

[Hong Kong's pivotal role as the Greater Bay Area's dispute resolution center, supported by the Hong Kong and Mainland China governments](#)

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Hong Kong has a pivotal role in the Greater Bay Area (“GBA”). Comprising the nine Mainland China cities of Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen, Zhaoqing and the Special Administrative Regions (“SARs”) of Hong Kong and Macao, the GBA spans an area of 56,000 km² with a combined population of over 72 million¹ and ranks as the world’s 12th largest economy².

In the Outline Development Plan (“**Outline Plan**”) for the GBA (released in February 2019), which seeks to increase cooperation among the cities and the SARs to maximize the region’s strengths and enhance its international competitiveness, Hong Kong was given a specific role: enhancing its status as an international financial center and establishing itself as a center for international legal and dispute resolution services.

In this article, we present an overview of the key features of Hong Kong’s legal system that make it a lynchpin of the Outline Plan, the enhancements made through legal frameworks introduced by the Mainland and Hong Kong governments that have increased its international competitiveness, and some anticipated future developments.

Key features of Hong Kong’s legal system

Hong Kong is well placed to take on and discharge its role as an international financial center and establish itself as a center for international legal and dispute resolution services for global economic and trade activities. It already has a renowned reputation as an international financial center with internationally recognized standards of professional services, including legal and dispute resolution services.

This reputation, which Hong Kong will continue to build upon, rests on two internationally recognized cornerstones: the principle of “*one country, two systems*” and the constitutional protection conferred by the Basic Law. Both have allowed Hong Kong, as part of China, to maintain its own systems, including its common law legal system, and the core values of upholding the rule of law and judicial independence. Notably, Hong Kong’s final appellate court, the Court of Final Appeal, has non-permanent judges who serve as judges on the highest courts of other Commonwealth countries. Together, with its wide exposure to the international community, Hong Kong is well placed to serve as a tried and true international bridge to facilitate GBA and other Chinese businesses “going global”, as well as foreign businesses entering the GBA and the wider Chinese market.

Enhancements to strengthen cooperation between Hong Kong and the Mainland

Building on the advantages of Hong Kong’s legal system, significant developments have been made to enhance it for better cooperation between Hong Kong and the Mainland to achieve the Outline Plan’s aim of maximizing the GBA’s strength and enhance its international competitiveness.

¹ <https://www.bayarea.gov.hk/en/about/overview.html>

² <https://databank.worldbank.org/data/download/GDP.pdf>; <https://www.statista.com/statistics/1007451/china-gross-domestic-product-gdp-of-cities-in-the-greater-bay-area/>

Record of Meeting on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the Hong Kong Special Administrative Region

On 14 May 2021, a consensus was reached between the Supreme People's Court and the Hong Kong Government in relation to the mutual recognition of and assistance in insolvency proceedings between the Mainland and Hong Kong.³ Under this new agreement, which will first apply to certain pilot areas - Shanghai, Xiamen and Shenzhen, insolvency proceedings in both Hong Kong and the Mainland will be mutually recognized and assistance may be granted to liquidators/ provisional liquidators and administrators to discharge of their duties under the relevant insolvency and bankruptcy laws in Hong Kong and the Mainland.

This is a crucial milestone, because neither Hong Kong nor the Mainland has any existing statutory framework for dealing with cross-border insolvency matters and the introduction of such agreement will further facilitate cooperation between the courts of the two jurisdictions. With ongoing active communication between both governments, it is anticipated that this mechanism will be gradually extended beyond the pilot areas, and consolidate the legal cooperation and assistance between the two jurisdictions.⁴

Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region

On 19 May 2021, the *Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region* was fully implemented. Notably, this arrangement clarifies that all arbitral awards made under Hong Kong's *Arbitration Ordinance* (Cap. 609) can be enforced in the Mainland, and that simultaneous applications may be made to both the Mainland and Hong Kong courts for enforcement of an arbitral award.⁵

With the *Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region* that came into force on 1 October 2019, Hong Kong is the only jurisdiction that has signed arrangements fostering cooperation with the Mainland in respect of arbitral proceedings.⁶ This demonstrates Hong Kong's strengths under the rule of law of "one country, two systems" and improves its competitiveness, contributing to the enhancement of Hong Kong's status as the center for international legal services in line with the Outline Plan.⁷

Anticipated future developments

Apart from the implementation of the abovementioned legal arrangements between Hong Kong and the Mainland, we anticipate more measures and developments that help facilitate the cooperation between the two jurisdictions will come into play soon.

