



香港和解中心  
Hong Kong Mediation Centre

# JMHO Advanced Mediation Skills Workshop

處理跨境商業爭議  
Resolving Cross-border  
Commercial Disputes

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# We are going to share with you

- Cross-border Commercial Activities and Disputes
- Challenges and Traditional Resolution Approaches
- Opportunities of mediators in Hong Kong
- “Hong Kong Mediation and Mainland Arbitration”  
Mechanism
- Be a Cross-Border Mediator
- Q & A

# Cross-border Commercial Activities & Disputes

- The most important entrepot,
- One-fifth of China's foreign trade.
- Second largest trading partner (after the USA)
- HK\$3,966 billion. 50.3% (Total trading)
- HK\$1986.9 billion 47.1% (Import)
- HK\$23.2 billion 42. (Export)
- HK\$1995.8 billion(Re-exports)

# Cross-border Commercial Activities & Disputes

- Mainland's largest foreign direct investment, 47.7% national total as at end 2013, cumulative value reaching HK\$4465 billion.
- Approved 374260 investments from Hong Kong
- Mainland is the second largest source of inward investment. accounted for about 31.9% , reaching US\$431 billion.
- In the first six months of 2014, an average of about 579 000 passengers and 41 000 vehicles crossed the boundary by land each day.

# Cross-border Commercial Activities & Disputes

- Hong Kong companies directly invest in the Mainland
- Hong Kong companies trade with Chinese companies
- Overseas company trade with Chinese firms
- Overseas company directly invest in the Mainland

# Cross-border Commercial Activities & Disputes

## 都市日報

長期以來，部分港商在內地受到不公正待遇或掠奪，卻很少被人們關注。直到最近幾年，不斷有港商在內地興訟，案件經本港媒體曝光，港商在內地的際遇，開始受到輿論關注。特別是，全國政協副主席霍英東臨終前不久大爆內幕，指其在廣州番禺南沙投資過百億的項目，竟遭當地官方小人物盤剝，怒斥「我從未見過這樣離譜的事！」港商在內地的遭遇更為人們注目，港商為保護投資權益而發起的行動，也風起雲湧，漸成大勢。

# Cross-border Commercial Activities & Disputes

過去多年，很多港商前往內地投資，經營不同業務，涉及金額少至數十萬元，上至涉及數以億元計。港商普遍依據大陸法律法規辦事，然而，不少在法院訴訟期間未獲依法公正對待，更有獲判勝訴的個案，最終因地方政府保護而未能執行法院裁決。

然而，由於不少個案多年仍未有解決，特區政府一直只扮演「信差」的角色，並鮮有真正為在內地遭到不公對待的香港居民反映問題，爭取合法權益。

香港社區組織協會內地港商投資權益關注組  
[www.soco.org.hk/hric.htm](http://www.soco.org.hk/hric.htm)

# Cross-border Commercial Activities & Disputes

## Apple Daily

廣州店遭內地拍檔吞併  
華星冰室「敗北」蝕埋招牌

華星冰室股東慨嘆，港商在內地開店，無論法制或道理均未能保障其權益。



# Cross-border Commercial Activities & Disputes

## 【太陽報專訊】 2 September 2015

在廣州經營玩具廠的三十歲朱姓港商，近日懷疑因經濟糾紛，遭李姓生意拍檔毆打，更疑因此導致胃穿孔，經手術需切除六成胃部保命。朱姓港商事後表示，早前因資金周轉問題，欠下李姓拍檔十多萬元人民幣，但他一直有逐少償還，對方亦從未有催促，雙方合作愉快，故不明行兇動機。

# Challenges in handling Cross-border Commercial disputes

- International
- Different Legal system
- Technical ( not often dealt with by courts )
- Reputation
- Time, cost

# Traditional Resolution Approaches

- Court in the Mainland
- Reciprocal Enforcement of Judgment (REJ)
- Arbitration - New York Convention 1958
- Mediation

