

Speech by SJ at Law Society of Hong Kong's Leadership Insights Session (English only)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the Law Society of Hong Kong's Leadership Insights Session on the opportunities for international lawyers to participate in the development of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) today (January 26):

Mr C M Chan (President of the Law Society of Hong Kong), learned bar leaders and presidents of law societies, distinguished guests, ladies and gentlemen,

It gives me great pleasure to join you today at this year's Law Society Leadership Insights Session. I am pleased to learn that speakers from around the world are together here with us virtually and in person, sharing their insights.

The Greater Bay Area

The Guangdong-Hong Kong-Macao Greater Bay Area comprises the two Special Administrative Regions of Hong Kong and Macao, and the nine municipalities of Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in Guangdong Province.

With a total land area of 56,000 square kilometres, which corresponds to the total land area of Croatia, the GBA has a population of over 86 million. This population is larger than that of the United Kingdom, Italy or South Africa. As compared to other bay areas, the population is larger than the 40 million in the greater Tokyo Bay area and the 10 million in the San Francisco Bay Area.

The GDP of the GBA was US\$1,668.8 billion in 2020 (Note 1) and, as an economic region, it ranks the 12th largest economy in the world. This GDP is more than that of Australia and ranks almost on par with South Korea.

The GBA is the home for around 20 Fortune 500 companies, representing their highest concentration in China. It is also home for most of the Chinese innovative technology companies like Huawei, ZTE, DJI and Tencent, etc. Undoubtedly, the GBA is and will continue to be the economic powerhouse for China, serving as the new engine driving China's economic recovery post-COVID-19.

The GBA development is a key development strategy in our country's reform and opening up in a new era. Its objectives are to further deepen co-operation amongst Guangdong, Hong Kong and Macao, fully leveraging on the composite advantages of the three places, facilitating in-depth integration within the region, and promoting co-ordinated regional economic development and international competitiveness for the benefit of all three jurisdictions.

The GBA is also significant for the Belt and Road Initiative and is the major market carrier for China's "dual circulation" development pattern, which emphasises on economic circulation, with domestic and external markets complementing each other.

The 2019 GBA Outline Development Plan, an important document outlining China's national strategy regarding the GBA, emphasises six basic principles. Among them are "To open up and co-operate and achieve a win-win outcome" and "To adhere to 'one country, two systems' and act in accordance with the law". More specifically, the GBA Outline Development Plan aims to speed up the establishment of a legal system that is commensurate with the development of an open economy, expedite the development of legal services industry, and encourage and promote the development of the legal services in the region in providing services for the businesses involved in the Belt and Road Initiative and for Mainland enterprises "going global" (Note 2). As of December 6, 2021, there were more than 3,000 Mainland law firms located in the GBA, while there were 12 partnership associations set up between Hong Kong and Mainland law firms.

In fact, policy measures are in place for strengthening the building of the GBA as an international innovation and technology hub with enhanced infrastructural connectivity supported by a globally competitive industrial system. Enterprises within the GBA will therefore be more inclined to "go global" – enhancing their overseas operations and expand their overseas market. On the other hand, more investments in the GBA by foreign enterprises are also expected.

It is envisaged that the innovation-driven development of this international bay area will attract global businesses and investors and open up immense opportunities for different sectors, in particular the legal and dispute resolution services sector. The demand for international – and, indeed, cross-jurisdictional – legal and dispute resolution services on a wide spectrum of practice areas, ranging from technology and infrastructure financing to intellectual property and cross-border dispute resolution, is bound to increase.

The GBA is the only bay area in the world that has three legal systems in place and what can be aptly described as the unique characteristic of "one country, two systems and three jurisdictions". Hong Kong is the only common law jurisdiction within the GBA and indeed in the whole of China. As will be described in more detail below, the opportunities for the legal sector, domestic and foreign lawyers, are immense and the scope for development unlimited.

Hong Kong as the springboard to the GBA

As the only common law jurisdiction within China, Hong Kong is ideally placed to utilise the unique advantages under the "one country, two systems and three jurisdictions" within the GBA.

Hong Kong's common law system has a history of 150 years with ample legal precedents. Judicial authorities of Hong Kong courts are frequently

cited in overseas jurisprudence, demonstrating the trust placed by the international legal community to our judiciary and legal system, which are internationally renowned for their independence, efficacy and quality.