Mutual recognition and enforcement of judgments

On 18 January 2019, the *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* was signed, but is still yet to be implemented as at the date of this publication. This arrangement largely widens the scope of application of the existing framework under *Hong Kong's Mainland Judgments (Reciprocal Enforcement) Ordinance* (Cap. 597) which only allowed the mutual enforcement of monetary judgments arising from written civil or commercial agreements that have elected either Hong Kong or Mainland courts as the sole jurisdiction for resolving disputes. Once implemented, judgments for most types of civil or commercial matters, including non-monetary judgments, will be mutually enforceable. Further, parties who have not elected the exclusive jurisdiction of Hong

³ <https://www.info.gov.hk/gia/general/202105/14/P2021051400219.htm>;

https://www.doj.gov.hk/en/mainland_and_macao/pdf/RRECCJ_RoM_en.pdf

⁴ <https://www.info.gov.hk/gia/general/202105/14/P2021051400219.htm>

⁵ <https://www.info.gov.hk/gia/general/202011/27/P2020112700696.htm>

⁶ <https://www.info.gov.hk/gia/general/201904/02/P2019040200782.htm>;

https://gia.info.gov.hk/general/201904/02/P2019040200782_307637_1_1554256987961.pdf

⁷ <https://www.info.gov.hk/gia/general/202011/27/P2020112700696.htm>

Kong or Mainland courts for the resolution of their civil or commercial disputes would still be able to benefit from the arrangement.⁸

Expansion of the right to choose Hong Kong law and Hong Kong arbitration as the governing law and dispute resolution mechanism for civil and commercial contracts in the GBA

In 2020, a pilot measure allowing "*wholly-owned Hong Kong enterprises ("WOKEs") to adopt Hong Kong law*" was implemented in Qianhai. Under this pilot measure, WOKEs registered in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone could agree to use Hong Kong law as the governing law for their civil and commercial contracts.⁹ Following its successful implementation, the Mainland and Hong Kong governments are now considering extending the measure to Shenzhen and the entire GBA, which would enable WOKEs in the GBA to adopt Hong Kong laws and choose for arbitration to be seated in Hong Kong even in the absence of foreign-related elements.¹⁰ If implemented, businesses in Shenzhen and the entire GBA would be able to avail themselves of the advantages of Hong Kong's legal system for the resolution of their disputes. The Hong Kong International Arbitration Centre's latest case statistics for 2020 show that it is well-recognized for handling large-scale international disputes concerning various different governing laws, with 99.4% of all arbitrations commenced during that year being seated in Hong Kong.¹¹

Proposals to set up a GBA Mediation Platform

A proposal to set up a GBA Mediation Platform is currently being discussed amongst the legal departments of the Guangdong, Hong Kong and Macao governments. It was first endorsed at the 2nd GBA Legal Departments Joint Conference held on 11 December 2020, and a Legislative Council Panel meeting held on 14 May 2021 confirmed that the relevant work and discussions required for setting up the platform would be actively pursued.¹²

Conclusion

The legal frameworks that are being developed and implemented as part of the development of the GBA are ground-breaking. Their aim is to facilitate and support the main objective of the Outline Plan to develop an innovation-driven and open economy with connectivity among the GBA markets, and facilitate the advancement of the Belt and Road initiative.¹³ They have and will continue to enhance Hong Kong's competitiveness as a center for dispute resolution and regulatory compliance for global economic and trade activities. Foreign organizations that want to do businesses with Chinese organizations (and vice versa) should be mindful of the advantages of choosing Hong Kong law and Hong Kong courts and/or arbitration as the governing law and dispute resolution mechanisms in their investment and/or transaction documents.

The views reflected in this article are the views of the authors and do not necessarily reflect the views of the global EY organization or its member firms.

Original article published in Benchmark Litigation Asia-Pacific's Top 100 Women in Litigation 2021 which recognized our partner, Kareena Teh, as one of Asia Pacific's leading female litigators in 2021. Please click [here](#) to access the original article.

⁸ https://www.doj.gov.hk/en/mainland_and_macao/pdf/Doc3_477379e.pdf;

https://www.doj.gov.hk/en/mainland_and_macao/pdf/Doc6_481354e.pdf

⁹ <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20210322cb4-648-5-e.pdf>

¹⁰ https://www.news.gov.hk/eng/2020/10/20201026/20201026_145929_008.html

¹¹ <https://www.hkiac.org/about-us/statistics>

¹² <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20210514cb4-956-4-e.pdf>; <https://www.legco.gov.hk/yr20-21/english/panels/ajls/papers/ajls20210514cb4-956-3-e.pdf>

¹³ Belt and Road refers to the land-based Silk Road Economic Belt and the seafaring 21st Century Maritime Silk Road. The initiative is a large-scale infrastructure project which aims to promote market integration among different economies and international cooperation across Asia, Europe and Africa.

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APAC no.: 03012648

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