



Department of Justice
The Government of the Hong Kong
Special Administrative Region



InvestHK
The Government of the Hong Kong
Special Administrative Region



HONG KONG: DEAL-MAKING AND DISPUTE RESOLUTION HUB



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Why Hong Kong?

Hong Kong – Asia’s world city – has built a formidable reputation as an international economic hub where businesses and individuals connect and excel.

Our Strengths

- ◆ “One Country, Two Systems” and the Basic Law protect Hong Kong’s way of life, freedoms and systems
- ◆ The rule of law underpinned by an independent judiciary
- ◆ Trusted regulatory regime aligned to global standards
- ◆ Strategic location and high-level of international connectivity at the heart of Asia
- ◆ A low and simple tax system
- ◆ Free flow of goods, capital, information
- ◆ Separate customs, immigration, monetary, fiscal and taxation systems
- ◆ Level playing field for business – zero tolerance of corruption
- ◆ Clean, efficient and stable government
- ◆ One of the world’s safest large cities
- ◆ Highly skilled, globally-experienced, multi-lingual workforce
- ◆ Communications and media hub
- ◆ Cosmopolitan lifestyle with vibrant arts, culture and events scene
- ◆ Beautiful countryside and seaside for leisure and to connect with nature

Talented People, Global Outlook

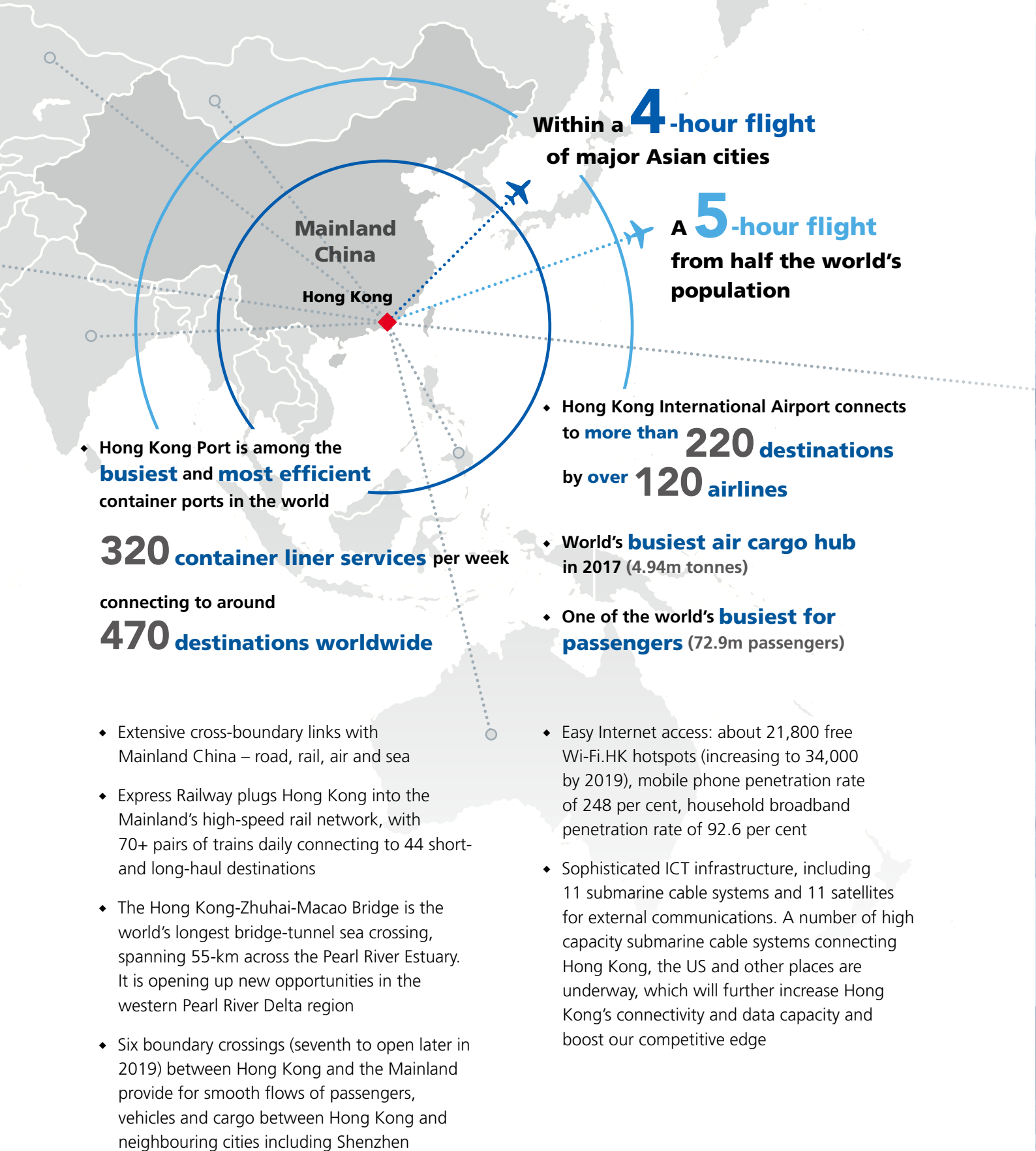
- ◆ Highly educated, multi-lingual, globally experienced workforce
- ◆ English and Chinese are official languages. English widely used in business, government and law
- ◆ Broad, deep pool of world-class professionals in areas such as financial services, law, accounting, auditing, insurance, architecture, engineering, design, marketing, public relations, project management, transport, logistics, aviation, shipping, hospitality, information technology and events management
- ◆ Comprehensive, wide-ranging networks of professional organisations, business chambers, think tanks to help people connect and excel
- ◆ Regional “brain bank” of global best-practise combined with unparalleled access, knowledge, experience, contacts and insight into Mainland China and ASEAN markets
- ◆ Home to some of Asia’s most highly regarded universities, three of which rank among world’s top 100¹
- ◆ World leader in hospitality training
- ◆ Capacity-building institutes provide training and courses on legal sector, aviation industry, railway management, maritime services and construction
- ◆ Asia’s largest concentration, and most diverse group of, international schools offering curriculum from the UK, US, Canada, France, Germany, Australia, Japan, Korea, Singapore