# Courts in the Mainland

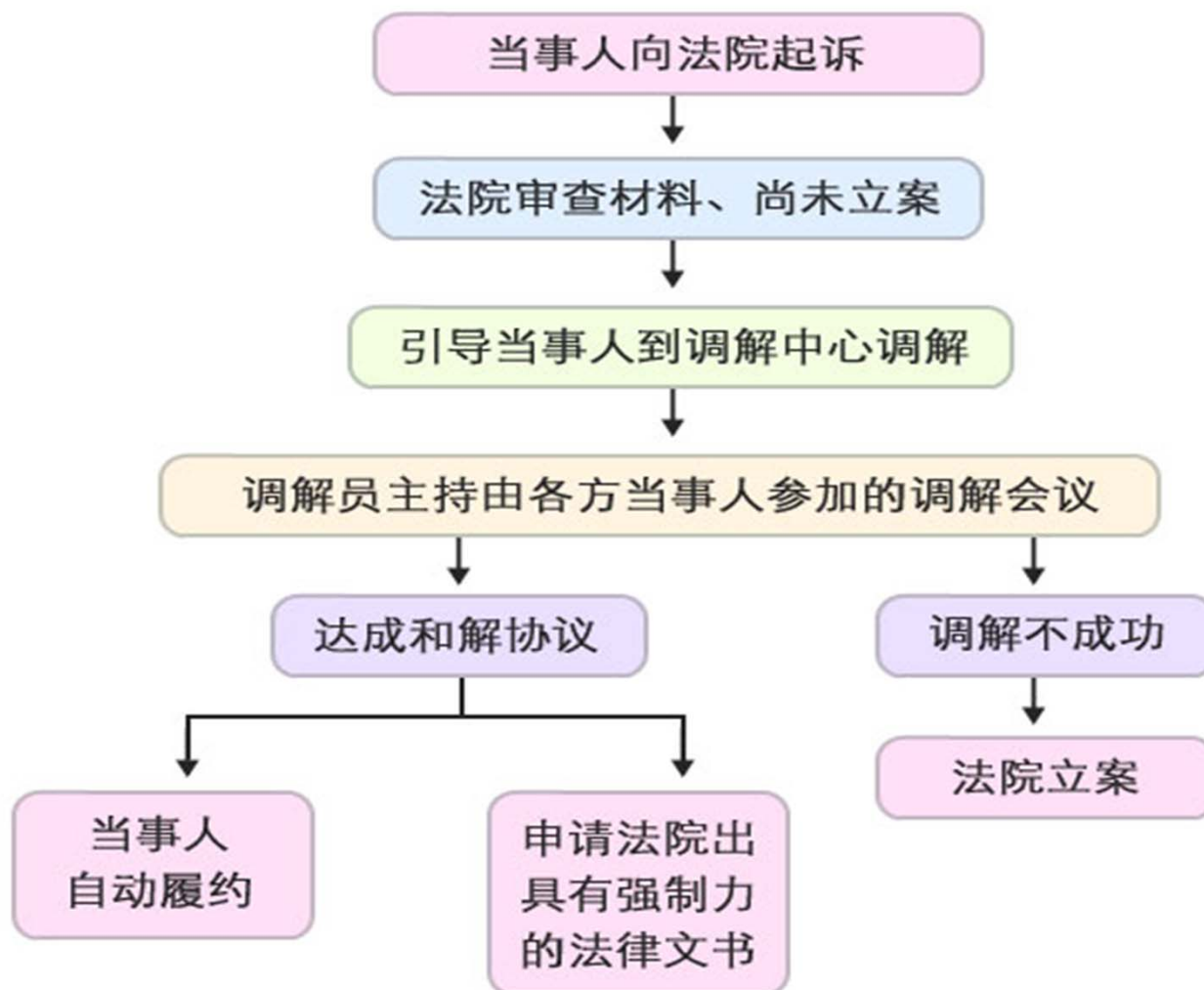
- Legal System
- Cost
- Time
- Deposit
- Confidants

# Diversified Disputes Resolution

## 多元化糾紛解決機制

- 訴仲對接
- 仲調對接
- 訴調對接

# 訴調對接



# Reciprocal Enforcement of Judgment (REJ)

- A convenient and expeditious method of enforcing a foreign judgment
- Same force and effect as a judgment from local court
- Chapter 319 of the Laws of Hong Kong ("Cap 319") to facilitate reciprocal recognition and enforcement of judgments on the basis of reciprocity.
- Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned (2008)

## Reciprocal Enforcement of Judgment (REJ)

The Secretary for Justice in the Gazette on 25 July 2014 (G.N. 4289) pursuant to section 25(1) of the Mainland Judgments. Over 190 Basic Courts in the Mainland.

