

Report of the Standing Committee on China Practice Development 2018

I. Background – The Two China Committees

The Standing Committee on China Practice Development (“**SC ChinPracDev**”) was set up in 2015 to focus on exploring development of the Mainland China legal services market for barristers.

It is necessary to report on the provenance of this Standing Committee and trace its functional relationship with the Standing Committee of Greater China Affairs (“**SCGCA**”). Throughout the time between 2015 to the beginning of 2017, the SCGCA worked closely with SC ChinPracDev. Before SC ChinPracDev became more widely recognized by its mainland counterparts as the driving force behind professional practice development, the SCGCA functioned as a fountain of resources in terms of personal contacts, and knowledge on the practice, etiquette and dynamics between relevant individuals and amongst the relevant entities we had had to deal with on the mainland. Chairman of SCGCA who has been at its helm for over a decade continued to hold out as the point of contact for all the Bar’s China related affairs, working together with SC ChinPracDev in liaising between the lawyers associations and other law-related entities of the mainland, as prior contacts with relevant personnel in the Mainland China legal market were built exclusively through the leadership of the SC GCA over the years. This has worked well in those two years, after which there was a general sentiment expressed by our partnership entities and lawyers associations for there to be one single committee on the Bar’s work relating to China.

However, for reasons I am not privy to, the then Chairman of the Bar Paul Lam SC resolved to preserve the separate status of the two committees for one more year, at the end of which the merger would have to be implemented. I was informed by Paul Lam SC that some time in the early part of the year 2017, a resolution was passed in Council that the two China committees were to be merged immediately after the end of the year. In January 2017, I was named to take over from William Wong SC as Chair of SC ChinPracDev. As directed by the then Chairman of the Bar, the two committees were to work closely and share relevant information on China practice. The two committees continued to run parallel to one another, with SC ChinPracDev being primarily responsible for continuing to develop practice opportunities in China, while the SC GCA began to turn its focus to Taiwan. Both committees would be invited to take part in all HKBA activities in China and to jointly host visits of

mainland lawyers in Hong Kong. SC GCA continued to be principally responsible in organizing the annual Beijing official visit and HKBA's Common Law/ Public Law Course in Peking University.

In keeping with the 2016 resolution for a maximum of 3 years chairmanship in committees (subject to exceptions to be approved by the Bar) with all committees being obliged to make succession plans, I named 2 V-Cs, namely Richard Khaw SC and William Wong SC.

II. The Development of Legal Consultants on Hong Kong Law

With the support of the Ministry of Justice in China, significant ground-breaking progress in practice development was made for the Bar between 2015-2017. Apart from the law associations of several major China cities, namely Shanghai, Shenzhen, Guangdong, Hangzhou and Nanjing signing MoUs with HKBA to support mutual professional advancement, up to 37 legal consultant agreements were signed each between a firm with a member of the HKBA.

The significance of these agreements was not so much in the limited number of individuals having formal professional relationships with a limited number of mainland law firms for a limited term subjects to renewal, but rather in the raising of the professional profile of Hong Kong barristers as a whole. The message that was designed to receive wide publicity amongst mainland lawyers in those cities and beyond was that there is a body of user-friendly Hong Kong barristers who are accessible directly or indirectly to mainland lawyers to provide legal services on Hong Kong law, and for mutual advancement in the provision of legal services.

Knowledge exchange by way of visits and seminars offered to mainland firms to build rapport and understanding of capabilities were encouraged, both between members who have established consultancy relationships and their firms, and between those who did not enter into any formal relationships on a "free-lance" basis. The consultancy relationship in no way limited barristers from taking up work on an ad hoc basis with other firms as may be permitted under the Bar's Code of Conduct.

Some who are proactive and willing to invest time to cultivate relationships have been doing better in this scheme than others in terms of generating paid work. A review of the scheme with relevant mainland leaders were conducted on no less than two occasions since 2017, once during the Beijing official visit in November 2017,

and another time in Hong Kong towards the end of 2017 when we shared our views with visiting Shanghai lawyers on improvements to be made on the matching of barrister to the firm that could benefit from the barrister's expertise. These views were likewise shared with leaders of the Ministry of Justice, the All China Lawyers Association, and the Legal Department of the China Liaison Office, who have played a significant and strongly supportive role in furthering the practice development efforts of the Hong Kong Bar.

At the last official Beijing visit in 2017, the then Minister of Justice Zhang Jun revealed his decision to upgrade the arrangement by allowing each barrister to be formally "matched" to 2 firms at any one time in different cities of China as consultant on Hong Kong law. Due to the halt of official communications between HKBA and mainland government entities and the major law associations on the mainland, there has not been any further legal consultancy agreements signed this year.

