanding the fruits of both measures through other means.

7. We have the following two observations from the statistics available:

- (1) Upon implementation of the measure of “allowing Hong Kong-invested enterprises to adopt Hong Kong law”, in recent years there has been an upward trend in the number of cases with Hong Kong elements heard by the Shenzhen Qianhai Cooperation Zone People’s Court (**Qianhai Court**). In 2023, the number of such cases exceeds 1,900, making the Qianhai Court the basic court which hears the most civil and commercial cases with Hong Kong elements. Furthermore, the number of cases the Qianhai Court heard in which the applicable law is Hong Kong law has been increasing, with a year-on-year increase of 15% in 2023. Besides, Hong Kong legal experts have been instrumental in assisting the Qianhai Court in verifying Hong Kong law or foreign laws in quite a number of cases, sometimes as expert witnesses.⁶
- (2) As regards the measure of “allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration”, the arbitration sector in Hong Kong have been handling a higher number of cases with Mainland elements. For instance, the Hong Kong International Arbitration Centre (**HKIAC**) has been maintaining a high caseload of over 300 arbitration cases in recent years, with the Mainland being the main geographical origins of the parties preceded only by Hong Kong.

⁶ See the yearly work reports of the Qianhai Court which are available on its website (Chinese version only): <https://www.szqhcourt.gov.cn/sfsjgk/gzbg/>

Between 2022 and 2024, the average number of arbitration cases involving Mainland parties exceeded 40% of its total caseload.

8. In addition, the DoJ has been in close communication with the sectors and other stakeholders on the implementation of relevant measures. It is our understanding that the legal and dispute resolution professions have welcomed the pilot measures since their introduction, which would offer the relevant Hong Kong-invested enterprises greater flexibility to make suitable choices, and also bring more opportunities to the sectors to serve Mainland enterprises. The business community has also conveyed to the DoJ the positive impact of the measures, which are welcomed by Hong Kong-invested enterprises. More importantly, a clear suggestion has been made to the DoJ that we should strive for extension of the measures to more GBA cities, so that more enterprises could benefit from the wider range of choices.

9. In this connection, on the basis of the positive pilot implementation of the two measures, the DoJ has been actively discussing with the relevant Mainland authorities and conveying the sector's suggestion for the extension of the measures. These efforts seek to enable the initiatives to effectively address the actual needs of the stakeholders, facilitating the sectors to consolidate and expand their businesses, thereby fully harnessing Hong Kong's strengths in its connectivity with both the Mainland and the world and the unique edges of the common law system.

The Two Measures after Extension

Incorporated as facilitation measures under CEPA Amendment Agreement II

10. On 9 October 2024, the Ministry of Commerce (**MOFCOM**) of the People's Republic of China and the Government of the Hong Kong Special Administrative Region (**HKSAR Government**) entered into the "Second Agreement Concerning Amendment to the Mainland and Hong Kong Closer Economic Partnership Arrangement Agreement on Trade in Services" (**CEPA Amendment Agreement II**). Under the CEPA Amendment Agreement II, the measures of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" and "allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration" are for the first time incorporated as liberalisation measures for facilitating trade in services under "the Mainland and Hong Kong Closer Economic Partnership Arrangement" (**CEPA**). Express provision is also made supporting the extension of the measures' scope of application in the GBA.

11. The inclusion of the two measures as facilitation measures under the CEPA is evident of the central government's emphasis on and support for Hong Kong's legal system, marking a milestone in promoting the Mainland's interface in respect of regulatory frameworks and mechanisms with Hong Kong.

Implementation of the extension of measures

12. To implement the two new CEPA facilitation measures, on 14 February 2025, the Supreme People's Court (SPC) and the Ministry of Justice jointly issued the *"Opinion on Fully Leveraging the Functions of Arbitration to Serve the High-Quality Development of the Guangdong-Hong Kong-Macao Greater Bay Area"* (**"Joint Opinion"**) (see **Annex 1**). On the same day, the SPC promulgated the *"Official Reply on the Issues concerning the Validity of the Adoption of Hong Kong or Macao Law as the Applicable Law of Contracts or the Designation of Hong Kong or Macao as the Seat of Arbitration by Hong Kong or Macao-Invested Enterprises Registered in the Mainland Part of the Guangdong-Hong Kong-Macao Greater Bay Area"* (**"SPC's Reply"**)⁷ (see **Annex 2**). The two documents expressly provide for the extension of the two measures, which applies to "Hong Kong-invested Enterprise", and came into force since the date of promulgation (i.e. 14 February 2025).