- Final judgment requiring payment of money
- Choice of court agreement in writing
- Time limit for application for execution of judgments is two years



## Reciprocal Enforcement of Judgment (REJ)

- Hong Kong's courts have not handled application from individuals or companies.
- Up to September 2014, eight attempts to get Hong Kong judgments enforced on the mainland.
- Litigation is not a mainstream dispute resolution in the commercial world.
- Parties generally prefer to settle through arbitration or mediation, where both the results and the processes remain confidential.

# Using Arbitration to resolve the cross-border commercial disputes

Resort to arbitration where the New York Convention of 1958, with its 149 member states, ensures the enforceability of both arbitration agreements and arbitral awards.

## Med-Arbitration

- a. a “dispute” has to exist at the time that the arbitrator is appointed, before the award can be recognized.
- b. Once a settlement agreement had been reached, technically not be a “dispute” when the mediator is subsequently appointed as an arbitrator in order to make an arbitral award.

# Using Arbitration to resolve the Cross-border Commercial Disputes

## Limitations

- 3<sup>rd</sup> Parties' decision
- Win-Lose
- Recover damaged relationship
- Enforceability in the Mainland

# Using mediation to resolve the Cross-border Commercial Disputes

**Strengths:** Best way to resolve commercial and community disputes

- Parties' decision
- Rebuild Relationship
- Confidential
- Flexible

**Limitations:**

- a. Different approaches ( models)
- b. Enforcement of settlement Agreement

# Using mediation to resolve the Cross-border Commercial Disputes

## Enforcement of Settlement Agreement

### *Domestic*

- In some jurisdictions, it is possible to apply to the court for a consent judgment. eg. US,
- some EU countries, mediation settlement agreement shall be registered before enforceable.

### *Hong Kong*

- Mediation Ordinance (Chapter 620)
- Contractual agreement

# Using mediation to resolve the Cross-border Commercial Disputes

## *Cross-border*

- Can the Mediated Settlement Agreement (whose legal effect is similar to a contractual agreement) be enforced overseas and in the mainland?
- Lack of an effective method of enforcement
- Can not make full use of mediation given the risk that any outcome might be unenforceable.

# Using mediation to resolve the Cross-border Commercial Disputes

- Only with this issue resolved can international mediation be truly adopted in Hong Kong
- To encourage mediation/conciliation, enforcement of mediation and mediated agreement needed
- International Convention for mediation
  - UNCITRAL

# Opportunities for Hong Kong Mediators

- Handling disputes between Hong Kong Companies and Mainland companies
- Handling disputes of Hong Kong companies in Mainland. Hong Kong act as a international disputes resolution centre attracting companies to settle their disputes in Hong Kong.
- Introduce the Hong Kong Mediation to the Mainland to facilitate the development of “一帶一路”



# Opportunities for Hong Kong Mediators

- A . Admitted as the panel mediator in Mainland Mediation Centers ( CCPIT/CCOIC Mediation Center, Shenzhen Arbitration Centre and Shenzhen Civil and Commercial Mediation Center, Shanghai Commercial Mediation Center.)  
(Currently less than 40)
  
- B. Make use of the new Platform “Hong Kong Mediation + Arbitration in Mainland”

# “Hong Kong Mediation and Arbitration” Mechanism [香港調解+中國仲裁]

- A. GHMMA collaboration project with Shenzhen International Arbitration Institute. (Qinghai) 『粵港澳商事調解聯盟』和深圳仲裁院的合作計劃[前海]。
  
