

Report on Committee on China Practice Development 2017

The Standing Committee on China Practice Development yet again experienced a busy year, building on the foundation laid since the Committee was set up two years ago.

At the beginning of the year, we renewed our Memorandum of Understanding with the Shanghai Bar Association, and both parties reflected on the cooperation so far. This dialogue was recently continued when the Bar yet again co-hosted and participated at the 9th Lujiazui Law Forum in Shanghai with the theme of 'Belt and Road and Internationalization of Legal Services'. The Bar is no stranger to this annual Forum, as it was precisely two years ago that the first batch of barristers were engaged as Hong Kong legal consultants to PRC law firms, with the support of the Ministry of Justice.

As part of our visit to Shanghai, we met with representatives from the Shanghai Municipal Bureau of Justice and the Shanghai Bar Association, during which we exchanged views on possible developments to the cooperation between Hong Kong barristers and Shanghai lawyers. It was generally agreed that there is certainly room for greater interaction, particularly between young barristers and their counterparts in Shanghai. This Committee is now liaising with the Standing Committee on Young Barristers (YBC) to work out ways in which young barristers interested in developing a practice in PRC-related matters can become more connected to their counterparts in Shanghai and elsewhere in the PRC.

The more familiar territories aside, earlier this year, we attended the 2nd Annual President Roundtable Conference of Bar Associations in Yangtze River Economic Zone in Shanghai, which saw the coming together of 11 bar associations along the Yangtze River Economic Zone, as well as representatives from the lawyers' associations of Beijing, Guangdong, Shandong and Fujian. This proved to be a remarkable opportunity for the Bar to be introduced to lawyers from cities and provinces which hitherto had no prior links with the Bar. It also demonstrates that major cities aside, there remain many opportunities in the rest of the PRC, where there is an increasing amount of foreign investments and overseas joint ventures, thereby leading to an increasing demand for the services of Hong Kong barristers.

This perhaps also emphasises the importance of maintaining a continuous communication channel with those who have demonstrated an interest in engaging the services of Hong Kong barristers, particularly those who have previously attended an event involving Hong Kong barristers. Therefore, we have set up a 'Wechat' group involving our PRC counterparts which provides a useful platform for relevant news and events to be shared. Internally, we have also set up an instant messaging group for barristers who have been engaged as consultants. This ensures that those who are interested in China Practice Development will be kept informed of upcoming events and developments.

In the meantime, we continued to have representatives of the Bar participating in various events and conferences over the year. This includes lectures given at the National Judges College; courses on international arbitration at Peking University; the 'Belt & Road Summit – Using Hong Kong as a

Platform for Infrastructure Dispute Resolution’ as jointly organized by the HKSAR Government and the Hong Kong Trade Development Council; the ‘Belt and Road Legal Services Forum’ as jointly organised by the All China Lawyers’ Association, the Guangdong Lawyers’ Association and China International Legal Professionals; and the ‘The 3rd Guangdong-HK-Macao Legal Seminar’ as jointly organized by the City University of Hong Kong, China Law Society and Universidade De Macau.

Finally, in Hong Kong, we also signed a Memorandum of Understanding with the China Enterprises Association at a jointly-organised seminar in January 2017. The Memorandum seeks to introduce a structured framework for cooperation between the Bar and the China Enterprises Association, such that ‘in-house counsel’ would receive more direct and in-depth information on barristers and the work we do.

Since November 2015, a total 38 Hong Kong barristers have been appointed as “Legal Consultants on Hong Kong Law” to mainland firms in 4 cities under provisions of CEPA in which members of the Hong Kong Bar are appointed by mainland firms as Legal Consultants on Hong Kong Law through matching exercises with the HKBA and the mainland local lawyers’ association. In the course of the past two years, the Committee has been seeking further expansion of the scheme so as to enable each barrister to be appointed to more than one firm to act in the same capacity. In October 2017 during the course of the Bar’s official mainland visit, the Bar has been informed of the decision of the Justice Bureau that each barrister will be permitted to be appointed to act as legal consultant on Hong Kong law by up to 3 firms. We consider this a positive development that will enable more lawyers in China to become acquainted with the work and capabilities of Hong Kong barristers. We would invite Hong Kong barristers with fully bilingual ability and interested in this area of work to avail themselves of the opportunity.

The scheme is in its fledgling stage, and in compliance with Chapter 13 of the Code of Conduct. While barristers can seek their own appointments to individual firms without going through the HKBA, we would very much appreciate reporting these appointments to the Bar, so that we can keep track of the general development of this area of practice.

We have been engaged in periodical review of the operation of the scheme. The scheme has now been officially implemented in four cities, namely, Shanghai, Shenzhen, Guangzhou, and Nanjing. It was found that while there have been encouraging instances of the mutually nurturing and profitable relationships successfully built, some of the early “matching” of firm to barrister at the initiation of the lawyers’ association of the city, were made without sufficient regard to the scope and nature of the practice of the firm and the strength of the barrister. In particular, it is seen important to ensure that mainland firms joining the scheme does have a substantial outreaching (涉外) practice in order for the appointment to be idle and futile for the barrister involved. The PRC Justice Bureau, the All China Lawyers Association, and relevant local mainland lawyers association have all been appraised of the situation, and will bear that in mind going forward.

Overall, we are certainly seeing an increasing demand for international legal services in the PRC. Barristers acting as legal advisers to mainland firms will see themselves playing the important role of

ambassadors of Hong Kong's legal system and our interpretation of the concept of the rule of law. With the sharp increase in number of qualified lawyers in China with a global outlook and exposure overseas, barristers will find it increasingly easy to work directly with mainland lawyers on matters involving Hong Kong law. On the other hand, lawyers from other common law jurisdiction are increasingly more aggressive in marketing themselves with mainland lawyers and in-house counsel particularly in arbitration matters. The Hong Kong Bar must not be slow to recognise and realise their strength and competitive edge in China-related work. The Bar therefore needs to work together as one, so as to ensure that we remain relevant, accessible, and competitive when faced with competition from all corners of the world.

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Winnie Tam SC
Chairman
Standing Committee on China Practice Development

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