"Allowing Hong Kong-invested enterprises to adopt Hong Kong law"

13. The SPC's Reply stipulates that the measure of "allowing Hong Kong-invested enterprises to adopt Hong Kong law" is applicable to Hong Kong-invested enterprises registered in the municipalities of Shenzhen and Zhuhai. In short, the measure has been extended from Qianhai, Shenzhen to the two pilot municipalities of Shenzhen and Zhuhai.

14. Under Article 1 of the SPC's Reply, where either party or both parties are Hong Kong-invested enterprises registered in Shenzhen or Zhuhai, the parties may agree to choose Hong Kong law as the law applicable to the contract, except that it

⁷ According to the "Provisions of the Supreme People's Court on the Judicial Interpretation Work", "reply" is one of the forms of judicial interpretation. The full text of the Provisions is set out in the "Decision of the Supreme People's Court to Amend the 'Provisions of the Supreme People's Court on the Judicial Interpretation Work'": <http://gongbao.court.gov.cn/Details/b1a7af04dad864fc2b87fd9bbe4dc.html> (Chinese version only).

would be contrary to the mandatory provisions of the law of the state or prejudicial to the social and public interests.

“Allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration”

15. Pursuant to the Joint Opinion and the SPC’s Reply, the scope of application of the measure will be further extended from the Pilot Free Trade Zones in the Mainland to include the nine Mainland municipalities in the GBA. Where either party or both parties are Hong Kong-invested enterprises established and registered in any of the said municipalities, the parties may agree to choose Hong Kong as the seat of arbitration.

16. Article 2(1) of the SPC’s Reply explains the validity of the relevant arbitration agreements by providing that such agreements shall not be considered by Mainland courts as invalid solely due to the absence of Hong Kong-related elements.

17. Article 2(2) of the SPC’s Reply concerns recognition and enforcement of the relevant arbitral awards. It expressly provides that, where the parties submit a dispute to arbitration seated in Hong Kong as agreed and later apply to a court in the Mainland for recognition and enforcement of the relevant arbitral award, the Mainland court would not support the assertion that the arbitration agreement is invalid solely due to the absence of Hong Kong-related elements.

Applicable Hong Kong-invested enterprises

18. The SPC’s Reply also provides for a relatively wide definition of Hong Kong-invested enterprises. Article 3 states that “Hong Kong-invested enterprises” refer to enterprises which are wholly or partially invested by natural persons, enterprises or other organisations from Hong Kong and are established and registered in the Mainland in accordance with its laws.⁸ In other words, the SPC’s Reply does not impose any restriction on the qualifying ratio of investment by Hong Kong shareholders. Prior to the extension, the measure of “allowing Hong Kong-invested enterprises to choose Hong Kong as the seat of arbitration” is only applicable to

⁸ The Mainland municipalities of the GBA have been home to the highest number of Hong Kong-invested enterprises in the Mainland. As of the end of 2023, more than 32,000 Hong Kong-invested enterprises are established in Guangzhou, more than 88,000 in Shenzhen, more than 11,000 in Zhuhai and Huizhou respectively, and more than 8,000 in Dongguan.

wholly-owned Hong Kong enterprises registered in the Mainland Pilot Free Trade Zones. In contrast, after the extension, more Hong Kong-invested enterprises would benefit as partly-owned Hong Kong-invested enterprises would now also qualify to enjoy both measures.

Effects and benefits of the extension of measures

19. The DoJ is most grateful to the relevant Mainland authorities (including the SPC and the Ministry of Justice) as well as the legal and business communities for their immense support in implementing the extension of the two measures. The extension will provide more options, flexibility and convenience for Hong Kong-invested enterprises, effectively addressing the needs of the enterprises, allowing Hong Kong-invested enterprises to choose the law that they are more familiar with (including the Hong Kong law) as the applicable law of their contracts in light of their needs and circumstances, and to also choose a suitable place (such as jurisdictions outside the Mainland, including Hong Kong) as the seat of arbitration to resolve contractual disputes arising from investment and business activities. Hong Kong-invested enterprises would thus be placed in a better position to manage their risks more effectively.

20. The extension of the two measures introduces more opportunities for the legal and dispute resolution sectors, encourages deeper and wider co-operation between the legal and dispute resolution professions of the two places, which would in turn enhance Hong Kong's strategic position as an international legal and dispute resolution centre in the Asia-Pacific region under the national "14th Five-Year Plan". More importantly, through allowing more options for enterprises, fuller use could be made of Hong Kong's unique edges – its common law system and dispute resolution services which are internationally aligned – facilitating the development of a market-oriented, international and predictable business environment underpinned by the rule of law in the GBA.