III. The Arbitration Course with the Peking University

In the second quarter of 2017, at the initiation of Professor Jiang Shi-gong of the Peking University, the Bar resolved to teach a new course at the Peking University on top of the Common Law and Public Law, one that was to focus on International Arbitration. The request came in the summer of 2016 from Peking University to William Wong SC, then Chairman of SC ChinPracDev. He was put in touch with Professor Gao Wei of Peking University to establish the course.

The operation of the course was delegated to Peking U graduate and member of the Bar Ellen Pang, who was in the best position to liaise with Peking U staff and students under the supervision of William. Arbitration expert Kim Rooney, who was already teaching regularly in ICC courses around the world, was roped in to assist in curriculum development. At the direction of the then Chairman of the Bar, Paul Lam SC, a Bar circular was sent out to recruit volunteers to teach in the arbitration course.

The first course in 2017 was taught in English (as requested by Peking University) by over a dozen barristers who came from 5 different sets of chambers. It received excellent feedback from students and teachers. Against this background, the course was operated again on the same curriculum this year, and was successfully completed by May 2018 with no issue arising. In organizing this year's course Adela Mao stepped into the shoes of Ellen Pang to help organize and liaise with Peking

University. In each of the two years, 5 outstanding students were picked from a moot arbitration to be seconded to chambers in Hong Kong for 2 weeks in the summer.

Unfortunately, due to circumstances completely out of the control of the Standing Committee, and as a result of certain issue arising from the Common Law / Public Law course, we are uncertain that this course will have the chance to continue under the flag of HKBA.

IV. Our Work in the Year 2018

A. Overview

The work of the Standing Committee on China Practice Development was in for a sluggish start throughout the first half of the year. Significant and unforeseen changes in the leadership and constitution of council has resulted in a lack of continuity of any voice in council that was supportive and attuned to the work of SC ChinPracDev in the immediate preceding year. Until March 2018, there was considerable uncertainty as to whether the leadership of SCChinPracDev would change. Additionally, until the middle of the year, there was even more uncertainty as to whether the two China committees were to remain separate, or merged, and if so, who would be leading the merged committee.

It is regrettable that the previously strong relationship has come to an abrupt halt this year. CLO no longer proactively assists in building bridges with mainland lawyers association and the Ministry of Justice, whose attention and support has given the work of SC ChinPracDev considerable momentum in its first 2 years. An official visit to be made by the Deputy Minister of the Shanghai Justice Bureau scheduled for 18 May 2018 was cancelled last minute.

Further signs of trouble surfaced when the Chairman and one other barrister were invited by Guangxi Lawyers Association to visit and to sign an MoU. The invitation to sign an MoU was withdrawn at the last minute. V-C Robert Pang SC attended the event with another barrister as speaker, without signing any agreement.

At the moment, continuous professional interaction could only be maintained through individual members with their own contacts of individual members of the mainland legal profession. These take the form of talks and volunteered training or knowledge exchange in law firms, universities and in events. This form of contact

serves to maintain, and hopefully will continue to enhance the profile of the Hong Kong Bar amongst mainland lawyers. Other members interested in China practice have been briefed of the situation objectively at the briefing session referred to under the next section. In particular, it has been explained to them that they must not shy away from developing their own professional contacts through appropriate means as advised.

B. Connections with Mainland China Lawyers' Association

During this period of changes and uncertainty, I noticed that our potential partners in China were holding back in their usual requests for visits and invitations to their events. Whereas in the past years there would usually be visits of at least a handful of associations on top of other law-related mainland government bodies each year, none of the mainland lawyers' association nor law-related entities visited us or requested to have meetings or made connections despite a large number of them have visited Hong Kong not least to attend a major Belt and Road Conference organized by the Hong Kong Law Society in September. Apart from the odd group of mainland Chinese officials, judges, lawyers or students in training programs organized by the HKSAR government department or some university, none of the many mainland lawyers delegations came to the HKBA this year. The annual Beijing visit by the Bar did not happen either. Interaction with the CLO at committee level remained minimal throughout the year.

In November 2018, the SC ChinPracDev was approached with a request for the committee to participate in and to support the building of an organization “深港法律服務深度合作區”, a legal professional organization for fostering cooperation between lawyers in Shenzhen and Hong Kong, and for that purpose to be a signatory to a Framework Agreement. The request came from a former senior official of the Ministry of Justice, Mr Du Chun. The request was reported to the Chairman and the matter together with relevant documents were tabled for discussion in the Bar Council. The Standing Committee was told to hold off entering into the Framework Agreement, and that if the Bar is to be involved at all, it would have to be in the name of the association. I pointed out that the invitation being extended to the Standing Committee was not accidental, and that in view of council's stance, I would hold off and not attend the ceremony or sign the agreement.

