



# **Leveraging on Hong Kong's Cooperative Arrangements with Mainland China**

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# Introduction

- Focus on China – Hong Kong's Role
- Opportunities for Hong Kong lawyers in the Mainland
- Legal Cooperation between Hong Kong and the Mainland
- Dispute Resolution strategy – using Hong Kong as a venue for arbitration and litigation

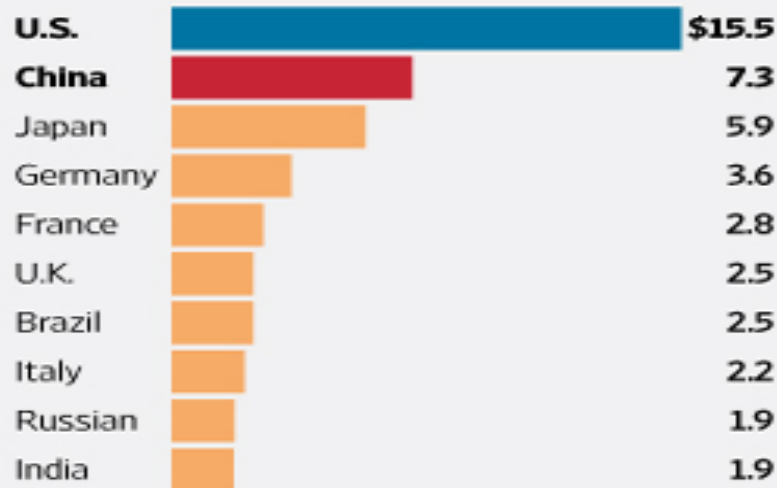
# Focus on China

## Economy Confusion

Power rankings of global economies show different results depending on the methodology

Using nominal GDP, the U.S. economy is twice the size of China's...

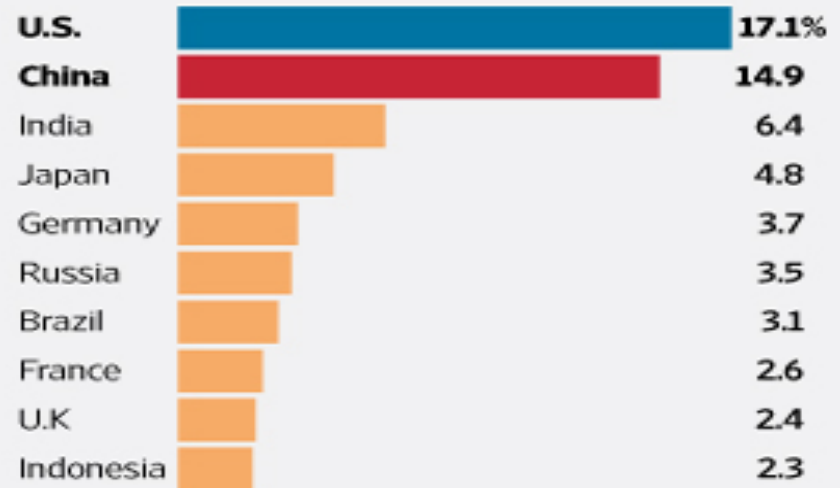
**2011 GDP in trillions of U.S. dollars:**



Source: World Bank

...but using purchasing power parity China is closing in on the U.S.

**2011 share of world GDP, PPP-based:**



The Wall Street Journal

# Focus on China

- In 2011, China's economy is 87% of the US, up from 43% in 2005
- 30% of global GDP attributed to the Asia Pacific Region
- China takes up 27% of global investment expenditure followed by the US at 13%

# Hong Kong – Gateway to China

- Middleman between China and the rest of the world – from goods to services
- Lawyers and other professionals in Hong Kong – bridging the technical, legal and cultural gap between Chinese and foreign enterprises

# Opportunities for Hong Kong Lawyers in the Mainland

- Closer Economic Partnership Arrangements (CEPA) since 2003
  - Goods – Zero tariffs for trade in goods
  - Services – includes market access commitments for Hong Kong lawyers

# Opportunities for Hong Kong Lawyers in the Mainland

- Rules of Origin for Hong Kong Law Firms (Extract from Annex V of CEPA 2003)
  - Principal business of the firm is providing Hong Kong legal services
  - The firm should have engaged in *substantive business operations* in Hong Kong for 3 years or more