Hong Kong also possesses a pool of high-quality legal and dispute resolution talents with strong business acumen. Many of them are professionally qualified in multiple jurisdictions. There are also over 1,400 registered foreign lawyers from over 30 jurisdictions currently present in Hong Kong. The Hong Kong Legal Hub, officially opened in November 2020, is home to various renowned regional and international legal and dispute resolution institutions, including the newly established AALCO (Asian-African Legal Consultative Organization) Hong Kong Regional Arbitration Centre, which will soon commence operation.

Hong Kong's position as the leading centre for international legal and dispute resolution services is also firmly supported by national policy. For instance, both the National 14th Five-Year Plan and the GBA Outline Development Plan explicitly support Hong Kong as the centre for international legal and dispute resolution services in the Asia-Pacific region, and transform Hong Kong's service sector into a high value-added industry.

The success of Hong Kong's arbitration services is also internationally recognised. Hong Kong has been continuously ranked amongst the top five preferred seats for arbitration globally since 2015 according to the International Arbitration Surveys conducted by Queen Mary University of London. In 2015, Hong Kong ranked third; in 2018, fourth; and last year, Hong Kong was ranked the third again, surpassing Paris.

Under the interim measures arrangement signed with the Mainland in 2019, parties to arbitral proceedings seated in Hong Kong and administered by one of the six arbitral institutions would be able to apply to the Mainland courts, covering all courts in the GBA, for interim measures. Hong Kong is the first and only jurisdiction in the world outside the Mainland where this is possible. This has enhanced Hong Kong's competitiveness as a seat of arbitration and the development of Hong Kong's legal and dispute resolution services in the GBA, attracting more international lawyers to participate in Hong Kong-seated arbitrations.

The Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and Hong Kong signed in November 2020 has refined the mechanism of mutual recognition of arbitral awards by allowing parties to make simultaneous applications to both the courts of the Mainland and Hong Kong for enforcement of an arbitral award. This has been duly implemented through local legislation in May last year.

In the area of deal-making, Hong Kong has been ranked as the world's top initial public offering, IPO, venue for seven out of 12 years. In the securities market, the average daily turnover for the first six months of 2021 was HK\$188.2 billion, representing an increase of 60 per cent when compared with HK\$117.5 billion for the same period in 2020. Additionally, there has been a steady rise in total deposits in our banking system, which had reached HK\$14.86 trillion by the end of May 2021. All of these reflect

the strong confidence in Hong Kong placed by international investors, fortifying Hong Kong's status as one of the world's leading deal-making hubs.

In the area of insolvency and debt restructuring, a Record of Meeting was signed last May to facilitate mutual recognition of and assistance to insolvency proceedings between the courts of Mainland and Hong Kong. This allows Hong Kong liquidators and provisional liquidators to apply to designated courts in the Mainland, that is Shenzhen, Shanghai and Xiamen, for recognition and assistance. Likewise, the Mainland's bankruptcy administrators may apply to Hong Kong's High Court for recognition of the Mainland's bankruptcy proceedings according to common law principles. This will ensure that the creditors' interests are protected whilst respecting those of the debtors. Further, by allowing debt restructuring orders to be implemented, the need to wind up a company is reduced. This arrangement provides for a fair and efficient market for investment, thereby enhancing Hong Kong's role as the regional and even international hub for deal-making. I am pleased to note that, in a recent decision (Note 3), the Shenzhen Intermediate People's Court has ordered formal recognition in the Mainland for liquidators to be appointed pursuant to a Hong Kong court order, with the relevant assistance granted to them in dealing with assets located in the Mainland.

Ample opportunities

Against the context of the GBA development and the unique characteristic of "one country, two systems and three jurisdictions", ample opportunities are present for international lawyers who may wish to make good use of Hong Kong as a springboard to the GBA, for the provision of deal-making and dispute resolution services.

Foreign law firms can establish in Hong Kong to provide better and more timeous advice to businesses from their own jurisdictions who are capitalising on the opportunities in the GBA.

Under CEPA (Mainland and Hong Kong Closer Economic Partnership Arrangement), liberalisation measures are in place for Hong Kong law firms to set up partnership associations with Mainland law firms. Foreign lawyers registered in Hong Kong can be employed by Hong Kong law firms of the partnership associations set up in the GBA (Note 4). Besides, international lawyers can also work in close conjunction with the Hong Kong law firms of such partnership associations when handling cross-border cases to provide clients with efficient cross-jurisdictional legal services of high quality and seamlessly connect Hong Kong's professional legal services with the Mainland for multinational corporate needs.

