



跨境贸易新模式与电子商务的法律问题

New Modes of Cross-Border Trade and Legal Aspects of E-Commerce

主讲 Speaker: 陈泽铭律师 Mr. CM Chan

香港律师会副会长暨大中华法律事务委员会主席

Vice-President and Chairman of the Greater China Legal Affairs Committee,
The Law Society of Hong Kong

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跨境贸易 Cross-Border Trade

- 「一带一路」倡议为国际贸易和投资搭建了新平台，促进贸易和投资自由化
- The Belt and Road Initiative has set up a new platform for international trade and investment in promoting trade and investment liberalization.
- 跨境电子贸易为进出口行业固然带来不少商机，但不少人仍然担心背后的风险、透明度等问题，而繁复的交易结构、商业规则、或不同法律制度更无可避免地会带来争议
- Risks and transparency behind cross-border trades, coupled with the complicated transaction structures, rules, or problems due to different legal systems will inevitably bring disputes.

香港的法律制度 Legal System in Hong Kong

- 一国两制 (One Country, Two Systems)
- 《香港特别行政区基本法》 (The Basic Law of the HKSAR)
- 普通法 (Common Law)
- 高度自治 (High Degree of Autonomy)
- 法治和司法独立 (Rule of Law and Judicial Independence)
- 官方语言：英文和中文 (Official Languages: English and Chinese)
- 在世界经济论坛《2018年度全球竞争力报告》中，香港的司法独立获评为亚洲第1，全球第8 (Asia's No.1 and World No.8 for judicial independence, according to the World Economic Forum's Global Competitiveness Report 2018)



香港 - 理想的争议解决中心

Hong Kong - An Ideal Venue for Dispute Resolution

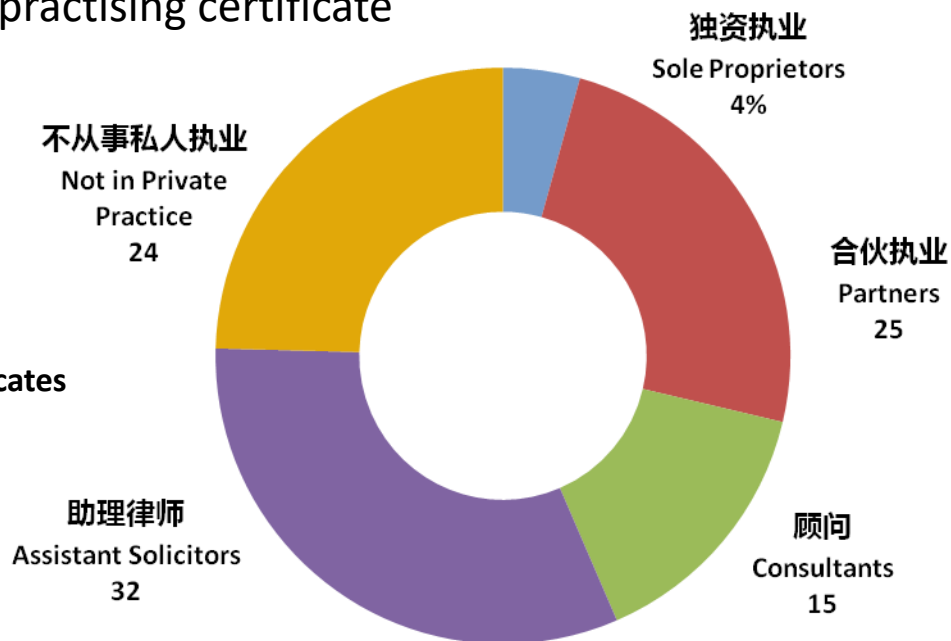
- 香港是一个中立的争议解决中心，并拥有世界级的仲裁机构和专业人士，可以提供高效而且值得信赖的争议解决服务
- Hong Kong is a neutral dispute resolution venue with world-class arbitration institutions and professionals that are capable of providing efficient and reliable dispute resolution services.
- 2018年，伦敦大学玛丽皇后学院公布的《国际仲裁调查》结果，显示香港国际仲裁中心在全球仲裁机构中排名第4
- Hong Kong was ranked as the fourth preferred venue for arbitration worldwide in a survey conducted by the Queen Mary University of London in 2018.
- 香港的仲裁裁决可在世界各地和中国内地执行
- Hong Kong arbitration award can be enforced internationally as well as in Mainland China.

