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Collaborating Organisation:



INTERNATIONAL DISPUTE RESOLUTION CONFERENCE 2019

New Era of Global Collaboration

17 April 2019

Hong Kong Convention
and Exhibition Centre

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Exploring Aspects of Development of Alternative Dispute Resolution relevant to Businesses in the Greater Bay Area

*Winnie Tam SC, JP
Independent arbitrator and mediator,
Des Voeux Chambers*

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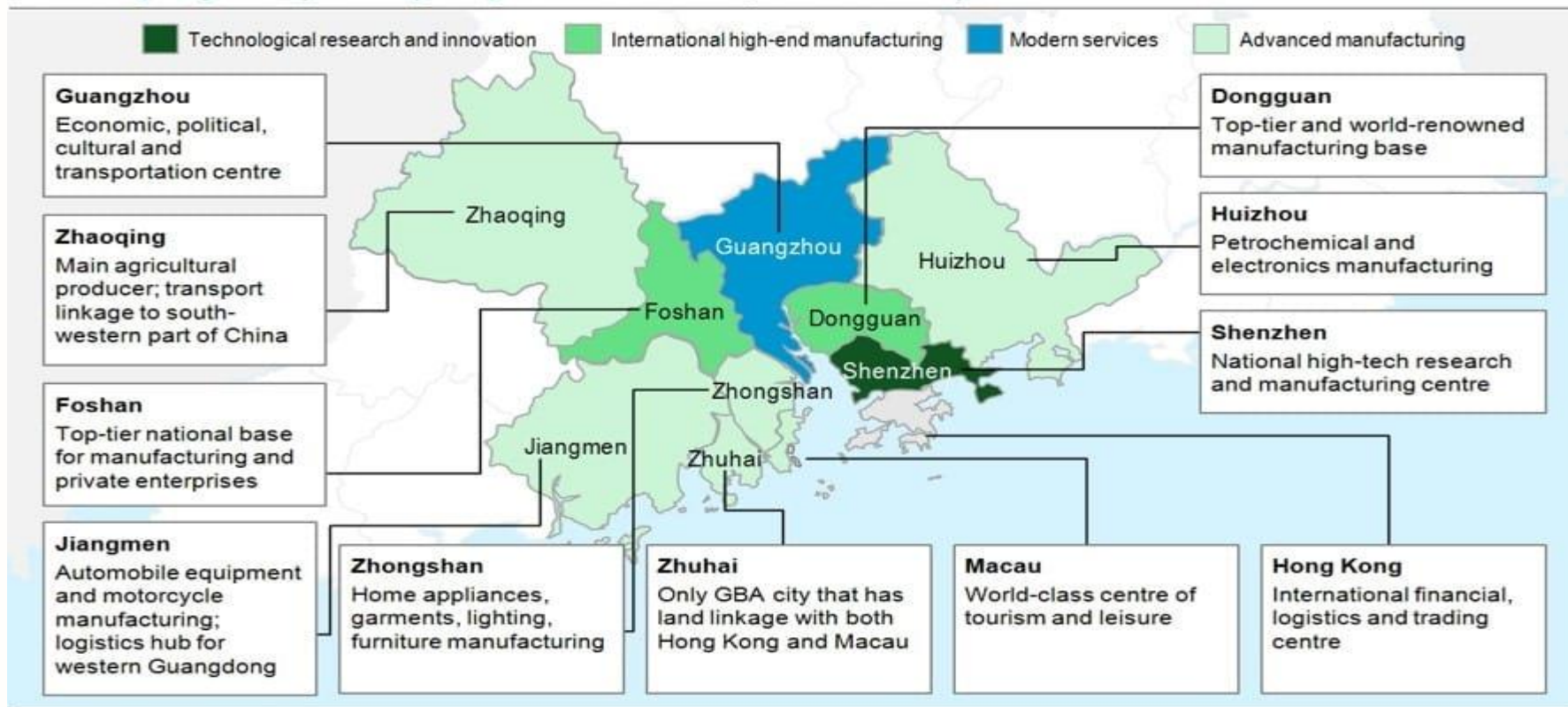


Aspects of Development of ADR in the Greater Bay Area

- **Manufacturing Base, Tech and Innovation Hub – Challenges faced by Joint Ventures set up between Mainland Chinese and Foreign Parties**
- **Diverse Cultures between Mainland China and Foreign Enterprises –
In business practices
In dispute resolution practices**
- **The Role of Hong Kong
As service centre
As dispute resolution centre**

