

Hong Kong as a two-way Gateway between the GBA market and the international market: are you well positioned to ride on the opportunities arising from the GBA initiative?

The development of the Greater Bay Area (“**GBA**”) is accorded the status of key strategic planning in China’s national development blueprint. We have received many enquiries from overseas and Mainland investors as well as multinationals that wish to launch or expand their business in Hong Kong so as to leverage the opportunities arising from the GBA initiative. This article aims to introduce the key strengths of Hong Kong as the global gateway between GBA and the rest of the world from a legal perspective, and highlight some of the significant developments which enhance Hong Kong’s collaboration with Mainland China.



I. What is the GBA initiative?

The GBA is an initiative that aims to synergise the best qualities of all cities in the region, joining their strengths to maximize regional economic development and international competitiveness for the benefit of all, attracting global businesses and investors. Hong Kong will leverage its unique advantages to form complementary functions with other cities in the GBA, serving as a global gateway to facilitate inbound and outbound businesses between the GBA market and the international market.



◆ The region comprises 9 mainland cities in Guangdong Province (including Guangzhou and Shenzhen as the two largest cities) together with the two SARs of Hong Kong and Macau

◆ GBA covers 3 different legal systems (i.e. Mainland China, Hong Kong and Macau)

◆ Total population is over 86 million in 2020 and total GDP is USD 1,668.8 billion in 2020

• Hong Kong’s Key Role in the GBA

Hong Kong is designated with the pivotal role to enhance its status as an international financial centre and establish a centre for international legal and dispute resolution services, according to the *Outline Development Plan for GBA* and the *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*.



II. Key strengths of Hong Kong as the International Legal Hub

Mature Legal System

One of the main pillars supporting Hong Kong's reputation as an international financial hub is the Hong Kong legal system. Hong Kong remains as a common law jurisdiction under the umbrella of "One Country, Two Systems". The Hong Kong legal system adheres to internationally recognised practices that is familiar to the international business community, forming a strong and stable foundation for commercial activities.

Reciprocal Recognition and Enforcement of Judgments

Reciprocity of enforcement of Hong Kong judgments is possible across Commonwealth countries and various other jurisdictions. Mutual recognition and enforcement of judgments arising from agreements by the courts in the Mainland and Hong Kong is also possible.

Leading Dispute Resolution Centre in Asia Pacific

Hong Kong is one of the leading dispute resolution centres for the resolution of commercial disputes. According to the 2021 International Arbitration Survey, Hong Kong International Arbitration Centre is ranked as the 3rd most preferred arbitral institution and Hong Kong is the 3rd most preferred seat worldwide. This is not surprising as Hong Kong has always strived to strengthen its status as one of the most arbitration friendly jurisdictions. Importantly, enforcement of arbitral awards in Hong Kong is quite straight forward and Hong Kong has an excellent track record of enforcement of arbitral awards.

International Legal Services

Hong Kong has a world-class infrastructure and financial system and a well-respected community of legal, tax, consulting and other business professionals with extensive knowledge of global markets able to serve clients from diverse backgrounds. Hong Kong legal professionals are trained in common law and are familiar with business needs across common law jurisdictions.

For instance, our partner, Shirley Fu, is admitted in Hong Kong, England & Wales, New South Wales Australia and New Zealand (and has passed the first-ever GBA Legal Professional Examination and is currently pending admission in the GBA), with 5 years' experience in premier offshore law firms advising on Cayman Islands and BVI laws. Our partner, Leo Tian, is admitted in the State of New York and Hong Kong, and has passed the PRC bar. Our team is well equipped to support clients' cross-border transactions and legal matters.

Foreign Investment Friendly Regulatory Environment

Generally, there are no Hong Kong laws that limit or restrict foreign investment, apart from certain narrow sectors such as broadcasting. Wholly foreign-owned entity structures are generally permitted, and there are no requirements for the nationality for individual shareholders. As stated in Hong Kong's "mini-constitution", the Basic Law, there are no foreign exchange control policies and the Hong Kong dollar is freely convertible. There are no restrictions on the remittance of money abroad. Capital can flow freely to and from Hong Kong. At the same time, Hong Kong has robust anti-money laundering rules under a well-established legal system.



III. Significant developments enhancing legal exchange and collaboration between Mainland China and Hong Kong

Governments across different levels in China (including at a national and provincial/SAR level) have put in place many arrangements to enhance legal exchange and collaboration. We have highlighted below a few recent developments.