香港法律服务市场概况 – 会员人数

Hong Kong Legal Services Market - Membership

- 截至2019年3月，香港律师会会员人数达**11,368名**，包括**9,923名**持执业证书会员
- As of March 2019, there were **11,368** members of the Hong Kong Law Society, including **9,923** members with a practising certificate

9,923
名持有执业证书会员
Members with Practising Certificates



香港法律服务市场概况 – 律师事务所

Hong Kong Legal Services Market - Law Firms

律师事务所 Law Firms	数目 Quantity
香港本地律师事务所 Hong Kong law firms	919 (其中47%为独资执业者) (47% are sole proprietorships)
在香港注册的内地/外地律师事务所 Registered foreign law firms	86 (其中29家为内地律师事务所) (29 are Mainland law firms)
与本地律师事务所在香港联营的内地/外地律师事务所 Associations between foreign and Hong Kong law firms	40 (其中25家为内地律师事务所) (of which 25 are mainland law firms)
香港律师事务所在内地设有代表处 Representative offices of Hong Kong solicitors firms in the Mainland	73 (分别在内地 11个城市) (located in 11 Mainland cities)

香港律师的优势 Advantages of Hong Kong Lawyers

■ 国际网络 International Network

- 拥有丰富处理跨境或多边法律问题的经验，以及完善的國際網絡
- Experienced in handling cross-border and multilateral legal issues, with a comprehensive international network

■ 企业法律咨询服务「一条龙」“One-Stop” Legal Advice for Enterprises

- 提供由公司注册到海外并购、企业上市等服务
- Provide services ranging from company registration to overseas M&A, as well as corporate listing and other services

■ 「拆解」 争议专家 Expert in Dispute Resolution

- 提供国际认可的专业调解、仲裁与审裁服务，提供迅速便捷的争议解决方案
- Provide internationally recognised mediation, arbitration and adjudication services , and a fast and convenient method for dispute resolution



香港海运服务业概况

An Overview on Hong Kong Maritime Services Industry

- 根据丹麦航运统计数据，香港在2017年是世界四大船舶注册地，紧随巴拿马、利比利亚和马绍尔群岛之后
- According to Danish Shipping Statistics, Hong Kong is the world's fourth largest ship register following Panama, Liberia and Marshall Island in 2017
- 中国新华社与波罗的海交易所发布的2018国际航运中心发展指数（ISCD）指出，香港于五年来首次超越伦敦，成为全球第二大的国际航运中心
- Hong Kong overtook London's spot for the first time in five years and became the second leading maritime centre in the world, according to the *International Shipping Centre Development Index (ISCD)* 2018 published by the Baltic Exchange and Chinese news agency Xinhua

香港海运服务业概况 (续)

An Overview on Hong Kong Maritime Services Industry (Cont.)

- 截至2019年2月，超过2,600艘船舶在香港船舶注册处注册，合计超过1.25亿总吨
- As of February 2019, more than 2,600 were on the *Hong Kong Shipping Register*, boasting a total of 125 million gross tonnes (GT)
- 香港注册船舶从国际营运所得的利润，可获豁免利得税
- Profits derived from international shipping operations are not subject to profits tax in Hong Kong

香港海运服务业概况 (续)

An Overview on Hong Kong Maritime Services Industry (Cont.)

- 香港已與多個地區簽署涵蓋航運收入的寬免雙重課稅協議，包括：中國內地、美國、英國、荷蘭、新西蘭、新加坡、比利時、丹麥、挪威和德國等
- Hong Kong has entered into double taxation agreements (DTAs) which cover shipping income with many places, including countries such as the Chinese Mainland, US, UK, the Netherlands, Korea, New Zealand, Singapore, Belgium, Denmark, Norway and Germany

海事法律服务 Maritime Legal Services

- 海事法律服务涵盖：一、海上傷亡事故；二、商業航運活動
- Legal services for the maritime sector cover (1) maritime casualty; and (2) commercial shipping activities.
- 商业航运活动涉及船务融资，以及造船和买卖交易等合同的法律程序
- Commercial shipping activities involve legal processes for ship finance, contracts for ship building and transactions
- 香港國際律師行提供包租船隻、海上搶劫、貨損索賠及調解糾紛等海事法律諮詢服務
- International law firms in Hong Kong offer maritime legal advice on shipping matters, such as chartering, piracy, cargo claims and dispute resolution



海事法律服务(续) Maritime Legal Services (Cont.)

- 香港高等法院有專門處理海事糾紛的法律專家，並設有海事法庭法官
- The High Court of Hong Kong has specialist lists to deal with admiralty disputes with its own Admiralty Court Judge
- 香港海商法協會於1978年成立，會員包括海事律師、船東，以及與海事行業相關的組織及個人會員
- Established in 1978, the Hong Kong Maritime Law Association consists of maritime lawyers, ship-owners, as well as organisations and individuals members involved in maritime sector
- 2017年，香港國際仲裁中心共處理532宗個案，當中8.8%涉及海事糾紛
- In 2017, the number of dispute resolution cases handled by the *Hong Kong International Arbitration Centre (HKIAC)* reached 532, where cases involving the maritime industry accounted for 8.8%



香港电子商贸概况

Hong Kong's E-commerce Ecology

- 香港的电子商贸市场较小，但电讯基础设施发达，是通往亚洲市场的门户，以及新产品和新概念的试验场
- While the e-commerce market in Hong Kong is relatively small, many merchants are interested in the local e-commerce market as Hong Kong is a metropolitan city with a sophisticated telecommunications infrastructure that can serve as a gateway to Asia as well as a testing ground for novel products and concepts

电子商贸的监管框架

Regulatory Framework for E-Commerce

- 为了建立一个便利电子商贸的理想监管框架，在电子交易的三个阶段中需要以下基本条例：

For an ideal regulatory framework for facilitating e-commerce, the following basic regulations are required for the 3 stages in an e-commerce transaction:

1. 搜罗/ 预购商品阶段：规定供应商有义务公平、准确地描述产品并监管欺诈行为

Discovery / pre-purchase: Regulations obliging vendors to describe products fairly and accurately and to control deceptive practices



电子商贸的监管框架 (续)

Regulatory Framework for e-Commerce (Cont.)