¹ *Times Higher Education World University Rankings 2018*

Highly Connected

Hong Kong is a global transport and information hub completely plugged into global markets and networks.



Low and Simple Tax System

**No
sales tax or VAT**

**No
withholding tax**

**No
capital gains tax**

**No
tax on dividends
or interest from
savings**

**No
estate tax**



Two-tier Company Profits Tax System

- ◆ 8.25 per cent on first HK\$2 million (approximately US\$255,000)
- ◆ 16.5 per cent on remaining profits above HK\$2 million
- ◆ “Super deductions” of up to 300 per cent in specific areas such as Research & Development, Corporate Treasury Centre, aircraft leasing

Personal Income Tax

- ◆ Capped at 15 per cent maximum
- ◆ Only income sourced in Hong Kong is taxed
- ◆ Network of comprehensive double taxation agreements (CDTAs) for expatriate residents

“One Country, Two Systems” and the Basic Law

Under “One Country, Two Systems”, Hong Kong is part of China but retains its own systems and way of life. The Basic Law – Hong Kong’s constitutional document – gives legal effect to the “One Country, Two Systems” policy.

The Basic Law came into effect on 1 July 1997 with the establishment of the Hong Kong Special Administrative Region of the People’s Republic of China.

The Basic Law guarantees:

- ◆ The continuation of the common law system that has been practised in Hong Kong for more than 170 years
- ◆ Fundamental rights and freedoms including: equality before the law; freedom of movement; freedom of conscience and religious belief; freedom of speech; the right to confidential legal advice; privacy of communication; access to the courts; and choice of legal representation
- ◆ An independent judiciary and the power of final adjudication by the Court of Final Appeal (CFA). The CFA may include non-permanent judges from other common law jurisdictions
- ◆ Everyone in Hong Kong is equal before the law
- ◆ Access to the courts, right to confidential legal advice and choice of lawyers for everyone
- ◆ English and Chinese as official languages. Local legislation is enacted bilingually and cases in Hong Kong may be heard in English or Chinese
- ◆ Courts exercise judicial power independently, free from interference. Members of the Judiciary are immune from legal action in the course of their judicial functions
- ◆ High degree of autonomy in areas such as the economy, external affairs as well as education, science, culture, sports, religion, labour and social services



Policy Support

Hong Kong’s development as the centre for international legal and dispute resolution services in the Asia-Pacific region has been included by the Central People’s Government in its national development blueprints including the 13th Five-Year Plan and the Guangdong-Hong Kong-Macao Greater Bay Area Development Plan.



