



香港政策研究所  
Hong Kong Policy Research Institute



香港願景  
HONG KONG VISION



# 香港成為國際法律樞紐

Hong Kong as an International Legal Hub

把握「一帶一路」的機遇  
Opportunities from the 'Belt and Road' Initiative

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香港願景計劃

# 香港成為國際法律樞紐

把握「一帶一路」的機遇

## 我們的論述和主張

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## 我們的論述和主張

「一帶一路」是貫穿亞非歐大陸大約65個國家的跨國合作發展倡議，涉及超過40億人口。根據亞洲開發銀行（Asian Development Bank）估計由2010至2020年間，亞洲新興國家所需要的基建資金缺口將達8萬億美元。香港政府和法律界應把握「一帶一路」帶來的機遇，把香港發展成為國際爭議解決中心。

法治是香港的核心價值，也是香港能夠發展成為國際法律樞紐的根本保證。在向國際拓展香港法律服務的同時，我們要維護「一國兩制」，鞏固香港的法治精神、基礎和制度。

### 跨國基建合作的法律風險

「一帶一路」的國家和地區在合作發展基礎建設時，要面對以下各種法律風險：

#### 1. 法律體制風險(Jurisdictional Risks)

「一帶一路」橫跨多個不同法系的國家和地區，法律體制之間的差異容易招致法律風險。「一帶一路」國家中最常見的五種系統包括：普通法系（Common Law）、大陸法系（Continental Law）、社會主義法系（Socialist Law）、伊斯蘭法系（Islamic Law）和混合法系（即同一個國家內實施不同的法律制度）。跨境投資者必須充分了解不同法律體系之間的分別，以控制法律爭議的風險。

#### 2. 當地實體法風險(Substantive Law Risks)

除了法律體制風險，投資者亦需要面對當地實體法風險。最常見的實體法包括：海外公司架構與組成方式及公司法（Business Organization and Company Law）、投資法（Investment Law）、合同法（Contract Law）、競爭法（Competition Law）、僱傭法（Employment Law）、知識產權法（Intellectual Property Law）、稅務法（Tax law）和外匯法規等等。

#### 3. 適用法(Choice of Governing Law)及法院管轄權(Submission to Jurisdiction) 爭議

正因為「一帶一路」中的每個國家和地區的實體法和程序法(Procedural Law)存在很大差異，當出現糾紛時，用哪一個國家的法律和法院去解決衝突，往往成為與訟雙方其中一個最大的爭論點。

### 法律盡職調查（Legal Due Diligence）的必要

近年，中國在「一帶一路」沿線國家中的投資日益增多，與此同時，跟這些國家的商業糾紛也愈來愈多：從印尼、斯里蘭卡、緬甸到俄羅斯，各式各樣的基建投資項目都出現爭議。可以想像，中國在「一帶一路」國家的投資所引起的商業糾紛只會有增無減。

為控制以上各項風險，跨境投資者在落實任何投資活動前都必須進行法律盡職調查，即是通過審閱不同文件，令投資者在進行投資前能夠全面掌握項目情況，以辨認及分析所有潛在危機及風險，目的是審核及確定有關資料的真實性及完整性。中國在「一帶一路」中擔當牽頭的角色，無可避免會遇上各種的跨境投資風險，需要高質素的法律盡職調查員去辨認及減低投資風險。

### 香港法律界的優勢和角色

#### 完善的法律制度

香港擁有完善和健全的法律、法院和仲裁制度，一貫廣受國際社會認可和尊重。香港的法律界同時熟悉中國和西方的法律制度與情況，並與內地維持緊密聯繫。

#### 香港國際仲裁中心聲譽佳

香港在國際法律上解決糾紛的成績是有目共睹的。自1985年開始，香港國際仲裁中心 (Hong Kong International Arbitration Centre) 已投入運作，「致力於協助當事人選擇最佳方法來解決彼此之間的爭端」。香港國際仲裁中心提供仲裁、調解、審裁和域名爭議解決，在國際上享有極佳的聲譽。一些海外仲裁機構亦已在香港成立分支及辦公室，例如國際商會國際仲裁院 (International Court of Arbitration of the International Chamber of Commerce)、中國國際經濟貿易仲裁委員會 (China International Economic and Trade Arbitration Commission)、中國海事仲裁委員會香港仲裁中心 (China Maritime Arbitration Commission)、海牙國際私法會議 (The Hague Conference on Private International Law) 和國際常設仲裁法院 (Permanent Court of Arbitration)。