In July last year, we saw the successful conclusion of the inaugural GBA Legal Professional Examination. After passing the examination and obtaining the relevant practice certificate, eligible Hong Kong legal practitioners would be allowed to provide legal services in the nine Mainland municipalities in the Greater Bay Area on specified civil and commercial matters to which Chinese law applies. These legal practitioners will be able to provide comprehensive legal services to enterprises investing in the

Greater Bay Area. This entails that international lawyers can collaborate with Hong Kong local lawyers to provide enterprises within the GBA a one-stop shop for cross-border and cross-jurisdictional legal services, offering a holistic regional approach taking into account relevant legal requirements of different jurisdictions. Riding on the success of the inaugural GBA Legal Professional Examination, the second GBA Legal Professional Examination will be held on June 11, 2022.

A pilot measure (Note 5) has also been implemented in Qianhai to allow Hong Kong, Macao, Taiwan and foreign enterprises registered in Qianhai to adopt non-Mainland law as the applicable law, even in the absence of "foreign-related elements", when entering into civil and commercial contracts. With the expansion of the geographic area of Qianhai by eight times as announced last year, it is hoped that more enterprises can benefit from the above-mentioned measure.

In terms of arbitration, as provided for in the Supreme People's Court Opinions, Hong Kong and foreign enterprises set up in Pilot Free Trade Zones such as Nansha can agree to have their disputes resolved in Hong Kong in the absence of "foreign-related elements".

The Department of Justice is actively seeking the support of the Central Government and the relevant local government to expand the application of this Qianhai initiative and the Supreme People's Court Opinions to Shenzhen, and hopefully the entire GBA. This will mean that foreign enterprises can by agreement choose Hong Kong law as the applicable law and choose Hong Kong as the seat of arbitration in the absence of "foreign-related elements".

Further development in the field of arbitration in the GBA is also under way. In the third annual Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference held in December 2021, the three legal departments have agreed to set up the Working Group on GBA Arbitration to establish a list of GBA arbitrators to promote the development of arbitration in the GBA.

There are also vast opportunities for the provision of mediation services in the GBA. A GBA Mediation Working Group was recently set up by the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference as an authoritative platform for high-level exchange and co-operation, promulgating mediation standards for reference and voluntary adoption by mediation institutions and mediators, with a view to promoting the wider use of mediation within the GBA. The GBA Mediator Accreditation Standards and GBA Mediator Code of Conduct Best Practice were promulgated in December 2021, and the GBA Mediation Working Group is now working towards the promulgation of GBA Mediation Rules for cross-boundary disputes and the establishment of local panels of qualified GBA mediators.

Use of lawtech

Apart from the traditional way of providing legal and dispute resolution services, international lawyers and parties can benefit from the use of online dispute resolution (ODR) services developed in Hong Kong, pursuant to a policy of the Hong Kong Government to promote lawtech.

In Hong Kong, eBRAM Centre was established in 2018, formed by enthusiastic legal and dispute resolution practitioners and technology experts to develop a platform for online dispute resolution and deal-making. It aims to provide a one-stop platform for international commercial parties, with the latest technologies such as blockchain and artificial intelligence utilised. eBRAM Centre recently launched the APEC (Asia-Pacific Economic Cooperation) Online Dispute Resolution procedural rules tailor-made for the APEC Collaborative Framework for ODR of Cross-Border Business to Business Disputes, which aims to provide a fast and affordable resort to resolving commercial disputes among the APEC economies in particular for the micro, small and medium-sized enterprises.

Concluding remarks

Ladies and gentlemen, the "dual circulation" development pattern of China as well as the unique position of Hong Kong as a major connector bridging the Mainland and global markets entail vast opportunities for the international legal and dispute resolution sector to further advance in Hong Kong. Given the ample opportunities available in the GBA and the unique position of Hong Kong, I would encourage and welcome all international lawyers to make good use of Hong Kong as an entry point for the GBA market.

May I conclude by thanking the Law Society of Hong Kong for arranging this Leadership Insights Session to bring together leaders of the international legal and dispute resolution community. I am certain that today's session will be inspirational, facilitating meaningful dialogues and exchanges.

Thank you very much.

Note 1: www.bayarea.gov.hk/en/about/overview.html

Note 2: See Section 1, Chapter Ten "Jointly Developing Guangdong-Hong Kong-Macao Cooperation Platforms", Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area

Note 3: On September 1, 2021, the liquidators' application was formally accepted by the Shenzhen Intermediate People's Court.

Note 4: As of January 17, 2022, 12 partnership associations have been set up in the GBA. Hong Kong solicitors can be hired by the partnership as their seconded lawyers or in the name of the partnership association. Hong Kong partner law firms provide legal services principally on Hong Kong law.

Note 5: Regulations of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of the Shenzhen Special Economic Zone