The Common Law

- ◆ Hong Kong is the only common law jurisdiction within China
- ◆ The common law system is maintained under Article 8 of the Basic Law
- ◆ Hong Kong has built well-established commercial case law that is highly regarded by the international business community and foreign investors
- ◆ The Law Reform Commission aims to maintain a reputation for excellence in law reform, both internationally and in Hong Kong. It presents reform proposals that make the law in Hong Kong more effective, more accessible, and more in tune with the community's needs
- ◆ All litigants may apply for legal aid regardless of whether or not they are Hong Kong residents
- ◆ Hong Kong's laws are available on line for easy access
- ◆ Over 260 multilateral treaties apply to Hong Kong. Hong Kong has signed over 250 bilateral agreements on its own in certain areas covering free trade, taxation, investment promotion and protection. Hong Kong participates on its own as a member of about 50 international organisations, e.g. World Trade Organization (WTO) and Asia-Pacific Economic Cooperation (APEC)

Independent, Respected Judiciary

Hong Kong's judiciary is renowned for its quality, independence and respect for the rule of law.

- ◆ Hong Kong ranks No.2 in Asia in respect of the rule of law in the Worldwide Governance Indicators 2018 project of the World Bank Group
- ◆ Hong Kong's percentile rank in respect of rule of law has improved from 69.85 in 1996 to 93.75 in 2017
- ◆ Hong Kong has scored above 90 (out of 100) consistently since 2003 in the aggregate indicator in respect of the rule of law. Hong Kong ranks No.1 in Economic Freedom and World No.3 in the Human Freedom Index 2018 (Cato Institute) by scoring 8.78 (out of 10), with Judicial Independence and Integrity of Legal System scored at 8.5 and 8.3 respectively



Photo courtesy of Hong Kong Court of Final Appeal

Power of Final Adjudication

- ◆ The Court of Final Appeal (CFA), based in Hong Kong and established on 1 July 1997, replaced the Judicial Committee of the Privy Council in London as the highest appellate court for the HKSAR
- ◆ Eminent jurists from other common law jurisdictions (e.g. the UK, Australia and Canada) may be appointed to the CFA as non-permanent judges
- ◆ The association of these esteemed judges with the CFA speaks for Hong Kong's judicial independence, and helps maintain a high degree of confidence in the legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions

Legal Sector

- ◆ Hong Kong's robust legal services sector includes more than 9,800 practising solicitors (including registered foreign lawyers from 33 jurisdictions) and about 1,500 practising barristers, of which 100 Senior Counsel (Mar 2019). Many major international law firms have offices in Hong Kong
- ◆ As a global trade, finance and business hub, Hong Kong has a wealth of legal expertise in areas such as banking and finance, shipping, maritime, construction, intellectual property, information technology
- ◆ International legal professionals bring with them additional experience in the areas of civil and commercial law, complementing the existing talent pool of local legal professionals with expertise in raising capital, drafting and negotiating contracts, and advising on intellectual property rights protection in Hong Kong
- ◆ They also bring international perspective and experience in handling international transactions so that commercial disputes can be dealt with fairly and effectively
- ◆ The Hong Kong Bar Association and the Law Society of Hong Kong are the two major legal representative bodies of the legal profession in Hong Kong

Market Access to the Mainland

Close and long-standing links between the legal sectors of Hong Kong and the Mainland have helped develop business opportunities since the opening up and reform of China's markets.

The Closer Economic Partnership Arrangement (CEPA) – a free trade pact – between Hong Kong and the Mainland provides enhanced and first-moved advantage for Hong Kong law firms into the Mainland market.

Many of the market access measures are piloted in adjoining Guangdong Province, which has long been a test-bed for economic reform in the Mainland.

For example, under CEPA:

- ◆ Hong Kong and Mainland law firms may be established in the form of a partnership association
- ◆ Mainland legal firms may employ Hong Kong legal practitioners for certain kinds of legal work
- ◆ Hong Kong legal practitioners meeting certain requirements can apply to practise as lawyers in the Mainland



Ceremonial Opening of the Legal Year 2019

What Esteemed Jurists Have Said About Hong Kong's Legal System

Lord Millet GBS, Non-Permanent Judge of the CFA, said:

I have sat on the Court of Final Appeal of Hong Kong for 14 years and have never experienced any political interference from China or anywhere else in all that time. All my colleagues have at all times conducted themselves exactly as English judges would in England. The local Permanent Judges are professionals to their fingertips. At no time in our discussions have I heard any of them express the slightest interest in what Beijing might think of our decisions. If I believed that the Court was susceptible to outside influence I would not be prepared to be a member of it, and nor would any of my overseas colleagues. I am proud to be a member of one of the strongest appellate courts in the common law world. The presence of such eminent jurists as Sir Anthony Mason, Lord Neuberger, Lord Hoffmann, Lord Walker and Lord Phillips is a guarantee of its total independence of Chinese influence, but the guarantee is unnecessary as I have found the local Permanent Judges as independently minded as are English and Australian judges.