## 我們的論述和主張

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### 香港法律人才濟濟

香港的法律專業是世界首屈一指的。跟據香港兩大律師會的記錄，除了現有接近9千名本地事務律師（Solicitors）和1300多名本地大律師（Barristers）外，香港有過千名來自近30個不同國家的外地註冊律師（Registered Foreign Lawyers）。香港法院也容許在特定情況下引入普通法地區的非香港註冊海外大律師參與本地訴訟。香港法律界熟悉國際法，制度亦富有彈性，可以適時引入法律專才，能夠迎合「一帶一路」的法律需求。同時，香港法律界在處理有關投資法、跨境勞工法糾紛、國際知識產權及其他投資保護方面皆有豐富經驗，能保障跨國投資者的權益。

### 普通法國際通行

「一帶一路」沿線國家中有17個普通法地區，佔整體65個國家逾四分之一。這些國家與中國簽訂合同的時候，會對使用中國法有保留；另一方面，中國亦不見得會在仲裁法和調解程序上採用外國法。香港在「一國兩制」的政策下，基本上沿用1997年前長期實施的普通法制度(Common Law System)。香港法律具備包括英國、美國、澳洲、加拿大、馬來西亞等國普通法系的內涵，對一些不了解中國法律的國家，香港法律作為合同適用法有其優勝之處。

### 中國的盡職調查員

一如上述，任何投資活動前都必須進行法律盡職調查。香港法律界對跨國投資法和盡職調查有豐富的經驗，加上大批高質素的本地及外國律師，絕對能夠勝任中國的盡職調查員，輔助投資者更有效地控制法律體制差異所帶來的風險。

## 建議

### 為了發展香港成為國際法律樞紐，我們建議：

#### 1. 增強香港的替代訴訟爭議解決服務 (Alternative Dispute Resolution)

相比傳統法院，替代訴訟爭議解決服務的特色是沒有嚴格的規定及高昂的訟費，亦相對有較高的自由度，例如雙方可以自行決定程序。爭議解決服務包括：談判 (Negotiation)、和解 (Conciliation)、調解 (Mediation)、專業判決 (Adjudication)、專家評估 (Expert Determination) 以及仲裁 (Arbitration)。

##### (a) 引進更多國際級仲裁機構

我們建議積極爭取其他國際級的仲裁服務機構進駐香港及在本地設立分支，例如世界著名的倫敦國際仲裁法院 (London Court of International Arbitration)、國際爭議解決中心 (International Centre for Dispute Resolution) 和世界智識產權仲裁與調解中心 (World Intellectual Property Organization Arbitration and Mediation Centre) 等。

##### (b) 建立香港國際解決爭議綜合大樓 (Hong Kong International Dispute Resolution Complex)

香港政府應建立一個統一處理解決爭議服務的「一站式」大樓，並應採用前法國外方傳道會大樓及舊政府西座大樓作為選址；運作模式可以參考荷蘭海牙和平宮 (Peace Palace) 及新加坡的麥士維樓 (Maxwell Chambers)。除此之外，為針對「一帶一路」基建項目可能帶來的糾紛，綜合大樓內應成立「一帶一路法院」。同時，我們建議籌建一所研究替代訴訟糾紛解決方案的學術研究院 (Hong Kong Academy of Alternative Dispute Resolution)，作為香港新的法律教育設施。

##### (c) 增加解決爭議服務專才

我們建議香港的解決爭議服務機構可以考慮吸納更多熟悉「一帶一路」沿線國家的國際專才，以整體提高仲裁員的國際多元性，及加強香港仲裁業在國際舞台上的地位。香港仲裁中心亦可考慮與其他普通法地區的國際仲裁中心合作，互認雙方的仲裁員名單，以擴大名單的數量和國際多元性。長期而言，目標乃發展出一套專門針對「一帶一路」沿線國家跨國投資法律問題的解決爭議服務系統。

### (d) 推廣其他解決爭議服務

近年來香港政府大力推廣香港的調解服務，包括設立調解工作小組、專責小組及督導委員會等等。我們建議政府應全面推廣香港其他解決爭議服務，包括：談判、和解、專家評估、專業判決、仲裁以及香港法院服務，讓國際使用者清楚明白香港的「一站式」法律服務。

