

**Research Centre for Sustainable Hong Kong¹
City University of Hong Kong**

**Policy Paper 8
Strengthening Hong Kong's Position as an Arbitration Hub
in the Belt and Road Initiative**

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1. Introduction

Hong Kong has long been a well-recognized hub for international arbitration. Both the central Chinese government and the Hong Kong government have indicated their support for Hong Kong to play a leading role in international alternative dispute resolution. Specific measures have been taken by the authorities and legal sector in this regard. More recently, the vision of the Belt-Road (B&R) Initiative raises new demands to the role of Hong Kong as an international legal services hub.

¹ Established in June 2017 by a cross-disciplinary research team, the Research Centre for Sustainable Hong Kong (CSHK) is an Applied Strategic Development Centre of City University of Hong Kong (CityU). CSHK conducts impactful applied research with the mission to facilitate and enhance collaborations among the academia, industry, professional service sector, the community and the Government for sustainable development in Hong Kong and the Region. Professor Linda Chelan Li, Professor of Department of Public Policy at CityU, is appointed as Centre Director. In 2017, CSHK is granted by the Policy Innovation and Co-ordination Office of the Hong Kong Special Administrative Region Government to conduct a Strategic Public Policy Research (SPPR) project entitled "Hong Kong Professional Services in the Co-evolving Belt-Road Initiative: Innovative Agency for Sustainable Development" [S2016.A1.009.16S]. For more information about CSHK, please visit our website at www.cityu.edu.hk/cshk. Please send your comment to sushkhub@cityu.edu.hk.

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This Policy Paper proposes additional measures in view of the new challenges. These include: (1) the further diversification of legal services and related professionals in Hong Kong, (2) attracting more arbitration institutions of diverse cultural backgrounds and clientele bases to provide services in Hong Kong, (3) enhancing the training and professional development programs for the local talent pool, (4) improving collaboration efforts with the mainland in promoting Hong Kong's roles as an international legal services hub in the context of B&R Initiative, (5) attracting enterprises involved in the B&R Initiative to come to Hong Kong to resolve their disputes, (6) increasing Hong Kong's investments in international arbitration events, and (7) improving coordination among local stakeholders.

2. Background of Arbitration in Hong Kong

Hong Kong has a long history of providing arbitration services. In the early years of Hong Kong as a trade port, the traditional Chinese preference for informal justice over litigation was deep-rooted in the local communities. British officers performed some arbitral activities among Chinese and English traders even before the colony's establishment. Two years into the colonial period, an ordinance was enacted at the newly instituted Legislative Council (LegCo) to mandate the governor to refer civil disputes to arbitration but disallowed by the Colonial Office in 1844. A decade later the *Civil Administration of Justice (Amendment) Ordinance 1855* was enacted to grant such power to the court. The beginning of the next century saw the introduction of the *Code of Civil Procedure Ordinance 1901*, which contained provisions based on the English *Arbitration Act 1889*.