The Greater Bay Area

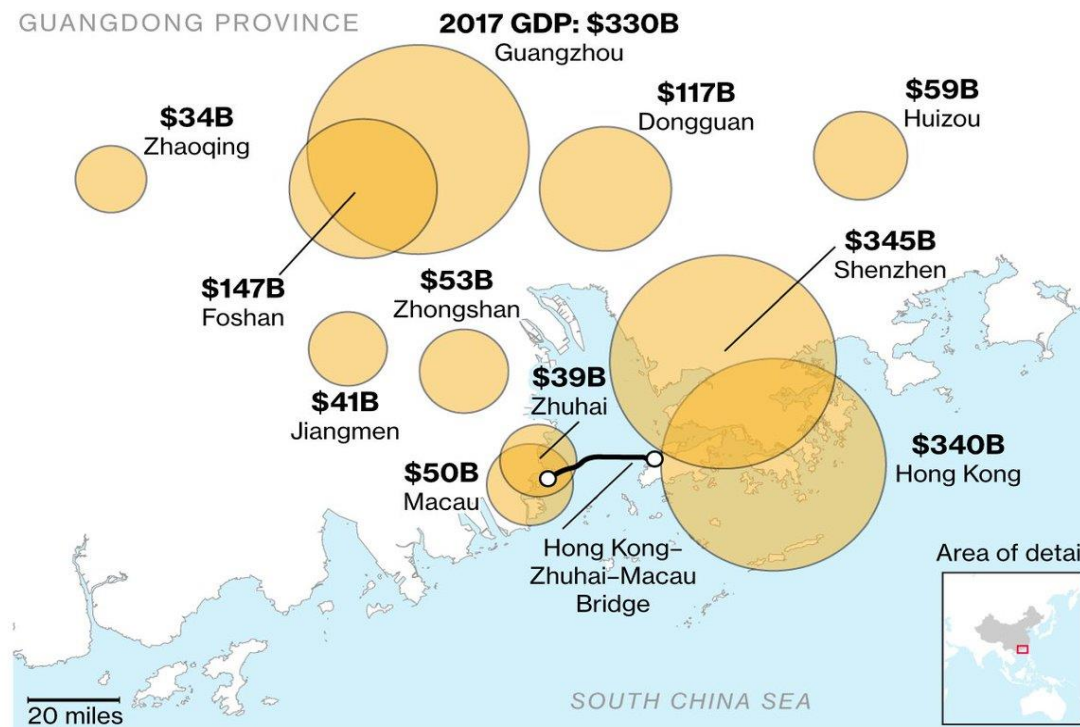
Nine Guangdong cities, plus Hong Kong and Macau, make up the Greater Bay Area



Source: Standard Chartered Research

The Greater Bay Area

Bridging China's Greater Bay Area Cities



Sources: Statistics Bureau of Guangdong Province, Census and Statistics Department Hong Kong, Macau Statistics and Census Bureau

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Demand for Professional Services by JVs in Manufacturing, Tech and Innovation

Professional Services -

- financial services
- personnel management
- management of IP rights
- Legal services – non-contentious and contentious matters

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Challenges faced by the JV businesses in manufacturing, innovation, and technology

Diverse Culture in business practices

breeds disputes between staff and JV
and between business partners

Common Issues

- Lack of understanding/respect for contract terms
- Lack of proper records or documentation
- Concept of R & D – copying or innovating?
- Unrealistic expectation of prospects of JV
- Misappropriation of business opportunities

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Diverse Legal Culture

Common Issues

- Imprecise, non-prescriptive language used in Chinese contracts
- Where bilingual contracts are used – disparity in translation
- Dispute Resolution
 - Courts 诉讼? Mutual consultation 共同协商?
 - Mediation 调解? Arbitration 仲裁?

Features of Mainland Legal Culture

PRC Courts as a forum for dispute resolution

- Civil law procedure
- Lawyers' adversarial role very limited
- Procedural "economy"
- Limited discovery of documents
- Limited witness examination
- Inept for contentious fact-finding
- Experts often appointed by court
- Limited recovery of damages
- Limited recovery of costs
- Courts often participate in mediation



Features of Mainland Legal Culture

Mediation & Arbitration

- Could be presided by the court
- Mediation agreement
- Med-court-med / Med-arb / Arb-med-arb
- “Different hats, same person” problem
- Resolving issues beyond jurisdiction?
- Choice of mediators/ arbitrators
- Numerous regional ADR institutions
applying different mediation and arbitration rules
- Use of overseas arbitrators/mediators in international institutions



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What Hong Kong has to Offer

- **An arbitral law modelled upon UNCITRAL model law**
- **Ad hoc arbitrations may be conducted under arbitration rules of the parties' choice**
- **Mediation law and accreditation organization HKMAAL**
- **A neutral venue backed by a world-renowned arbitration centre HKIAC**
- **13th 5-year Plan and the 2019 Outline Development Plan of the GBA both identified Hong Kong as the place to be built as the regional ADR Hub**
- **An internationally respected court to provide support to the arbitration procedure eg via granting interim measures**
- **Plenty of skilled and multi-lingual mediation and arbitration professionals providing quality service**
- **Highly efficient logistics centre**
- **Unparalleled connectivity to other cities in the GBA and beyond**

What Hong Kong has to Offer

- Well-developed mediation law that deals with the problematic “different hats” issue to ensure fairness
- Updated rules (HKIAC Administered Arbitration Rules 2018)
 - provide for and support the med-arb procedure and arb-med-arb procedure to ensure maximum flexibility
 - provide for emergency arbitrator procedure that facilitates speedy preservation of parties’ interest
 - provide for third-party funding under a regulated regime

A fully online dealing-making and ADR platform “eBRAM” with machine-learning capabilities to cater for multiple languages is expected to be unveiled next year. It will further enhance cost-effectiveness and user-friendliness of lower value ADRs.

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THANK YOU