### 2. 加強推動香港法為適用法、宣傳香港為解決爭議地點及推廣香港法律服務

我們建議爭取中方企業、亞洲基礎設施投資銀行和外國機構在簽署跨國協議及所有相關合同時，採用香港法律為適用法和選擇香港作為爭議解決地。用香港法律作為適用法可協調不同主權國家的法律之間的差異所引致的法律衝突，特別是當締約雙方涉及普通法或伊斯蘭教國家。

### 3. 設立專責「一帶一路」法律專員

要成功推廣以上建議，我們認為律政司應該設立一個專門負責處理「一帶一路」事宜的法律專員職位，職級為首長級（律政人員）第2點至第3點以上。其職能可分為三個層面：

#### (a) 本地層面

新增職位會與香港法律界緊密合作，與香港律師會及香港大律師公會攜手宣傳香港法律服務。政府單方面的推動成效往往有限，故必須和業界在民間層面下功夫，方能事半功倍。

#### (b) 內地層面

「一帶一路」法律專員應向中國內地的對口單位加強宣傳香港法律界的優勢。我們建議集中向負責管理國有企業的國務院國有資產管理委員會、監督融資融券業務運行情況的中國證券金融股份有限公司、和主管投資的中國外匯管理局旗下的梧桐樹投資平台有限公司的法律部推廣。此外，新疆維吾爾自治區及福建省分別是「絲綢之路經濟帶」及「21世界海上絲綢之路」的開端，我們認為「一帶一路」法律專員應與兩地的司法廳加強聯繫。

### c) 對外層面

對外包含「宣傳」與「吸納」兩個方面。「宣傳」方面，新增職位應向國際宣傳香港法律界、「一國兩制」和司法獨立的優勢，例如在「一帶一路」沿線國家舉辦推廣活動。「吸納」方面指吸引國際法律組織來港進駐及設立辦公室，令香港成為一個國際法律組織的落腳點。另一個方法是吸引更多國際法律組織來港舉辦年會，增強國際交流。

## 4. 促進「一帶一路」法律一體化

### (a) 設立「一帶一路」法律資料庫

政府可牽頭與香港律師會、大律師公會及三間大學法律學院合作，成立一個統一的「一帶一路」法律資料庫，這不單有助香港法律從業人員了解「一帶一路」的國家法律，更可吸引海外客戶使用香港的「一站式」法律服務。我們建議可考慮把法律資料庫設於上面提到的「一帶一路法院」內。

### (b) 推動「一帶一路」的跨國投資法律標準化

我們認為香港法律界可以牽頭發展一套專用於「一帶一路」基建及融資的國際法律標準，以及發展一套標準化法律格式文件。形式可以參考海牙會議(Hague Conference)下的國際私法 (Private International Law) 和國際貨物銷售法律 (International Sale of Goods) 適用公約的安排。另外，香港應爭取以適當身份加入亞投行(Asian Infrastructure Investment Bank) 及東南亞國家聯盟(Association of Southeast Asian Nations)，這對香港推動法律標準化事半功倍，亦對香港長遠的整體發展有重大意義。



### 5. 優化本地的《仲裁條例》及相關法例

#### (a) 修改本地的《仲裁條例》

香港《仲裁條例》在2011年及2014年以《國際商事仲裁示範法》（Model Law on International Commercial Arbitration of the UN Commission on International Trade Law）為基礎作出修改，統一了本地及國際法定制度。在此基礎上，我們建議政府應繼續優化《仲裁條例》，例如考慮引入新加坡的「否定管轄權裁」（Negative Judicial Ruling）及「提前駁回」（Early Dismissal）機制。

#### (b) 修改其他法例，例如「第三方資助仲裁」及「道歉法」

2015年10月香港法律改革委員會（Law Reform Commission）報告已經提議香港應立法准許香港第三方資助仲裁（Third Party Funding for Arbitration）。香港社會各界應盡快達成共識，加快立法程序。另外，我們亦留意到律政司正就《道歉法》（Apology Legislation）進行諮詢。我們同意諮詢文件中提到的改善措施，希望立法會能盡快通過此兩項法案。

#### (c) 加強與內地不同範疇的相互執行法律安排

基於一國兩制的原則，香港《仲裁條例》中有關《紐約公約》的條款在回歸後不適用於中國，取而代之的是1999年與內地簽定的《相互執行仲裁裁決的安排》。我們認為香港可以就其他範疇與內地加強合作，制定相互執行裁決的安排，例如相互承認和執行婚姻家庭判決。律政司已經在2016年6月就安排的建議展開公眾諮詢，我們建議律政司應加快研究其他與內地司法互助的安排。