# Opportunities for Hong Kong Lawyers in the Mainland

- As of January 2014:
  - 9000 Solicitors
  - 1200 Barristers
  - 1400 Registered Foreign Lawyers
  - 79 Representative offices of Hong Kong law firms in the Mainland (44 after signing of CEPA)
  - 6 Associations of Hong Kong/Mainland law firms



# Further opportunities for Hong Kong Law Firms

- Free Trade Zones
- Shanghai
- Guangdong, Hong Kong and Macau
- Special economic zones in Guangdong: Qianhai, Nansha and Hengqin

# Further opportunities for Hong Kong Law Firms

- Choice of law and choice of venue
- Presence of Hong Kong institutions
  - Arbitration
  - Law firms – association based on a partnership model – providing service in Hong Kong and Mainland laws

# Legal Cooperation between Hong Kong and Mainland China

- 1 country, two systems – common law vs civil law
- Hong Kong's position as a centre for legal services and dispute resolution in the Asia Pacific and a global financial centre
- Connecting with the Mainland and maintaining Hong Kong's own legal system

# Legal Cooperation Arrangements

- Reciprocal enforcement of arbitral awards – Mainland (1999), Macau (2012)
- Service of Legal Process in civil and commercial matters – 2000
- Reciprocal enforcement of commercial judgments – 2006
- Mutual legal assistance in criminal matters?
- Matrimonial judgments

# Enforcement of Arbitral Awards

- Filling in the void between Hong Kong and the Mainland since the handover – New York Convention
- Underpinning of Hong Kong as a venue for international arbitration
- Prospect of Hong Kong serving as a neutral venue for disputes between Mainland and Taiwan/foreign enterprises

# Development of Arbitration in Hong Kong

- Hong Kong International Arbitration Centre 1985
- Establishment of ICC International Court of Arbitration (Asia Office) 2008
- CIETAC Hong Kong Arbitration Center 2012
- China Maritime Arbitration Commission 2014
- Others

# Service of Legal Process in Civil and Commercial Matters - 2000

- Replaces the Hague Service Convention as between Hong Kong and the Mainland
- 2014 – 1600 requests from the Mainland and nearly 200 requests from Hong Kong

# Reciprocal Enforcement of Commercial Judgments - 2006

- Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned
- <http://www.legislation.gov.hk/intracountry/eng/pdf/mainlandrej20060719e.pdf>



# Reciprocal Enforcement of Commercial Judgments - 2006

- A timely arrangement to address:-
  - Enforcement issues relating to Mainland judgments – review mechanism by Supreme People's Procuratorate
  - Rapid economic integration brought about by CEPA and significant increase of cross-border commercial activities

# Reciprocal Enforcement of Commercial Judgments 2006

- Meant to be an alternative to arbitration
- Modelled on the *Hague Convention on Choice of Court Agreements 2005*
- Effective from 1 August 2008 and implemented in Hong Kong by the Mainland Judgments (Reciprocal Enforcement) Ordinance, Chapter 597 of the Laws of Hong Kong

# Reciprocal Enforcement of Commercial Judgments 2006

- Based on the existence of an exclusive choice of court agreement between the parties of a commercial contract
- Basic Principle
  - Where parties have entered into an exclusive choice of court agreement in respect of a contract, the resulting judgment on the merits given by the **designated court** shall be recognised

# Reciprocal Enforcement of Commercial Judgments 2006

- Substantive validity of an exclusive choice of court agreement
  - To be determined by the law of the chosen court

# Reciprocal Enforcement of Commerical Judgments 2006

- Few exceptions (public policy, consumer, employment etc)
- Applicable to money judgments only
- Registration for enforcement

# Dispute Resolution Strategy

- Hong Kong as a venue of arbitration
  - neutral venue (Mainland related disputes)
  - Enforcement network
  - Legislative (UNCITRAL Model Law 2006 version), professional and institutional support

# Dispute Resolution Strategy

- Hong Kong as a venue of commercial litigation for Mainland related disputes
  - Procedural support
  - **Enforcement** through reciprocal arrangement
  - Supportive court system

# Conclusion

- Opportunities for lawyers and law firms in the Greater China Region
- Leveraging on Hong Kong close legal and commercial ties with the Mainland in formulating dispute resolution strategy for clients



**Thank You**



**END**