

Policy Recommendations

The legal system of Hong Kong is highly respected in the world. Hong Kong is well-positioned to develop and strengthen its legal services for the OBOR Initiative.

1. Strengthening Hong Kong's Alternative Dispute Resolution Services

(a) Attract overseas arbitration organisations to set up branches in Hong Kong

Apart from our own Hong Kong International Arbitration Centre, a number of reputable international arbitration institutions have already set up branches or regional offices in Hong Kong.

Hong Kong should continue its efforts to attract other reputable arbitration bodies and international organisations to set up offices in Hong Kong, for instance, the London Court of International Arbitration, the International Centre for Dispute Resolution and the World Intellectual Property Organization Arbitration and Mediation Centre.

(b) Set up Hong Kong International Dispute Resolution Complex

The Government has announced to allocate space in the former French Mission Building and the West Wing of the former Central Government Offices to house law-related institutions, including arbitration bodies. We recommend that the Government should establish an International Dispute Resolution Complex that houses all forms of Alternative Dispute Resolution services. The iconic former French Mission Building and the West Wing are ideal for such purpose. In terms of operations, the Complex could mirror those of the Peace Palace in The Hague, the Netherlands and Maxwell Chamber in Singapore. The Complex should also have a designated "OBOR Court" dealing with disputes arising out of or related to OBOR projects. In order to build a world-class Dispute Resolution Complex, we also recommend establishing a Hong Kong Academy of Alternative Dispute Resolution for training and research in dispute resolutions.

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(c) Increase the number of dispute resolution practitioners

The number of quality dispute resolution practitioners in Hong Kong, including arbitrators, mediators and adjudicators should be increased. This can be achieved through training and expanding the panel list of arbitrators and mediators by inviting practitioners from overseas.

(d) Promote all forms of Dispute Resolution

The Department of Justice has made good efforts in promoting Mediation in recent years. To this end, the Government has set up working groups, accreditation groups and task forces for Mediation. We recommend that other forms of dispute resolutions (Negotiation, Conciliation, Expert Determination, Adjudication, Arbitration and also Litigation) should receive similar treatments with a view to promoting Hong Kong's capabilities in all types of Alternative Dispute Resolutions (ADR) as a whole.

2. Promoting Hong Kong Law, Hong Kong ADR Services and Hong Kong Legal Services

Hong Kong law closely resembles English law which is highly compatible with laws in other Common Law jurisdictions. We recommend strengthening the promotion of Hong Kong Law as the Governing Law in OBOR and Asian Infrastructure Investment Bank (AIIB) contracts. We should also encourage parties to OBOR projects to submit to the Hong Kong jurisdiction, and advance Hong Kong legal services in general.

3. Appointing a New OBOR Legal Officer

We suggest that the Department of Justice should appoint a new Legal Officer for all OBOR-related matters with the following duties:

(a) Local Level

To liaise with the Law Society of Hong Kong, the Hong Kong Bar Association, and other law-related organisations to consult their views on ways to improve the provision of legal and arbitration services related to the OBOR Initiative. The Legal Officer should also facilitate OBOR legal research in Hong Kong.

(b) Mainland Level

To contact Mainland entities with the focus to be placed on the Legal Department or General Counsel of:

- State-owned Assets Supervision and Administration Commission of the State Council (“SASAC”)
- China Securities Finance Corporation
- Wutongshu Investment Platform, a fund wholly owned by the State Administration of Foreign Exchange
- Xinjiang Uyghur Autonomous Region (as the starting point of the “Silk Road”)
- Fujian Province (as the starting point of the “21st Century Sea Belt”)
- State-owned enterprises with projects in OBOR

(c) International Level

To promote Hong Kong's legal sector in the international communities, such as attending international conferences and roadshows, as well as organising conferences and roadshows in Hong Kong.

4. Enhancing Legal Standardisation of OBOR

(a) Set up OBOR Legal Database

We recommend the establishment of a database containing legal information of all OBOR countries. The legal database should be stored within the International Dispute Resolution Complex (see 1(b) above).