Lord Neuberger GBS, Non-Permanent Judge of the CFA, said:

“At the moment I detect no undermining of judicial independence [in Hong Kong]. If I felt that the independence of the judiciary in Hong Kong was being undermined then I would either have to speak out or I would have to resign as a judge.”

Sir Nicolas Hamblen, Judge of the Court of Appeal of England and Wales, said in *Shangang South-Asia (Hong Kong) Trading Co Ltd v Daewoo Logistics*:

“Whilst Hong Kong is no doubt geographically convenient, it is also a well-known and respected arbitration forum with a reputation for neutrality, not least because of its supervising courts.”



International Dispute Resolution Centre

Hong Kong is a prime venue for international legal and dispute resolution services through arbitration and mediation:

- ◆ Since 2015, Hong Kong has been among the top five preferred seats for arbitration globally according to the International Arbitration Surveys conducted by Queen Mary University of London
- ◆ With an arbitration-friendly approach well-documented in court judgments, Hong Kong's judiciary is particularly successful in the realm of international dispute resolution. When two parties have a dispute with a valid arbitration agreement, the court will order that the court proceedings be stayed in favour of arbitration. The court will also uphold the general flexibility and integrity of the arbitral process
- ◆ Hong Kong arbitral awards are enforceable in over 150 Contracting States to the New York Convention. This is complemented by respective arrangements for reciprocal enforcement with Mainland China and Macao SAR
- ◆ The Hong Kong International Arbitration Centre (HKIAC) is a home-grown arbitral institution. HKIAC ranked first for location, perceived value for money, helpfulness of staff and IT services by the Global Arbitration Review Hearing Centres Surveys 2016, 2017 and 2018
- ◆ A number of well-respected international institutions have chosen to make Hong Kong their first global location outside their home jurisdictions. This melding of local and international arbitral institutions has fostered Hong Kong's development as the leading international legal and dispute resolution services hub in the Asia-Pacific region and beyond

Sector-specific Arbitration

- ◆ As a global financial and business hub, Hong Kong has a wealth of legal and professional expertise in different areas including commerce and finance, maritime, infrastructure and construction, intellectual property, information technology and international investment law
- ◆ Each industry carries a unique set of circumstances and requirements when it comes to arbitration or other dispute resolution processes. Hong Kong has a deep pool of legal professionals with the know-how to address them



User-friendly Arbitration Law

- ◆ Hong Kong adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration for its arbitration legislation in 2011
- ◆ This user-friendly framework unified the legislative regimes for domestic and international arbitrations into a self-contained set of provisions. It guarantees clear, certain and accessible arbitration framework which serves to attract more international arbitration to Hong Kong

Third Party Funding

- ◆ A proven efficient way to allocate and manage financial resources of arbitration users
- ◆ The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* clarifies that third-party funding for arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty and provides for related safeguards
- ◆ A Code of Practice for Third Party Funding of Arbitration set out the practices and standards with which third party funders are ordinarily expected to comply in carrying out activities in connection with third party funding of arbitration



Intellectual Property Rights

- ◆ Hong Kong is developing as a leading global intellectual property trading centre
- ◆ Arbitration and mediation are effective means to handle intellectual property disputes as they often involve parties from different jurisdictions
- ◆ Intellectual Property Rights (IPRs) are arbitrable under the *Arbitration (Amendment) Ordinance 2017*. It would not be contrary to public policy to enforce an award solely because the award involves an intellectual property right dispute