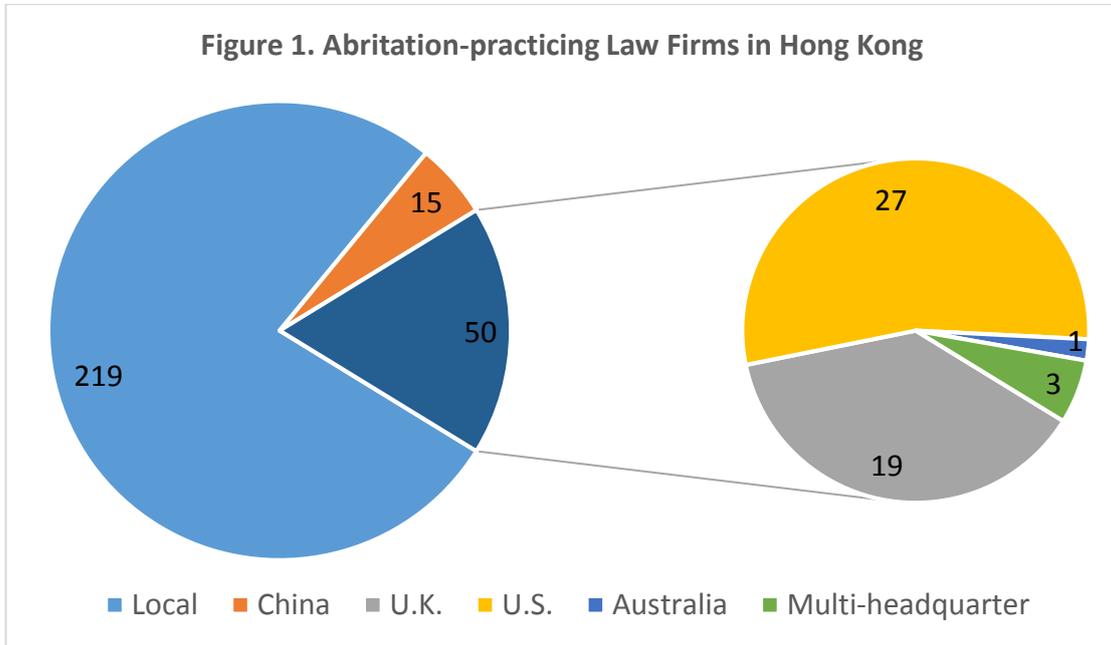
The modern arbitral regime in Hong Kong began with the *Arbitration Ordinance 1963* that reflected the English *Arbitration Act 1950*. Amendments to this ordinance was carried out in 1975 to incorporate the *New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards*. In 1985, the Hong Kong International Arbitration Centre (HKIAC) was established to promote and manage the use of arbitration. In 1987, the Law Reform Commission of Hong Kong (LRC) recommended the adoption of the *Model Law on International Commercial Arbitration* of the United Nations Commission on International Trade Law (UNCITRAL). The Government accepted the recommendation in 1989.

Since Hong Kong's return to Chinese sovereignty in 1997, the legal infrastructure in Hong Kong keeps evolving to support arbitration services. In June 2011, a new *Arbitration Ordinance* came into effect to unify the legislative regimes for domestic and international arbitrations on the basis of the revised Model Law. An Advisory Committee on Promotion of Arbitration was set up in 2014 to advise the Department of Justice (DoJ) in promoting arbitration in Hong Kong. In June 2017, the *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance* and the *Arbitration (Amendment) Ordinance* were gazetted. The former provides a framework for third-party funding for arbitration, while the latter clarifies that disputes over intellectual property rights are subject to arbitration.

3. Current Status: Arbitration Profession in Hong Kong

There is currently a vibrant, diversified group of legal professionals specializing in international arbitration services in Hong Kong, with 284 law firms self-claiming to be practising arbitration

as of March 2018. Amongst these about 50 are international law firms headquartered in other countries, and 15 of them are firms based in mainland China with offices in Hong Kong (Figure 1). Within the firms there is a mixture of locally qualified, foreign qualified and dual qualified lawyers. However, it is desirable to see more representation of firms or legal personnel from countries along the B&R.



Arbitral institutions from China and around the world are increasing their activity in Hong Kong. In November 2008, the International Court of Arbitration of the International Chamber of Commerce (ICC) from Paris established a secretariat branch in Hong Kong. In September 2012, the China International Economic and Trade Arbitration Commission (CIETAC) set up its Hong Kong Arbitration Center, which is also its first branch outside mainland China. In January 2015, the Permanent Court of Arbitration (PCA) from The Hague signed a memorandum of administrative arrangements with Hong Kong to allow for ad hoc dispute resolution proceedings administered by it to be conducted in Hong Kong. In October 2017, the Chinese Arbitration Association (CAA) from Taiwan announced that it was planning to establish an international branch in Hong Kong and a preparatory office was set up to provide related services.