#### (d) 與台灣簽訂仲裁協議

除了與內地的《安排》外，香港亦分別在1999年及2013年與澳門簽訂《相互認可和執行仲裁裁決的安排》。本文留意到台灣在2016年修定當地的仲裁法，承認外國仲裁裁決與當地法院的判決有相同的法律效力及執行名義。因此，我們建議港府應盡快與台灣當局簽定相互執行國際仲裁的協議，令香港發展成為涵蓋中國內地、台灣和澳門的兩岸四地仲裁中心。

### 6. 發展伊斯蘭金融的相關法律

「一帶一路」沿線國家中，伊斯蘭教國家大約有23個。我們認為香港有能力吸引這些伊斯蘭國家來香港投資及發展業務。香港必須加強發展伊斯蘭金融的基建。

#### (a) 發展具香港特色的伊斯蘭產品

香港作為全球最大的離岸人民幣業務中心，擁有最大的資金池，能夠為中東國家主權基金在中國的投資提供一個穩健的人民幣資金平台。香港有兩次成功發行以美元計價的伊斯蘭Sukuk債券的經驗，廣受投資者歡迎。因此，我們建議香港應集中發展以人民幣計價的伊斯蘭債券，並在香港發展本地規管伊斯蘭金融產品的法例和法規。

#### (b) 研究國際通用的伊斯蘭教法合規機制

伊斯蘭金融產品必須獲得伊斯蘭教義委員會（Sharia Supervisory Council）的核准才可以被稱之為沙利亞產品（Sharia-Compliant Products）。事實上各個伊斯蘭國家的委員會並沒有就沙利亞產品制定一個劃一的標準。因此，我們建議香港政府應在未來與更多不同伊斯蘭機構簽定合作協議，在香港釐訂出一套廣受伊斯蘭國家認可的沙利亞標準。

#### (c) 加強人才培訓

目前在香港政府資助的八間大專院校當中，共有5間開辦有關伊斯蘭教的課程，課程主題大多停留在理論層面（如伊斯蘭文化及歷史等），實用層面的課程（例如說伊斯蘭法律和金融）則相對匱乏。我們建議各大院校開辦更多實用層面的伊斯蘭課程，培育出更多熟悉伊斯蘭法律及金融制度的專才。問題是，在香港認識伊斯蘭法律的人數不多，而香港政府亦甚少舉辦伊斯蘭教研討會。反觀其他國家，例如新加坡和馬來西亞每年都舉辦數十個國際伊斯蘭會議。因此，政府應該加強與伊斯蘭教專業人士合作及交流，並舉辦更多推廣伊斯蘭金融和法律的活動，以推動伊斯蘭金融在港發展。

# 結語

## 成本效益

我們深信本報告提出的建議都是切實可行的。從經濟角度而言，這些建議跟香港的自由經濟政策並沒有衝突。對於「一帶一路」涉及數以萬億元計的機遇，香港應發揮所長，加強自身專業服務，對於香港整體長遠發展非常有利，因此上述各項建議所涉及的支出都是值得的。

## 鞏固法治

落實建議中的法律基建，能夠協助香港發展國際法律市場，幫助香港法律界拓展國際業務，並達到香港成為國際法律樞紐的目標。更重要的是，法治是香港的一個核心價值；本報告所有的建議都有利於維護司法獨立及法治。

## 發揮一國兩制的積極作用

要成功落實「一國兩制」，除了依靠中央和香港特區雙方嚴格遵守《基本法》外，亦需要香港繼續發揮所長，與中國內地互補不足，這正是香港維持自身特色最有效的方法。香港法律界憑著自身優勢和在國際上的地位，可以在分享「一帶一路」的成果之餘，亦可以填補中國法律的不足，互惠互利。因此，香港法律界應好好把握這個千載難逢的機會，加強法律基建，協助推動「一帶一路」的發展。事實上，除了法律界外，香港的其他專業服務也應把握「一帶一路」的機遇，拓展服務。



**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

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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.

## Our Discourse and Recommendations

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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.

## 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.



## **Our Discourse and Recommendations**

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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.

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### **(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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## Our Discourse and Recommendations

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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.

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# 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.

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