

IP rights in the Greater Bay Area 大灣區的知識產權

www.wenping.com.hk



July
2021



大灣區的知識產權

2017年7月1日，中國國家發展改革委員會，廣東省人民政府，香港特別行政區政府和澳門特別行政區政府簽署了《深化粵港澳大框架協議》。澳門大灣區發展合作（“協定”）。隨著該協定簽署後，大灣區（“GBA”）的開發亦正式啟動。

大灣區包括香港、澳門兩個特別行政區及廣東省的九個直轄市。該地區佔地面積約56,000平方公里，2019年總人口為7200萬，國內生產總值達1.7萬億美元，人均GDP達23,371美元。

GBA項目是中國政府採取的關鍵戰略舉措之一，目的是聯繫和加強香港，澳門及廣東省的九個城市，並將該地區轉變為世界一流的海灣地區。一流的城市集群，適合居住，工作和旅遊。

儘管GBA有巨大的潛在發展，要如何一個擁有三個體系的國家中保護知識產權，是每位知識產權持有人在啟動任何業務計劃之前應考慮到的一個關鍵。該區存在三個獨立的法律體系之下，因此可能需要分別諮詢中國，香港和澳門的知識產權律師意見。

理想情況下，若GBA有一個統一系統，全面保護知識產權，可以幫助方便各業涉及知識產權的各項業務。儘管如此，由於涉及不同的法律，法規，甚至是管理中國，香港和澳門知識產權的政策，期望GBA可出現一個統一的知識產權制度並不切實際。

因此，目前可行的方法是在各司法管轄區獲得單一有效的知識產權。正常情況下，知識產權在GBA三個司法管轄區內獲得專利及外觀設計權相對較高。但至於商標註冊要在三個不同的司法管轄區授權同一個商標便相對較難。因此，商標持有人應在三地GBA開展其業務前盡早在中國，香港和澳門分註冊其商標。

香港計劃於2022年中旬左右實施通過馬德里體系的國際註冊申請，沿此途徑商標持有人可以以單一註冊申請將商標延伸至《馬德里議定書》的其他指定成員國家/地區。然而，澳門不是其中之一員，也沒有消息顯示澳門會在不久的將來實施國際註冊系統。隨著近十年來電子商務各物流的快速發展開拓出更拓寬市場並提高了跨領域技術轉讓的速度。知識產權持有人需要特別注意他們在涉及三個法律體系的GBA的有效權益。®



IP rights in the Greater Bay Area

On 1 July 2017, the National Development and Reform Commission of China, the People's Government of Guangdong Province, the Government of the Hong Kong Special Administrative Region and the Government of the Macao Special Administrative Region signed the Framework Agreement on Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area ("the Agreement"). And immediately after the signing of the Agreement, the development of the Greater Bay Area ("GBA") was officially launched.

The GBA comprises of the two Special Administrative Regions of Hong Kong and Macao and nine municipalities in Guangdong province. This region covers an area around 56,000 sq.km. In the year 2019, the total population of this region is 72 million with a total GDP of US\$1.7 trillion and per capital GDP of US\$23,371.

The GBA project is one of the key strategic initiatives adopted by the Chinese government with a view to linking and reinforcing the roles of Hong Kong, Macao and the nine municipalities in Guangdong, and transforming this region to be a first class bay area and world-class city cluster ideally for living, working and travelling.



Whilst there are massive potential developments in the GBA, how to protect IP rights in one country with three systems is one of the key factors that every IP right holder should take into account before launching any business plans there. There are indeed three separate legal systems, and thus separate legal advice from IP lawyers in China, Hong Kong and Macao may be required.

Ideally, a unified system for IP protection in the GBA can help facilitate all walks of business involving IP rights. Nonetheless, it is almost unrealistic to expect such a unified IP system in GBA to happen soon due to the different laws, regulations and even polices governing the IP rights in China, Hong Kong and Macao.

Hence, the realistic approach that one can adopt is to obtain a valid IP right in each of the jurisdictions. Understandably, the odds to obtain the same patent and design rights across these three jurisdictions are relatively high. There is however no guarantee that one can obtain the same registered trade mark rights in the three jurisdictions at once. For this reason, trade mark owners are advised to register their marks in China, Hong Kong and Macao separately well before they launch their business plans in GBA.

With the implementation of the International Registration via the Madrid system in or about mid 2022 in Hong Kong, trade mark owners may follow this route to obtain one single registration in China, Hong Kong and other countries having joined the Madrid Protocol. Macao is however not one of them and there is no indication that Macao will implement the International Registration system in the near future.

Recent rapid growth in e-commerce and advances in logistic in this decade have broadened markets and increased the speed of transfer of technology across the borders. IP owners are advised to pay extra attention to their IP rights in GBA where three legal systems are involved. 