Wider Use of Mediation

- ◆ Hong Kong Mediation Ordinance encourages the wider use and development of mediation as an effective means of dispute resolution
- ◆ Hong Kong is the first jurisdiction in Asia to have apology legislation which promote and encourage the making of apologies between parties with a view to preventing the escalation of disputes and facilitating their amicable resolution
- ◆ CEPA Mediation Mechanism was established for the settlement of investment disputes arising from an alleged breach of the substantive obligations of the agreement by one side causing loss to an investor of the other side
- ◆ With the CEPA Mediation Mechanism in place, Department of Justice (DoJ) of the HKSAR Government is developing a bespoke training programme for investment mediators with the objective of building up a team of investment mediators in Asia, and to develop Hong Kong as a training and capacity building centre

IDAR Office

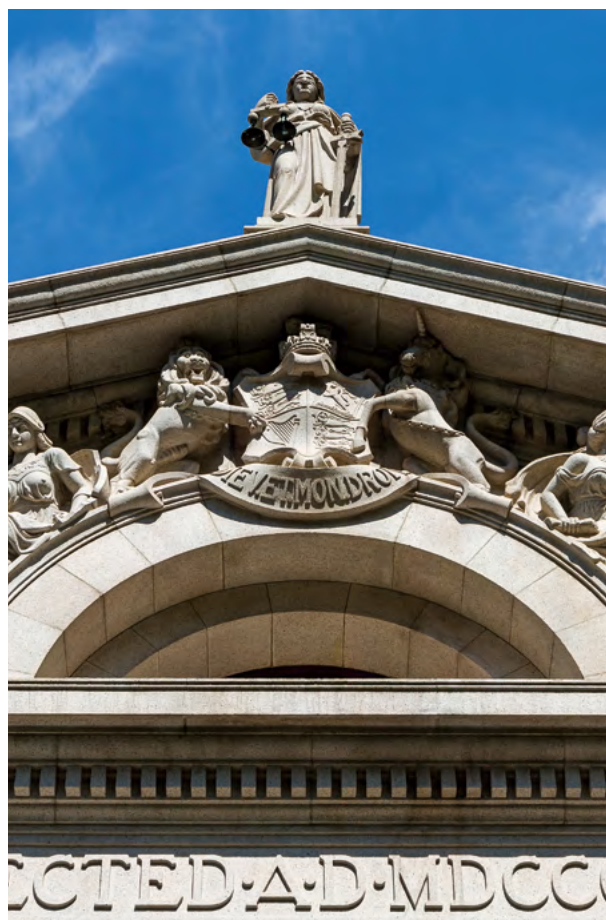
To better cope with the challenges and harness the additional opportunities offered by the Belt and Road Initiative and the Greater Bay Area Plan, the “**Inclusive Dispute Avoidance and Resolution Office**” (IDAR Office) has been established within the Department of Justice to facilitate access to justice and raise the international profile of Hong Kong in deal making and dispute resolution through capacity building, concluding co-operation or partnership arrangements with other jurisdictions and international organisations, organising and supporting a number of important international events in Hong Kong and promotional activities overseas.

Training and Capacity Building

- ◆ Department of Justice (DoJ) has been actively involved in training and capacity-building programmes relating to international law, judicial skills and dispute resolution for judges and government officials in Asia and around the world
- ◆ Such programmes foster collaborative relationships between international organisations, the legal profession, experts, and other stakeholders in Hong Kong and other countries and regions
- ◆ The goal is to strengthen Hong Kong's status as a regional and international centre for legal and dispute resolution services

LawTech

- ◆ DoJ is supporting the private sector's initiative of developing an online deal-making and dispute resolution platform to provide cost-effective, secure and efficient dispute resolution and smart contract services to parties from anywhere in the world
- ◆ Reducing costs and dealing with the linguistic and geographical barriers that parties may face when resolving their dispute through the use of negotiation, mediation and arbitration
- ◆ Advanced technology (e.g. Blockchain, real-time translation etc.) is adopted to provide a deal-making platform for parties located in different parts of the world
- ◆ A set of e-mediation and e-arbitration rules will be available for the platform
- ◆ DoJ is also taking the lead in online dispute resolution work under the APEC Economic Committee's Friends of the Chair on Strengthening Economic and Legal Infrastructure (SELI) working group with micro, small and medium-sized enterprises as major beneficiaries



Legal Hub

A Legal Hub is being developed in the heart of Hong Kong's Central Business District to underscore the city's commitment to the rule of law, and reinforces Hong Kong's position as a prime, global dispute resolution centre.