(b) Standardisation of OBOR Transnational Law

We believe Hong Kong is well-positioned to initiate the development of a set of transnational law applicable to OBOR projects and transactions. References could be made to The Hague Conference on Private International Law and Convention relating to a Uniform Law on the International Sale of Goods (The Hague, 1964). Moreover, Hong Kong should seek to join AIIB

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and the Association of Southeast Asian Nations (“ASEAN”) under the name 'Hong Kong, China'. This will enhance Hong Kong's role in the standardisation of OBOR Transnational Law.

5. Enhancing Arbitration Ordinance and Related Legislations

(a) Amend Arbitration Ordinance

The Arbitration Ordinance (Cap 609) was amended in 2011 and 2014 unifying our previous domestic and international arbitration regimes on the basis of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law.

We recommend a further review of the Arbitration Ordinance. We note that Singapore Arbitration Rules have recently departed from the Model Law with two new Procedures, namely Negative Judicial Ruling and Early Dismissal.

(b) Legalise “Third Party Funding for Arbitration” and Introduce Apology Legislation

The Hong Kong Law Reform Commission published a paper on legalising “third party funding for arbitration” in October 2015. The Department of Justice has also published a consultation paper on apology legislation. We fully support both proposals because we believe they will reinforce Hong Kong's dispute resolution services.

(c) Strengthen Arrangement of Reciprocal Recognition and Enforcement of Judgement between Mainland and Hong Kong in all respects

Since 1997, New York Convention on the Recognition and Enforcement of Foreign arbitral awards have been recognised in Hong Kong courts (and vice versa). Hong Kong has since entered into an “Arrangement Concerning Mutual Enforcement of Arbitral Awards Between the Mainland and the Hong Kong Special Administrative Region” which is limited in scope. We note that the Department of Justice has recently started consultation regarding arrangement with the Mainland on reciprocal recognition and enforcement of judgments on matrimonial and related matters. We support the proposal and recommend entering into comprehensive arrangement with the Mainland on reciprocal recognition in all respects.

(d) Reciprocal Recognition of Arbitration Awards between Taiwan and Hong Kong

Hong Kong has in place with Macau an “Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards Between the Hong Kong Administrative Region and the Macau Special Administrative Region”. We notice that Taiwan has recently amended its Arbitration Law, allowing Taiwan courts to recognise arbitral awards from foreign countries. We suggest the HKSAR Government should consider entering into similar reciprocal arrangements with Taiwan so that Hong Kong would become the arbitration centre covering the Mainland, Taiwan and Macau.

6. Develop Islamic Finance and Sharia-compliant Products

There are about 23 Islamic countries along OBOR. In this connection, we recommend further developing Islamic Law in Hong Kong.

(a) Promote Islamic Financial Products with Hong Kong Features

Hong Kong is the largest offshore RMB business centre and possesses the biggest offshore RMB funding pool in the world. Hong Kong twice issued U.S. Dollar-denominated Sukuk (Islamic Bond) in 2007 and 2015.

Going forward, we recommend the Government should focus on developing RMB denominated Islamic financial products.

(b) Establish Hong Kong Sharia-compliant System

In order to qualify as “Sharia-Compliant Products”, financial products must be certified by a Sharia Supervisory Council. Criteria vary tremendously amongst different Islamic countries. We suggest that the HKSAR Government should work with overseas Sharia compliance boards to develop a set of internationally-accepted Sharia standards in Hong Kong.

(c) Develop Islamic Legal Education

Out of the eight publicly funded universities in Hong Kong, five of them offer Islamic-related courses. Such courses are mostly theoretical on Islamic religion (history and culture). We welcome the universities to offer more practical courses like Islamic financial law. We also encourage closer cooperation with foreign Islamic legal and financial experts.

Outcome

Costs and Benefits

We are convinced that the recommendations above are pragmatic and feasible. The benefits to Hong Kong would far outweigh the costs of implementation.

Upholding the Rule of Law

A strong and independent legal sector is a pre-requisite to safeguarding the Rule of Law in Hong Kong. We believe that the OBOR Initiative would provide a unique opportunity for Hong Kong's legal sector to strengthen itself, and ultimately to enhance judicial independence in Hong Kong.

Safeguarding One Country Two Systems

Hong Kong must continue to develop its own strengths and contribute to assisting China's further development and integration with the world. The legal sector, along with other professional sectors, is in a unique position to provide services for the OBOR Initiative.