In the same month, it also came to my notice that the **Guangdong-Hong Kong-Macau Greater Bay Area Lawyers' Association** was to hold its inaugural

meeting to mark its establishment on 15 December 2018. This is an official organization with the support of the Ministry of Justice and the Justice Bureau of Guangdong. The Hong Kong Law Society is a member and invited to attend the meeting, but the Bar is left out altogether. This is despite an earlier notice that was sent to the Bar and all intended members last year *did* include the Bar. My informal inquiry with the leadership of the Guangdong Lawyers Association indicated to me that they are unable to include the Bar for now as it is felt that they could not have a trusting and mutually respectful relationship with the leadership of our association. My reading is that they felt embarrassed by the situation, and was somewhat apologetic. With time, it is hoped that the Bar can demonstrate that it would not cause them any difficulties with their supervising authority to they were to continue to work with the Hong Kong Bar on a professional level.

The one and only exception in terms of approaches made to the Bar during the year by law associations in China was **Ningbo Lawyers Association**. This came as late as 11 December 2018. The delegation visited the Bar and on the following day signed an MoU with the HKBA almost in an impromptu fashion. I was delighted to learn that this was made possible apparently by the combination of two factors : (1) Ningbo Lawyers Association is a small and new Association from Shanghai, whose delegation was visiting Hong Kong not through any official channel involving the knowledge or support of the state's entities, but only privately on a training tour organized by a private Hong Kong company that organizes study trips for lawyers. (2) Ningbo Lawyers Association had learned of our existing agreement in 2016 with Hangzhou Lawyers Association, and was keen to have the same arrangement. They have therefore taken the opportunity of the visit to achieve that purpose.

C. The Guangzhou Legal Services Forum and Briefing Session on China Practice

The Legal Services Forum, a biannual event held in one of the cities of mainland China, was held in Guangzhou this year. It was the only major China practice development event that took place this year. With the HKTDC and DoJ in the driving seat, the Bar was able to participate to the full.

5 barristers including myself as a member of the organizing committee took part in a pre-forum working trip in July 2018 where we visited relevant government departments and lawyers association in Guangzhou, Zhaoqing and Foshan to market the Forum and to invite views on the program.

On the eve of the Guangzhou Forum, the SCChinPracDev held a briefing session and seminar in the Juror's Assembly Room where I briefed around 30 members of the landscape of China practice for Hong Kong barristers, and explained to them the appropriate mindset and skills to be acquired in attempting to develop this area of practice. Members also received tips on how to make use of conference opportunities in China to build connection and profile without offending acceptable practices of the Bar.

33 barristers actively took part in the Forum of over 1000 attendees playing various roles as speakers or role players in the mock arbitration, and making themselves available for business matching with mainland Chinese lawyers and potential clients. The Chairman gracefully attended the entire program giving support to our young members when they were attending business matching.

D. Information Session on Ascertainment of Foreign Law via Benchmark Chambers International (BCI)

The Standing Committee, with the support of the DoJ and the Law Society of Hong Kong, jointly hosted a seminar on 13 December 2018 to provide information on the practice of "ascertainment of foreign law" (域外法律查明) providing legal opinion on Hong Kong law through the agency, Benchmark Chambers International (BCI) 深圳市藍海現代法律服務發展中心, an NGO backed by Shenzhen Bureau of Justice. Executive Director Dr Xiao Jingyi came to Hong Kong with two colleagues to explain, mainly in Cantonese, the scope of work of the centre in procuring foreign legal opinion to support the administration of justice in the Qianhai, the Greater Bay Area and beyond, and to serve the needs of commercial and other entities requiring legal opinion on foreign law. They also invited interested lawyers to apply to be enlisted on their panels, which admit lawyers according to their expertise, seniority and experience, as may be appropriate, to serve different purposes and parties. The seminar was attended by over 80 lawyers including around 40 barristers, many of whom were interested in applying to join the panels.

E. CEPA Liberalisation Measures for Services

In May this year, we sent our suggestions to the DoJ on the captioned with various suggestions to liberalise, enhance and create more practice opportunities in the mainland for Hong Kong barristers.

F. Association of Chinese Enterprises

The Committee continued its efforts to maintain a good relationship with the association and has held one seminar for their members on 15 August 2018 on various aspects of company law and intellectual property law.

Membership

Winnie Tam SC (Chairman)
William Wong SC (Vice Chairman)
Richard Khaw SC (Vice Chairman)
Anthony Neoh SC (Advisor)
Andrew Liao SC (Advisor)
Daniel Fung SC (Advisor)
Michael Lok (Honorary Secretary & Treasurer)
Cherry Xu (Deputy Honorary Secretary)
Patrick Fung SC
Jimmy Ma (since 6/2018)
Paul Wu
Osmond Lam
Martin Wong
Vod Chan
Sabrina Ho
Kay Seto
Rachael Siu
Patrick Siu
Adrian Wong
Douglas Clark
Kang Yanan
Athena Wong
Anthony Ko (since 6/2018)
Alex Fan
Theresa Chow
Keith Tam (since 6/2018)
Stephanie Hung (since 7/2018)
Adela Mao (since 6/2018)

Winnie Tam SC
19 December 2018