As of March 2018, the Law Society of Hong Kong has admitted 24 solicitor-arbitrators, while the Hong Kong Bar Association has 105 registered barrister-arbitrators. Meanwhile, 244 members of the HKIAC panel and list of arbitrators have established practice locations at Hong Kong, while 74 arbitrators on the CIETAC panel are residents in Hong Kong. The Singapore International Arbitration Centre (SIAC) and the Shenzhen Court of International Arbitration (SCIA), despite having no Hong Kong branch as yet, also has respectively 27 and 146 arbitrators based in Hong Kong (Table 1). Together these four arbitral institutions cover about 390 Hong Kong arbitrators, of whom 35 are from B&R countries, including Singapore, New Zealand, India, South Korea, Malaysia, Poland, Russia, and Nigeria.

Table 1. Nationalities of Hong Kong Arbitrators

	HKIAC	CIETAC	SIAC	SCIA
Australia	29	4	3	9
Austria	2			
Belgium	1			
Canada	15		1	6
China	19	10	2	21
Denmark	1			
France	3			2
Germany	3			1
Hong Kong	56	62	5	96
India	3			
Ireland	3			
Italy				1
Malaysia	5			
Netherlands	1			
New Zealand	7	2	1	1
Nigeria	1			
Poland	1			
Russia	1			
Singapore	13		3	4
South Korea	2			
Sweden	1			
Switzerland	4			
United Kingdom	87	2	15	35
United States	12	2		4

4. Opportunities & Challenges under B&R

Many advantages of Hong Kong as an international arbitration centre remain effective in the context of B&R Initiative. The jurisdiction has been a party to the *New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards* and for decades has adopted almost wholesale the *UNCITRAL Model Law on International Commercial Arbitration*, which are regarded as the international standard for legislation in this field. Another notable feature of Hong Kong Law is the relative ease with which arbitral awards can be enforced between Hong Kong, Macao and Mainland China. Finally, the Courts in Hong Kong are trusted and regarded internationally as both efficient and supportive of arbitration.

Our local legal market is also open to international competition. A large number of foreign experts is able to continue international legal practice from a base in Hong Kong and it is relatively easy for them to obtain additional local licenses. A person who is not a solicitor or barrister may be registered as a foreign lawyer to practise the law of the jurisdiction in which he or she is qualified. A foreign-qualified lawyer can even be admitted as Hong Kong solicitor or barrister through obtaining an exemption or passing an examination. This compares favorably with the system in China and many other countries, where a foreign lawyer cannot be easily qualified.

In recent years, a number of international arbitration centres have established off-shore common law jurisdictions. The Dubai International Financial Centre, for example, is a special

jurisdiction within the Emirate of Dubai and practise a set of regulations, laws and court system based on common law. Several cities in mainland China are also considering a similar approach to developing their arbitration practice. Hong Kong enjoys a clear advantage relative to these experiments, given it is a part of China with a well-established and lively common law regime under the “one country, two system” framework.

Most non-Chinese international arbitral institutions can administer cases and issue awards freely in Hong Kong but not in mainland China, yet it is expected that they may have a possibility of further growth should the Chinese authority permit the enforcement of their awards. Therefore these international institutions may be interested in increasing their activities in Hong Kong as a precursor to licensing of their activities in mainland China in the future.

Some obvious challenges remain if Hong Kong is to strengthen its position as an arbitration hub under the B&R Initiative. Given the availability of a pool of expert arbitrators comprising local and internationally qualified professionals, most international law firms currently in Hong Kong are from the United Kingdom, the United States and Australia. Hardly any of them are from the less developed B&R countries. Among the several institutions’ panel list of arbitrators, only a limited number are from the B&R countries.

There is also indication that Hong Kong is losing some of its popularity as a provider of international arbitration services. The HKIAC, whilst still one of the most successful and popular arbitration institutions in the world, was actually hearing fewer cases in the past few years (Figure 2). Amongst arbitration cases submitted to the ICC Court, Singapore has consistently outranked Hong Kong since 2004 as a preferred seat by the relevant parties, and for most years as a preferred seat by the Court (Table 2). The latest *International Arbitration Survey* released by Queen Mary University of London in May 2018 has even replaced Hong Kong with Singapore as the most preferred seat in Asia.

