

**Submission on Consultation on Draft Talent List by
The Law Society of Hong Kong**

1. The Law Society supports the Government's commitment to take effective measures to secure Hong Kong's position as an international legal and dispute resolution services centre in the Asia Pacific region.
2. The Law Society agrees that to create a demand for legal and dispute resolution services in Hong Kong, one of the effective ways is to ensure that Hong Kong is designated as the seat of arbitration and Hong Kong law is chosen as the governing law in contracts in cross border transactions.
3. The Law Society has reservations as to whether the compilation of a "Talent List" claiming to cover occupations that are in talent shortage based on a consultancy report commissioned by the Government, coupled with immigration facilitation, is an effective measure in itself to attract external talent to help achieve the result in paragraph 2.
4. The Law Society has not been provided with the findings of the consultancy report that recommended the inclusion of the following occupations identified as having a specific shortage within the legal services sector:
 - (a) dispute resolution professionals specializing in resolving financial and investor state disputes; and
 - (b) transactional lawyers with specialized knowledge of and experience in cross border transactions from investing or host states along the Belt and Road routes and jurisdictions of the Guangdong-Hong Kong-Macao Bay Area Development.
5. The Law Society is thus not in a position to comment on the basis of the identification of these two occupations within the legal services sector as the ones most in need of external talent to fill the gap.
6. As a matter of general principle, demand for a particular occupation is market-driven. If there is a genuine need, the market itself will drive the search for talent to meet the demand, whether there is a "Talent List" or not.

7. For the legal services sector, the increase of multi-jurisdictional work requiring legal expertise of different jurisdictions in addition to Hong Kong has created a demand of overseas qualified lawyers and has driven an increase of registered foreign lawyers coming to work in Hong Kong from around the world. There are 1,504 registered foreign lawyers from 33 jurisdictions in April 2018 compared to 1,393 from 27 jurisdictions in April 2011.
8. With the strong economic growth in the Mainland, the legal work involving a Mainland element keeps increasing, and it is translated into a huge demand for Mainland legal talent in Hong Kong. Mainland law firms took up the largest number among foreign law firms and have topped the list, replacing US law firms since 2014.
9. On the assumption that the occupations identified are genuinely in demand, a Talent List may serve the purpose of making it easier to publicise to those who have such talent and encouraging them to consider coming to Hong Kong where they are in need.
10. However, the Talent List, which is instrumental in form, must be supported in substance by the existence of an actual genuine need to ensure that when the external talent comes to Hong Kong, their expectations and aspirations are met.
11. One of the ways to show that a talent is needed in Hong Kong is that before the talent enters Hong Kong, he has already been offered an employment that is commensurate with his qualifications. The proposed immigration facilitation given under the Quality Migrants Admission Scheme (“QMAS”) to the external talent, however, removes this requirement of having secured an offer of employment in Hong Kong.
12. The removal of such a requirement may risk reducing the attraction and credibility of the Talent List if the external talent, after having gained a facilitated entry into Hong Kong, is unable to secure employment that meets his expectations within a reasonable period.
13. Hong Kong has always allowed the market to dictate its demand and supply. One of the roles of the Government is to ensure that there is a corresponding regulatory regime in each relevant sector to adequately protect the public in the process.
14. For the legal services sector, the foreign lawyer registration regime has been established since 1995 to regulate lawyers who have overseas qualifications serving the public as a practitioner of foreign law in Hong Kong.
15. There is no residency requirement for registration as a foreign lawyer in Hong Kong. Nevertheless, to ensure proper indemnity protection, the services provided to the public by a registered foreign lawyer as a practitioner of foreign law must be from within a Hong Kong firm or a registered foreign firm in Hong Kong (section 50B(3) of the Legal Practitioners Ordinance (Cap 159)(“LPO”).

16. Temporary fly-in-fly-out is also permitted to facilitate a lawyer with foreign qualifications, who is not registered as a foreign lawyer, to serve the public in Hong Kong as a practitioner of foreign law provided that he does so from within a registered foreign firm or a Hong Kong firm for a limited period (not more than three continuous months or 90 days in any 12 month period) (section 50B(2), LPO).
17. Foreign practitioners are also welcome to establish a commercial presence in Hong Kong by applying to the Law Society for registration of a foreign law firm. Once a foreign law firm is set up and registered, it can form an Association with a Hong Kong law firm and apply to register the Association with the Law Society. The two firms in a registered Association are then permitted to share fees, profits, premises, management and employees between them (section 39C, LPO).
18. Under the current arrangement with the Immigration Department in relation to applications for work visas by legal personnel from overseas, the Law Society will require the overseas qualified lawyers employed in law firms to register as foreign lawyers and the approved registration will be evidence of no objection from the Law Society. For employment in non-law firms, the Law Society will not issue any no-objection letter as it has no jurisdiction over non-law firms.
19. Under QMAS, there is no need for an applicant to secure a job offer when they apply for a work visa. There is a concern that after an applicant has been granted entry into Hong Kong, it is possible that he may be found to be unable to satisfy the requirements of registration as a foreign lawyer. This will result in the applicant being restricted to employment in non-law firms in Hong Kong. This will greatly reduce the scope of impact of these external talents.
20. To get Hong Kong selected as the dispute resolution venue and Hong Kong law as the governing law in contracts, the Law Society urges the Government to consider the following substantive ways in addition to putting up a Talent List :
 - (a) Actively promote Hong Kong as an international legal service hub to the international community, in particular to the countries along the Belt and Road and the cities in the Great Bay Area;
 - (b) Provide more market information with reference to the official policy direction of the Central Government in the development of the Initiative and the Great Bay Area to the legal service industry to assist its evaluation on how the legal service sector should position itself to benefit from the development;
 - (c) Provide guidance, having regard to the official policy direction, on the priority jurisdictions in the areas covered by the Belt and Road Initiative and the development of the Great Bay Area that the legal service sector should focus its efforts in exploring expansion opportunities;

- (d) Provide resources to reinforce the following qualities of the Hong Kong legal profession on the basis that the cross border element is a very crucial feature in any participation in the Belt and Road Initiative and the development of the Great Bay Area:
- international connections;
 - expertise in handling cross border transactions;
- (e) Allocate financial resources to improve and modernise Hong Kong's capability to host international conferences because international conferences create a good opportunity for legal practitioners to reach out for multiple purposes - professional development and training as well as strengthening connections worldwide;
- (f) Provide financial assistance to the more junior practitioners to gain international exposure in various ways e.g. by attending international professional exchanges or internship in law firms in other jurisdictions, to prepare the next generations of the legal profession for the demands arising from the development of the Belt and Road Initiative and the Great Bay Area.

The Law Society of Hong Kong
29 May 2018