Feedback from stakeholders and follow-up

21. Upon announcement of the extension details of the measures by the Mainland authorities, the DoJ has forthwith informed the stakeholders, setting out clearly the details of the extended measures. We have also published reader-friendly leaflets on social media platforms and the DoJ website. The feedback has been positive. We have

also proactively made use of various platforms to explain and promote the details of the measures to the stakeholders and the general public, including:

- (1) On 18 February 2025, DoJ's representatives attended the meeting of the Legislative Council Panel on Commerce, Industry, Innovation and Technology to brief panel members on the CEPA Amendment Agreement II, including the implementation of the extension of the two measures, and to answer members' questions. Members welcomed such extension;
- (2) On 19 February 2025, DoJ's representatives attended the CEPA Forum co-organised by the MOFCOM and the HKSAR Government, and hosted the breakout session on financial and legal services. During the session, we joined the representatives from the SPC and the Ministry of Justice to introduce the details of the two measures to representatives from the business, legal and dispute resolution sectors, and answered questions from them. We have received active response from the participants; and
- (3) On 24 February 2025, the Secretary for Justice (**SJ**) attended an event titled "Exchange with Outstanding Celebrities" celebrating the 125th anniversary of the Chinese General Chamber of Commerce, Hong Kong. In the event, the SJ introduced the latest development regarding the extended measures and that of the legal and dispute resolution sectors in the GBA to members of the Chamber, and leaders and professionals in the industry and business sectors. The participants agreed that such extension would bring new opportunities for the legal sector and Hong Kong-invested enterprises, and looked forward to the DoJ striving for further extension of the measures.

22. Implementing the extension of the two measures has been well-received by the sectors and other stakeholders. The DoJ will closely monitor the implementation of the extended measures and continue to maintain close communication with the stakeholders, the sectors and the Mainland authorities, to timely consolidate practical experience and explore further extension of the measures in due course, so as to foster continuous improvement of the business environment, supporting expansion of businesses in the GBA and beyond, encourage foreign businesses to enter the Mainland market through Hong Kong as the "springboard", in a bid to making fuller

use of Hong Kong's connectivity with both the Mainland and the world and its unique edges against the backdrop of "one country, two systems, three jurisdictions".

23. Members are invited to note the content above.

Department of Justice

March 2025

(Courtesy translation)

**Opinion on Fully Leveraging the Functions of Arbitration
to Serve the High-Quality Development of
the Guangdong-Hong Kong-Macao Greater Bay Area**

(Jointly issued by the Supreme People's Court and the Ministry of Justice
on 14 February 2025)

In order to implement the decisions of the Third Plenary Session of the 20th Central Committee of the Communist Party of China on deepening the reform of the arbitration mechanism, in accordance with the requirements of *the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area* and *the Implementation of the 14th Five-Year Plan regarding the Construction of the Guangdong-Hong Kong-Macao Greater Bay Area* to “promote the establishment of a diversified dispute resolution mechanism based on consultation, joint contribution, and shared benefits” and “improve the international commercial dispute resolution mechanism and build an international arbitration centre,” to fully leverage the functions and edges of the arbitration mechanism, to create a market-oriented first-class international business environment based on the rule of law, and to facilitate Hong Kong and Macao’s integration into the national development, the following opinions are provided:

1. Hong Kong- and Macao-invested enterprises established in any of the nine Mainland cities of the Guangdong-Hong Kong-Macao Greater may, in addition to the Mainland, also choose Hong Kong or Macao as the seat of arbitration for resolving commercial disputes.

2. Accelerate the construction of world-class and top arbitration institutions in the Greater Bay Area by strongly integrating the development of pilot centre(s) of international commercial arbitration centre(s) in Guangzhou and Shenzhen with the development of international legal and dispute resolution service centre(s) in Hong Kong and Macao, plan the construction of a Greater Bay Area international commercial arbitration centre, establish unified arbitration rules and an online dispute resolution platform for the Greater Bay Area, form a global, leading and influential international commercial arbitration hub, enhance the reputation and competitiveness of arbitration in China.

3. Consolidate and improve arbitration rules and business models to meet the demands of developing new quality productive forces, regulate the development of online arbitration, explore the application of intelligent technology in arbitration, so as to serve the healthy development of emerging industries such as artificial intelligence, digital economy and life sciences.