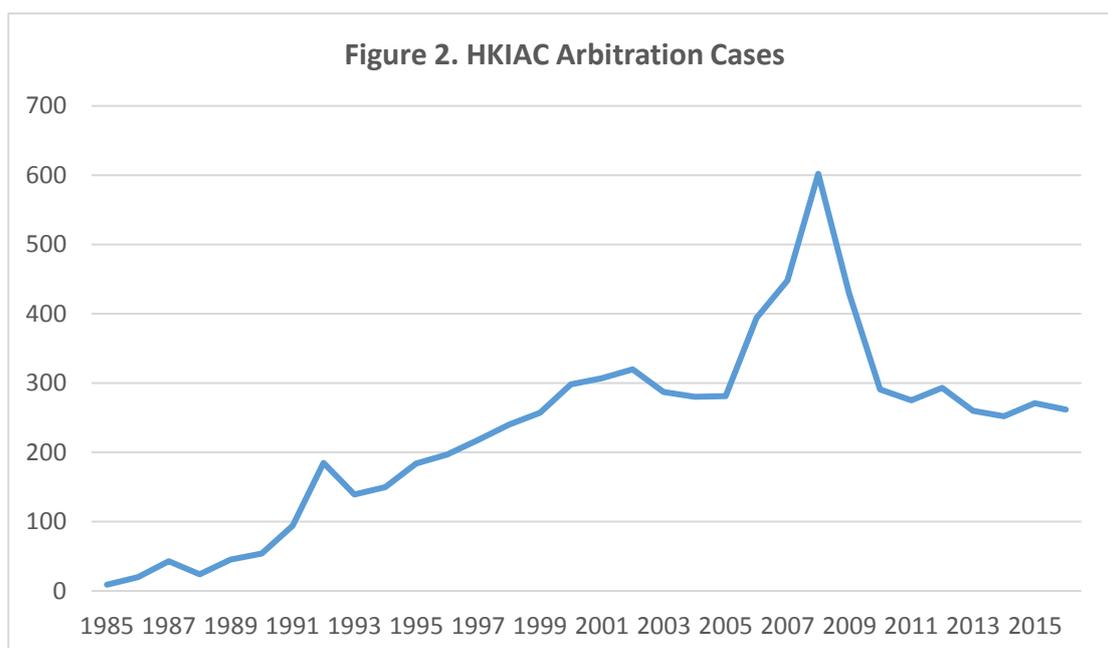


Table 2. ICC Court Arbitration Seat Frequency

Year	Selected by Parties		Fixed by Court	
	Hong Kong	Singapore	Hong Kong	Singapore
2004	3	4	0	6
2005	3	12	1	2
2006	7	10	1	1
2007	3	13	2	2
2008	10	29	1	1
2009	7	30	1	4
2010	11	23	3	1
2011	4	22	4	2
2012	10	31	2	5
2013	14	32	0	1
2014	16	23	0	1
2015	8	35	2	0
2016	8	22	0	4

5. Policy Suggestions

Given that most potential disputes relating to the B&R Initiative will come from the less developed countries along the B&R, it is desirable to increase the presence of law firms from those countries in Hong Kong, which could be in the form of a representative office, or joint office with an existing firm already based in Hong Kong, in order to enhance the legal services support to business transactions with the B&R countries. Policy incentives, e.g. office space in an expanded legal services centre, communal facilities, and tax benefits, may be considered to provide the necessary impetus to facilitate the early stage of these processes. The universities can also play a part by expanding their programmes in arbitration to students from the B&R countries, assisted if possible by government scholarships.

As the existing arbitral institutions in Hong Kong are from either the Western countries or the greater China region, we suggest measures be taken to attract arbitration institutions in B&R countries, e.g. the Bangladesh International Arbitration Center, the Lewiatan Arbitration Court, the Cambodian Centre for Mediation and Dispute Resolution, and the Thailand Arbitration Center, to set up their branches or secretariats here. The presence of these arbitral institutions would strengthen the confidence in Hong Kong as a suitable seat of arbitration for enterprises from those countries.

