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Pearl River Delta Blues: Extradition and Hong Kong's Position as Arbitral Seat

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After facing one of the [largest protests](#) in the city's history on June 9, and then repeated [protest and clashes with police](#) last Wednesday, the Hong Kong government suspended efforts to pass its extradition [bill](#). The bill would have required the city's judges to extradite criminal suspects to Mainland China with minimal safeguards and facilitated asset seizure within the territory. Debate has been suspended, but the government [promised to introduce a revised version](#). Today saw another [massive march](#). The episode demonstrates the paradox at the heart of Hong Kong's status as a legal center. This status depends on Hong Kong's separation from the PRC legal system, even as its importance to the PRC may make such separation less tolerable to Beijing.

Greater Bay Area

Hong Kong is a particularly [desirable](#) seat for China-related arbitration. The city has a common law court system strongly influenced by English approaches to contract law. Its laws favor enforcement of agreements to arbitrate and of arbitral awards, and allow the courts to intervene in support of arbitration. Hong Kong has an [agreement on award enforcement](#) with the Mainland that resembles the New York Convention and has recently concluded a [new agreement](#) that will allow judges on both sides of the border to assist the arbitral process. Its lawyers are typically fluent in English, Cantonese (which means they can read documents in Chinese characters), and, increasingly, Mandarin. Beijing's [influence](#) on the city's politics, problematic from the perspective of many Hong Kongers, probably increases the comfort-level of Chinese state-owned enterprises. In short, Hong Kong is a convenient location that can cater to Chinese parties, including SOEs, with enough English law influences not to put foreigners off.

Mainland Chinese arbitration providers, such as the China International Economic and Trade Arbitration Center (CIETAC) and Shenzhen Court of International Arbitration (SCIA), have sought to capitalize on Hong Kong's status. CIETAC, [originally China's only international arbitration provider](#), remains a leading organization. The SCIA is more of an upstart, having once been a CIETAC office that [declared its independence](#)

in 2012. The SCIA's [investment rules](#) make Hong Kong the default seat and its [arbitrator list](#) includes Hong Kong practitioners, who are conveniently close to Shenzhen. Not to be outdone, CIETAC opened a [Hong Kong office in Fall 2012](#). The smaller China Maritime Arbitration Commission [did so in 2014](#).

Both the local and central governments have promoted the city as a [center for arbitration](#) as part of a Greater Bay Area in the Pearl River Delta. Such a status may drive a perceived need for legal integration—and measures like the extradition bill.

Neutrality in Question

The extradition bill, however, undercut an important part of Hong Kong's desirability. Hong Kong maintains its own immigration system and criminal courts. Within the PRC, parties have been known to try to get the local police to file criminal charges in business disputes, and the [local police have been known to oblige](#). A contract interpretation matter that should be arbitrated suddenly also becomes criminal fraud—the suspect's [passport seized](#) until the charges are dropped. The standard advice to parties outside of the PRC is [don't go to Mainland China](#) for the duration of the dispute and don't send your employees there. By contrast, Hong Kong has been neutral ground. Parties and witnesses can travel to an arbitration in Hong Kong without fear. [Bankers and accountants](#) know there will be limits to any criminal liability.

It is perhaps for this reason that the Hong Kong chapter of the International Chamber of Commerce came out against the extradition bill, [adding its voice to the American Chamber of Commerce, governments, a large array of NGOs, the Hong Kong Bar Association, and even private businesses](#).¹⁾ The ICC has a Hong Kong office in part to court Mainland Chinese customers—so its intervention was unusual to say the least. The ICC's letter to the Hong Kong Legislative Council covered the same ground as many others—pointing out that investors choose Hong Kong for their business and related dispute resolution, in part, because it meets “international standards in terms of protecting personal safety and ownership of property” and that “people” might “reconsider” this choice if “there is risk of their being removed to another jurisdiction which does not provide the protection they enjoy in Hong Kong”. [para 4] It also pointed out the PRC Central Government's reliance on Hong Kong as part of the Belt and Road Initiative and its plans for a greater Pearl River Delta development area. It noted that “the government has worked to promote Hong Kong to be the seat of legal and dispute resolution services on the basis of Hong Kong's rule of law widely known internationally”. [para 7]

If Hong Kong becomes a less desirable seat, more dispute resolution business [may move to Singapore](#). Only a few hours by plane from Hong Kong, Singapore also boasts a common law legal system, favorable legislation, and lawyers who speak English and Mandarin. Parties [may also choose Seoul](#), which is actively [making a bid](#) for regional business and could offer less political risk. Even if businesses constructively seat the arbitrations in Hong Kong but hold the arbitrations elsewhere, the city stands to lose out on the money that having people physically in the jurisdiction brings.

Trouble on the Belt and Road?

The PRC stands to lose as well. Through initiatives like the [Greater Bay Area dispute resolution hub](#) and China International Commercial Court (ably chronicled by [Susan Finder](#)), PRC policy-makers are seeking to influence the development of global civil procedure norms. When arbitration business moves out of Chinese territory and away from Chinese arbitration providers, the PRC loses an important avenue to do so.

The extradition bill now hangs over the city like a suspended sentence. Should hardliners feel they are losing too much control—they can revive it again. Next time, [other measures](#) may have eroded the citizenry's ability to protest. A letter from the ICC is not going to be enough.

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References

↑ 1 Thank you to Susan Finder for alerting me to this letter.

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