4. Establish fully functional and regulated service platform(s) which connects people's courts, judicial and administrative organs, and arbitration institutions in the nine Mainland cities, facilitate the processing of interim measures for arbitrations and other matters through the people's court online service platform, and further organic connection between arbitration and litigation.

5. Establish a database of cases of arbitration and judicial review in the Greater Bay Area, strengthen the publication and publicity of notable cases, with a view to guiding arbitration institutions to handle arbitration cases according to law, encouraging parties to choose arbitration for resolving disputes, and supporting arbitration in playing a more prominent role.

6. Support the construction of a recommended panel of arbitrators from Guangdong, Hong Kong and Macao, promote the sharing of resources and mutual recognition and engagement of arbitrators in the Greater Bay Area. Explore formulating international service standards for tribunal secretaries in the Greater Bay Area, explore the establishment of a recommended list of tribunal secretaries and a mechanism for arbitral tribunals' free choice of tribunal secretaries, promote sharing of tribunal secretaries in the Greater Bay Area. Promote sharing of information among people's courts, judicial and administrative organs and arbitration institutions, enhance communication and cooperation regarding arbitration.

7. Support the establishment of a joint training mechanism for foreign-related arbitration talents in the Greater Bay Area, jointly build training and practice bases by Guangdong, Hong Kong and Macao for arbitrators and tribunal secretaries, and conduct joint training for judges and arbitrators in the nine Mainland cities. Fully leverage the role of Hong Kong's foreign-related legal talent training mechanism and implement foreign-related arbitration talent training projects.

Source: The Supreme People's Court website¹

¹ <https://www.court.gov.cn/zixun/xiangqing/454931.html> (simplified Chinese version only)

(Courtesy translation)

**Official Reply on the Issues concerning the Validity of
the Adoption of Hong Kong or Macao Law
as the Applicable Law of Contracts
or the Designation of Hong Kong or Macao as the Seat of Arbitration
by Hong Kong or Macao-Invested Enterprises Registered
in the Mainland Part of the Guangdong-Hong Kong-Macao Greater Bay Area**

(Adopted at the 1,927th Meeting of the Judicial Committee of the
Supreme People's Court on 22 October 2024,
with effect from 14 February 2025)
Fa Shi No. 3 [2025]

To the High People's Court of Guangdong Province:

Your Court's Request for Instructions on Issues Concerning the Validity of the Adoption of Hong Kong or Macao Law as the Applicable Law or the Arbitration Agreements when Designating Hong Kong or Macao as the Seat of Arbitration Where One or Both Parties Are Wholly or Partly Hong Kong- or Macao-Owned Enterprises Established and Registered in the Mainland Part of the Guangdong-Hong Kong-Macao Greater Bay Area (Yue Gao Fa [2023] No. 53) has been received. Upon deliberation, the following official reply is hereby made:

1. Where one or both parties to a contract are Hong Kong- or Macao-invested enterprises established and registered in Shenzhen or Zhuhai in the Guangdong-Hong Kong-Macao Greater Bay Area, and the parties agreed to choose the law of the Hong Kong Special Administrative Region or the Macao Special Administrative Region as the applicable law of the contract and subsequently assert

such choice in litigation, the people's court shall uphold such choice if, upon examination, it would not be contrary to the mandatory provisions of the law of the state and would not damage social and public interests.

2. Where one or both parties are Hong Kong- or Macao-invested enterprises established and registered in any of the nine Mainland municipalities in the Guangdong-Hong Kong-Macao Greater Bay Area, and the parties have designated the Hong Kong Special Administrative Region or the Macao Special Administrative Region as the seat of arbitration, the people's court shall not allow any application by a party disputing the validity of the arbitration agreement on the sole ground that the dispute lacks any Hong Kong or Macao elements.

Where the parties have submitted their dispute to arbitration in accordance with their arbitration agreement and, after the arbitral award has been rendered, a party seeks to oppose the recognition or enforcement of such award on the sole ground that the arbitration agreement is invalid for lack of Hong Kong or Macao elements, the people's court shall not uphold such opposition.

3. For the purposes of this Reply, a "Hong Kong-invested enterprise" or "Macao-invested enterprise" means an enterprise, wholly or partially invested by natural persons, enterprises, or other organisations from the Hong Kong Special Administrative Region or the Macao Special Administrative Region, that has been established and registered in the Mainland in accordance with the laws.

Source: The Supreme People's Court website.¹

¹ <https://www.court.gov.cn/zixun/xiangqing/454941.html> (simplified Chinese only)