



Hong Kong Vision Project

Hong Kong as an International Legal Hub

Opportunities from the 'Belt and Road' Initiative

Our Discourse and Recommendations

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Our Discourse and Recommendations

The One Belt One Road Initiative (OBOR) stretches across around 65 countries in three continents, covering over 4 billion people. The Asian Development Bank estimated that the total investments in Asia between 2010 and 2020 would exceed 8 trillion US dollars. In light of the new opportunities brought about by the OBOR initiative, we should develop and strengthen our legal services, and turn Hong Kong into an international legal hub.

The Rule of Law is a core value of Hong Kong and the cornerstone of Hong Kong's success. The best way to preserve the Rule of Law is to further develop our legal infrastructures and to promote our legal services to the world.

Legal Risks of International Infrastructure Development Projects

1. Jurisdictional Risks

The countries joining the OBOR Initiative have different jurisdictions (Common Law, Continental Law, Islamic Law, Socialist Law, and Mixed Law). Cross-border investors must fully appreciate and control the risks associated with multi-jurisdictional transactions.

2. Substantive Law Risks

It goes without saying that the substantive law in another country may invariably differ from that in the home country of the investor. Multi-jurisdictional deals would normally involve Business Organization and Company Law, Investment Law, Contract Law, Competition Law, Employment Law, Intellectual Property Law, Tax Law, and currency regulations.

3. Choice of Governing Law and Submission to Jurisdiction

It is crucial to expressly spell out which set of laws should be used to interpret the parties' obligations and hence the phrase "Choice of Governing Law". A jurisdiction clause is also important in the parties' agreement on using the court of a named country to take jurisdiction over any disputes that may arise.

Due Diligence

Legal due diligence is an essential part of a transaction that involves acquiring objective and reliable information prior to completion. China as the leader of the OBOR Initiative needs high-quality due diligence services to assist it in identifying and reducing investment risks.

The Strengths of Hong Kong's Legal Sector

A Well-developed Legal System

Hong Kong is renowned for its well-developed legal system and its forward-looking arbitration industry. Our legal sector has close ties with both the Mainland legal authorities and the international legal community.

The Reputable Hong Kong International Arbitration Centre

Since 1985, the Hong Kong International Arbitration Centre has been offering world-class dispute resolution services including arbitration, mediation, adjudication and domain name disputes resolution. It was considered the third most preferred and used arbitral institution worldwide and the most favoured arbitral institution outside of Europe in Queen Mary University of London's 2015 International Arbitration Survey. Moreover, many international arbitration organizations have established branches and offices in Hong Kong, including the International Court of Arbitration of the International Chamber of Commerce, the China International Economic and Trade Arbitration Commission, the China Maritime Arbitration Commission, Hague Conference Permanent Bureau's Asia- Pacific Regional Office and the Permanent Court of Arbitration.

Hong Kong Legal Profession

Hong Kong has a large pool of experienced legal professionals. Apart from the existing 9,000 plus solicitors and around 1,300 barristers, there are currently over a thousand Registered Foreign Lawyers from over 30 different countries practicing in Hong Kong. Under certain circumstances, overseas barristers can be admitted to appear in Hong Kong Courts.

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Common Law

Out of around 65 OBOR countries, 17 practise common law. It is well-known that cases from other common law jurisdictions, for instance, England, the United States, Australia, and Canada are persuasive in Hong Kong courts. In entering contracts with China, these countries are unlikely to accept Chinese Law as the governing law of the contracts. By the same token, China may not accept foreign law as the governing law. This conflict presents an inherent problem for the parties in OBOR projects. The choice of Hong Kong Law as governing law in OBOR contracts could be a solution for the parties concerned.

To Conduct Legal Due Diligence

Hong Kong legal profession is experienced in handling complicated cross-border transactions and the relevant legal due diligence. Hong Kong's competitive edge is to manage legal risks on China's behalf. This is how Hong Kong's legal sector can contribute to the OBOR initiative.