2. 交易 / 购买阶段：相关规定须涵盖付款系统的安全性、不公平合约条款的监管以及电子合同和签署的有效性

Transaction / purchase: Regulations covering security of payments, control of unfair contract terms, and validity of digital contracts and signatures

3. 交货及售后阶段：相关规定须涵盖交货的强制性时限、海关的合规事宜，以及损失 / 损坏 / 盗窃的责任

Delivery and post-purchase: Regulations covering mandatory time limits for delivery, customs compliance and liability for loss / damage / theft



与电子商贸有关的法例

Ordinances Related to E-Commerce

- 《电子交易条例》 Electronic Transactions Ordinance
- 《不合情理合约条例》 Unconscionable Contracts Ordinance
- 《消费品安全条例》 Consumer Goods Safety Ordinance
- 《货品售卖条例》 Sale of Goods Ordinance
- 《服务提供(隐含条款)条例》 Supply of Services (Implied Terms) Ordinance
- 《商品说明条例》 Trade Description Ordinance
- 《支付系统及储值支付工具条例》
Payment Systems and Stored Value Facilities Ordinance
- 《个人资料(私隐)条例》 Personal Data (Privacy) Ordinance

《支付系统及储值支付工具条例》

Systems and Stored Value Facilities Ordinance

- 金融管理专员根据《条例》订明的准则及有关因素决定应否指定某零售支付系统
The Ordinance stipulates criteria and relevant factors based on which the Monetary Authority will determine whether or not a retail payment system (“RPS”) should be designated
- 《条例》确保指定零售支付系统的运作安全、稳健及有效率，以及促进香港的金融及支付系统稳定
The policy objective is to ensure that operations of designated RPS are safe, sound and efficient and would contribute to the financial and payment system stability of Hong Kong

《个人资料(私隐)条例》 Personal Data (Privacy) Ordinance

- 旨在保障我们作为「资料当事人」在个人资料方面的私隐权
aims to protect the privacy rights of a person in relation to personal data (Data Subject)

《电子交易条例》

Electronic Transactions Ordinance

- 为推动电子商务的发展，香港政府于2000年1月制定《电子交易条例》并于2004年6月作出修订，旨在：
 - 赋予电子纪录及电子签署¹跟纸张文件上的纪录和签署同等的法律地位
 - 设立核证机关自愿认可计划以加强社会人士对电子交易的信心
- The Electronic Transactions Ordinance (Cap. 553) ("ETO") was enacted in January 2000 and updated in June 2004, which aims at:
 - accord electronic record and electronic signature the same legal status as that of their paper-based counterparts; and
 - establish a voluntary recognition scheme for certification authorities to enhance public confidence in electronic transactions

《电子交易条例》 (续)

Electronic Transactions Ordinance (Cont.)

- 两间获得认可的香港核证机关为：
 - 邮政署署长 (香港邮政核证机关)
 - 电子核证服务有限公司
- Two Recognised Certification Authorities in Hong Kong:
 - Postmaster General (Hongkong Post Certification Authority)
 - Digi-Sign Certification Services Limited



总结 Conclusion

- 香港律师拥有国际网络、企业法律咨询服务「一条龙」、争议解决专家等优势，在各种跨境贸易、海运服务、电子商贸中扮演重要角色
- With the advantages of international network, “one-stop” legal advice for enterprises and specialty in dispute resolution, Hong Kong lawyers can play an important role in a variety of cross-border trade, maritime services and e-commerce
- 香港是全球第二大国际航运中心，海运乃跨境商贸的重要组成部分
 - 海事法律为海运服务提供保障
 - 香港律师提供法律咨询，包括包租船只、海上抢劫、货损索赔及调解纠纷等
- Hong Kong is the second leading maritime centre in the world, while maritime service is an important part of the cross-border business and trade
 - Maritime law provides protection to maritime service
 - Hong Kong lawyers offer maritime legal advice on shipping matters including chartering, piracy, cargo claims and dispute resolution



总结 (續) Conclusion (Cont.)

- 电子商贸是跨境商贸的发展趋势，香港政府已于2000年1月制定《电子交易条例》，律师可提供知识产权保护、隐私权保护、跨司法管辖区电子合同等法律咨询，以及解决争议等
- E-commerce is a trend in cross-border commerce. In January 2000, the HKSAR Government enacted the Electronic Transactions Ordinance. Hong Kong lawyers can provide legal advice on intellectual property protection, privacy protection and cross-jurisdictional electronic contracts, as well as dispute resolution services





香港律师会

The Law Society of Hong Kong

电话 Tel : +852 2846 0593

电邮 Email : adceag@hklawsoc.org.hk



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LAW SOCIETY
OF HONG KONG
香港律師會