- B. Shenzhen Arbitration Centre and Shenzhen Civil and Commercial Mediation Center agreement – Shenzhen and Hong Kong Disputes resolution Platform  
與深圳仲裁委員會及深圳市民商事調解中心的合作協議“深港多元化糾紛解決服務平臺”

# “Hong Kong Mediation and Arbitration” Mechanism

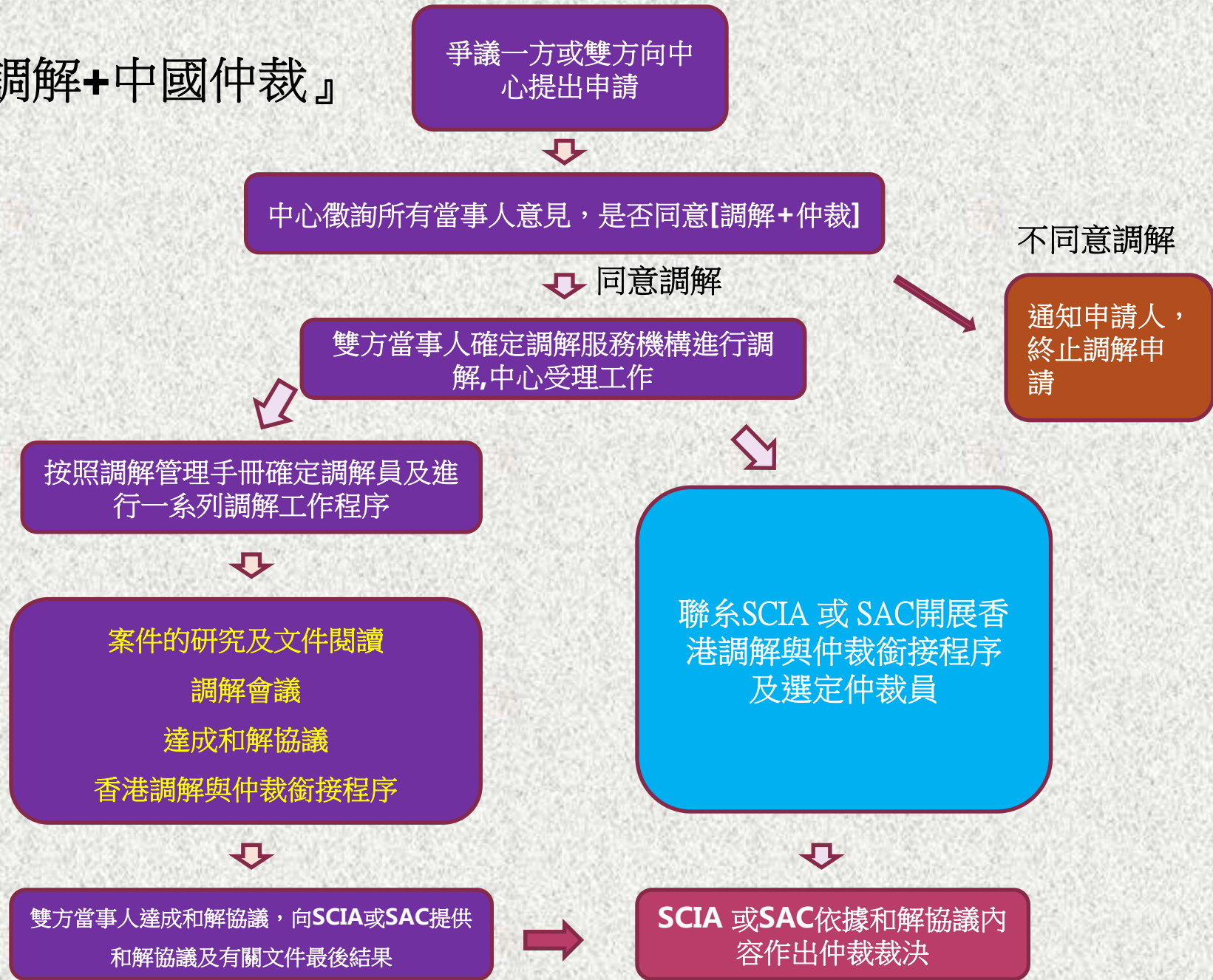
## [香港調解+中國仲裁]