- ◆ Asian Academy of International Law (AAIL)
www.aail.org
- ◆ Asia Pacific Regional Office of the Hague Conference on Private International Law (HCCH)
www.hcch.net
- ◆ CEDR (Centre for Effective Dispute Resolution) Asia Pacific Limited
www.cedr-asia-pacific.com
- ◆ Chartered Institute of Arbitrators (CIArb) (East Asia Branch)
www.ciarbasia.org
- ◆ China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center (CIETAC – HK Arbitration Center)
www.cietachk.org
- ◆ China Maritime Arbitration Commission Hong Kong Arbitration Center (CMAC – HK Arbitration Center)
www.cmac.org.cn
- ◆ Financial Dispute Resolution Centre (FDRC)
www.fdrc.org.hk
- ◆ Hong Kong Institute of Arbitrators (HKI Arb)
www.hkiarb.org.hk

Space has been offered to a number of law-related organisations (LROs). All of them are reputable local, regional and international organisations. LROs and the major international law organisations and dispute resolution bodies in Hong Kong include:

- ◆ Hong Kong International Arbitration Centre (HKIAC)
www.hkiac.org
- ◆ Hong Kong Maritime Arbitration Group (HKMAG)
www.hksoa.org/maritime_arbitration_group.html
- ◆ Hong Kong Mediation Accreditation Association Limited (HKMAAL)
www.hkmaal.org.hk
- ◆ Hong Kong Mediation Centre (HKMC)
www.mediationcentre.org.hk
- ◆ International Advocacy Training Council Limited
www.i-atc.com
- ◆ Joint Mediation Helpline Office (JMHO)
www.jointmediationhelpline.org.hk
- ◆ Secretariat of the International Court of Arbitration of the International Chamber of Commerce Asia Office (ICC – ICA)
www.icchkcbc.org and <https://iccwbo.org/>
- ◆ Vis East Moot Foundation Limited (Vis East Moot)
www.cisgmoot.org

More information on Hong Kong's legal services can be found at www.legalhub.gov.hk

Business Opportunities

Hong Kong is global centre for finance, insurance, trade, transport and logistics, the maritime industry, business services and tourism. Many of the business opportunities in Hong Kong require sophisticated legal services.



Guangdong – Hong Kong – Macao Greater Bay Area

The Greater Bay Area is a visionary undertaking to develop a world-class cluster of cities with a strategic focus on innovation and technology, modernised industry, improved connectivity and quality living of international standards.

Hong Kong plays a major role in this national-level plan involving a population of almost 70 million and a combined GDP the size of Australia's. The Greater Bay Area will be an important node for the implementation of the Belt and Road Initiative. Hong Kong continues to enhance and pursue its development in:

- ◆ International financial services, asset management and risk management
- ◆ Global offshore Renminbi business
- ◆ Innovation and technology, research and development and IP
- ◆ International aviation, transport, logistics and trade
- ◆ International legal and dispute resolution services
- ◆ Professional services

The Belt and Road Initiative

While foreign affairs are the responsibility of the Central People's Government (CPG), Hong Kong has been authorised by the CPG under the Basic Law to conduct relevant external affairs on its own in accordance with the Basic Law. Hong Kong may on its own, using the name "Hong Kong, China", conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields. Under these unique arrangements, Hong Kong has developed an effective and close relationship with the international community in the past decades and

will continue to develop such relationship with the Belt and Road countries.

The Belt and Road Initiative is expected to increase activities in trading, investment, financing as well as infrastructure and construction projects amongst enterprises in the Mainland and the Belt and Road countries. There will inevitably be disputes in these activities and transactions.

CPG has given clear policy endorsement for the establishment of a credible, neutral, fair and effective dispute resolution body for resolving cross-border disputes arising from Belt and Road projects.





DoJ has set up a taskforce to study the establishment of a Belt and Road Dispute Resolution Centre in Hong Kong, providing negotiation, mediation and arbitration services for the resolution of various types of disputes under the Belt and Road Initiative, and the formulation of a set of bespoke rules for the resolution of different types of disputes arising from Belt and Road transactions.

Hong Kong's special reciprocal arrangement with Mainland China makes it an ideal location for the resolution of Belt and Road-related disputes.

Under the arrangement, if a party refuses to comply with an arbitral award made in Hong Kong, the other party can apply to the Intermediate People's Court of the Mainland China in order to seek enforcement of the award.





This arrangement, coupled with its physical and cultural proximity, adds to Hong Kong's appeal as the preferred locale for Belt and Road-related arbitration.

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