Arrangement Concerning Mutual Enforcement of Arbitral Awards between Mainland China and Hong Kong



Hong Kong is the only jurisdiction that has mutual enforcement of arbitral award arrangements with Mainland China. It is now possible for the (i) simultaneous enforcement of arbitral awards in Mainland China and Hong Kong and (ii) the grant of interim measures by courts before or after accepting applications for enforcement, upon satisfaction of the required threshold of evidence to be imposed by the relevant court.

GBA Mediation Platform Proposed



The Vice Minister of Commerce of PRC and the Financial Secretary of HKSAR of PRC have signed an investment agreement under CEPA in 2017 which provides mediation mechanisms for cross-border investment disputes, allowing Mainland investors to use Hong Kong mediation services, and Hong Kong investors to appoint Mainland mediation institutions and mediators. To further promote the use of mediation in GBA, a proposal to establish a GBA Mediation Platform has been endorsed. The Guangdong, Hong Kong and Macau legal departments have formed the working group to actively promote the work of the GBA Mediation Platform.

Mutual Recognition and Assistance on Corporate Insolvency Proceedings



Pursuant to the *Record of Meeting of the Supreme People's Court of PRC and the Government of the HKSAR on Mutual Recognition of and Assistance to Bankruptcy (Insolvency) Proceedings between the Courts of the Mainland and of the HKSAR*, liquidators from Hong Kong may apply to Mainland courts in pilot areas for recognition of insolvency proceedings in Hong Kong and bankruptcy administrators from pilot areas in the Mainland may apply to the High Court in Hong Kong for recognition of bankruptcy proceedings in the Mainland. Currently the pilot areas include Shanghai, Xiamen and Shenzhen.

Expansion of Right to Choose Hong Kong Law as the Governing Law



Some regulations in Mainland China were passed last year, allowing wholly-owned Hong Kong enterprises registered in Qianhai to choose Hong Kong law as the governing law for contracts, and to choose Hong Kong as the place of arbitration for contracts, even for wholly PRC-related matters without any foreign-related elements. According to *the Chief Executive's 2021 Policy Address* of Hong Kong, the Department of Justice in Hong Kong will strive to further extend such right to other areas of Shenzhen and the entire GBA.

Pilot measures for Hong Kong and Macau legal practitioners to obtain Mainland practice qualification:



GBA covers three different legal systems (i.e. Mainland China, Hong Kong and Macau). Upon obtaining a practicing certificate in GBA, experienced legal practitioners in Hong Kong will be able to practice law in specified civil and commercial matters in the GBA, and in turn will be able to advise the business community in structuring their business transactions in the GBA from a holistic regional approach taking into consideration not only legal requirements in Hong Kong but also those in the GBA.



IV. The Way Forward

Looking ahead, with the ongoing rapid development of the Chinese economy, there will be substantial opportunities in Hong Kong.

The GBA initiative aims to attract global businesses and investors. Recently, we have seen numerous multinationals and overseas enterprises strengthening their stake in China.

We envisage that these legal frameworks will continue to enhance Hong Kong's position as the centre for international legal and dispute resolution services. In structuring your business transactions in the GBA, we urge you to consider the various initiatives and advantages of choosing Hong Kong law and Hong Kong courts or arbitration, as the governing law and dispute resolution mechanisms.



V. How we can help

SF Lawyers is a Hong Kong law firm affiliated with KPMG. Our team of legal professionals has extensive experience in serving clients wishing to set up a business presence in Hong Kong or to expand their business in Asia through Hong Kong. We have legal insights on the realities of doing business in Hong Kong, and experience in both local and cross-border transactions involving Mainland China and other Asia-Pacific jurisdictions.

Furthermore, we are also part of the KPMG Global Legal Services network, which allows us to leverage on our connection to 2,850+ legal professionals in 81 jurisdictions, as well as the ZICO Law Firm Network across the ten jurisdictions of ASEAN, giving legal coverage to clients' business needs wherever they may be in the world.

SF Lawyers and its affiliated member firm, KPMG, are ready to give our clients an integrated business solution. We can call at any time on the vast legal, business, IT and tax subject matter experts across KPMG's global network.

Please contact the team at SF Lawyers to discuss how we can help you in your business growth journey.

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