- One single proceeding with choice of law by the parties instead of multiple proceedings in different jurisdictions
- Free choice of mediator and arbitrators with relevant expertise and experience
- Open and reliable ( Their home lawyers and advisors )
- Flexible Procedures
- Confidentiality ( avoid leakage of trade secrets and risk to reputation
- Preservation of parties' relationship and develop a new working relationship
- Binding and enforceable worldwide.

# “Hong Kong Mediation and Arbitration” Mechanism [香港調解+中國仲裁]

1. Intake
2. Appointment of mediator and Arbitrator
3. Signing the Mediation Agreement
4. Reviewing and Certifying the related documents
5. Conducting Mediation
6. Drafting the mediated settlement agreement
7. Signing the Mediated settlement Agreement
8. Engaging the Arbitrator
9. Arbitration Awards

# 『香港調解+中國仲裁』



# The role of the Centre

1. Intake
2. Appointment of mediator and Arbitrator
3. Signing of the appointment letter
4. Reviewing the related documents and certification
5. Arranging the mediation conference
6. Liaison with the relevant Arbitration Centres in the mainland

# The role of the Mediator

1. Preparation works on mediation and the conversion process
2. Paper perusal
3. Pre-meetings
4. Conduct mediation
5. Drafting the mediation settlement agreement
6. Communicating with the Arbitrator
7. Submit the Settlement Agreement to the Centre and the relevant Arbitration Centre for issuance of Arbitration Award.

# Expertise

- Legal system difference
- Legal preceding
- Technical issues
- Language
- Coordinating role



# Expertise

- Mediated Settlement Agreement
- Factual
- Legality
- Enforceability

# The First Case

深圳特區時報2015年01月07日 星期三

## 前海首宗港人港案港式調解取得成功

深圳衛視法治時空 2015年01月  
17日

前海 跨境仲裁新  
模式 促進調解有  
新招



# The First Case

- In December 2014
- All parties were Hong Kong people with investment in the Mainland
- They were friends and partners
- Commercial disputes in the mainland involving RMB 55 millions
- Successfully mediated and directly transited to Arbitration part.
- Issuance of the Consented Arbitration Award on the same day.
- Whole process completed in 9 hours.

# Recent signature case

- 13.5 Billion
- Chinese enterprise and Overseas enterprises
- Solicitors from five countries participated
- 6 days - Mediation
- Consented Arbitration Award issued on 27 May 2015
- Two weeks from referral to issuance of Arbitration Award

# Be a Cross-border mediator

- a. Admitted as the Panel mediators of Mediation Centres in the Mainland
- b. Admitted as Panel mediator of the overseas Mediation Centres
- c. Referral
- d. Attend training in Hong Kong or in the Mainland
  - Make use of “Hong Kong Mediation and Arbitration” platforms to do the Cross-border mediation
  - Join the Panel of Hong Kong China Mediation Experts

# Panel of Hong Kong China Mediation Experts

## 中港調解專家名冊

Members with the relevant mediation expertise as indicated in the ensuing paragraphs are invited to join the panel:

- a) Have substantial mediation experiences in Hong Kong and
- b) Satisfies the Enrollment Board to have the competent knowledge in the Legal system and mediation practice in the mainland.
- c) Applicants may be invited to attend the interview conducted by the enrollment board.

# Relevant Training

## **GHMMA Mediation Training ( Course 1)**

**7, 8, 14, 15, 21 & 22 November 2015**

內地與香港調解實務證書課程(二)(第二屆) –  
涉及跨境商事及土地管理部份

10,16 & 27 Oct 2015 (16 hours Certificate course)

**HKMC 10 CPD, HKMAAL 16 CPD, Law Society under  
process.**

# **Cross-border Mediation in Asia**

**Our alliance**

**Our competitor**

**Our Strength**



# Q & A





Thank you