Meanwhile, currently nationals from mainland China and overseas need to apply for an employment visa in order to participate in arbitration proceedings in Hong Kong. We recommend the government to simplify access and exempt the requirement for an employment visa to boost Hong Kong's competitiveness as an international arbitration hub. This requirement has been removed in Singapore since a decade ago in 2008 per the enactment of the *Employment of Foreign Manpower (Work Pass Exemptions – Specified Activities) Notification*, subject to the arbitrator's fulfilment of several conditions.

We also see a need to enhance the training and professional development programs for the local talent pool. Not all of our professionals in Hong Kong are familiar with the cultures, languages and legal systems in the B&R countries, but these are essential knowledge if they

are to provide services for clients from those countries. For instance, there should be more components about Islamic laws in the training programs at local law schools and more courses on foreign languages for continuing education. Academic conferences relevant to B&R and exchanges with the B&R countries should be supported by the universities and government as well.

Moreover, whilst Hong Kong should be an appropriate venue for resolving B&R disputes, we do not seem to be promoting ourselves well enough to the mainland community. The Chinese government has recently announced its intention to establish international commercial courts based in Beijing, Xi'an and Shenzhen with the intention of offering support for the development of B&R disputes. There are inevitably be difficulties in establishing such courts, such as whether they may conduct proceedings in foreign languages, adopt internationalized rules of procedure and involve non local judges. It is submitted that many of these problems are mitigated in the Hong Kong court system, which already operates bilingually and with the involvement of a number of distinguished foreign judges. Hong Kong should do more to promote its position to the Central Government as an ideal venue for the resolution of B&R disputes. One modest proposal might be the creation of a specialized "commercial" division of the Court of First Instance (CFI) which may initially entail no more than the "designation" of particular judges to hear such disputes at a particular time. Commercial applications, for example, may be heard on Friday morning before the commercial judge, whilst preliminary applications in commercial cases may be heard by the commercial judge rather than a Master in chambers.

Hong Kong and mainland China also need to have a better communication in applying new technologies to assist dispute resolution. The Hong Kong government and legal sector are building an e-Belt and Road Arbitration and Mediation (eBRAM) online dispute resolution platform, while the Supreme People's Court of China has also been working on the National Judicial Adjudication Justice Information System, or "Tian Ping" Project. Both parties should have taken this opportunity to share information and technology in order to develop an online dispute resolution mechanism for the B&R dispute. We recommend that those in charge of the development of eBRAM should take the initiative to contact Chinese authorities, so that the platform can be integrated with the "Tian Ping" Project, thus enhancing its attractiveness to Chinese investors.

As most potential disputes relating to the B&R Initiative will involve Chinese investors and foreign state parties, it is also necessary for our government and arbitration professionals to convince them to choose Hong Kong as their site for dispute resolution. Local arbitration professionals will improve their competitiveness through strengthening their client-specific knowledge, e.g. the evolving mixed-ownership reforms in Chinese state-owned enterprises.

In addition, we should invest more to raise Hong Kong's visibility and sustain our involvement in major global arbitration events. For example, this year's International Congress and Convention Association (ICCA) Congress held in Sydney has successfully promoted Australia as an arbitration seat to the international arbitration community. The community in Hong Kong should be more active in bidding for hosting similar events, and the government should consider donating venues for free to them as well.

Last but not least, Hong Kong should also take better advantage of the international events

currently hosted in Hong Kong such as the Willem C. Vis (East) International Arbitration Moot hosted at CityU and arbitration week. Improved coordination amongst various stakeholders within Hong Kong, e.g. the universities, professionals, government and judiciary, and better communication will help build continued improvement.

6. Conclusion

With its long-standing history of arbitration and ample regulatory support, Hong Kong has featured an arbitration-friendly legal regime and achieved the status as a hub for alternative dispute resolution. However, under the new international environment formulated by the B&R Initiative, Hong Kong's position has witnessed both opportunities and challenges. This paper proposes diversification of our legal personnel and arbitration institutions to buttress our traditional strengths. It also calls for better promotion of Hong Kong's key role in the B&R Initiative to both the mainland and international communities. We also recommend efforts by all parties towards improved communications and synergies among academics, legal professionals and governmental communities within Hong Kong in the hosting and participation in major international events including the Vis East Moot and the ICCA Congress.

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