

# 1-Day Conference on NEC Contracts in Hong Kong The Legal Landscape and Beyond

## International Contracting with NEC for Greater Bay Projects

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# Overview of Greater Bay Area (“GBA”)



## Overview of Greater Bay Area (“GBA”)

- 1 July 2017 - Framework Agreement signed in Hong Kong
- *“Deepening Guangdong-Hong Kong-Macao Cooperation in the Development of the Greater Bay Area”*



## Overview of Greater Bay Area (“GBA”)

### The Cities



## Overview of Greater Bay Area (“GBA”)



	Area (km <sup>2</sup> )	GDP (US\$ Trillion) (2017)	Population (million) (2017)
China	9,597,000	12.24	1,386
GBA	56,000 (0.6% of China)	1.60 (13% of China)	71 (5% of China)
Hong Kong	1,108 (2% of GBA) (0.01% of China)	0.37 (23% of GBA) (3% of China)	7.5 (10.6% of GBA) (0.5% of China)

<https://www.censtatd.gov.hk/hkstat/sub/sp250.jsp?tableID=030&ID=0&productType=8>

<https://data.worldbank.org/country/china>

<https://www.bayarea.gov.hk/en/>



## Overview of Greater Bay Area (“GBA”) - A National Strategy

### Mission

1. To break new ground - opening up
2. Further forward on "*One Country, Two Systems*"

### Six Basic Principles

1. Driven by innovation & led by reform
2. Coordinate development & plan holistically
3. Pursue green development & ecological conservation
4. Open up, cooperate & achieve win-win
5. Share benefits of development & improve people's livelihood
6. Adhere to "*One Country, Two Systems*"



## Overview of Greater Bay Area (“GBA”)

### Seven Areas of Development

1. Developing an international innovation and technology hub
2. Expediting infrastructural connectivity
3. Building a globally competitive modern industrial system
4. Taking forward ecological conservation
5. Developing a quality living circle for living, working and travelling
6. Strengthen cooperation and jointly participating in Belt and Road Initiative
7. Jointly developing Guangdong-Hong Kong-Macao cooperation platforms



# GBA Projects



## GBA - From Hong Kong

### Recently / Nearly Completed

1. Guangzhou–Shenzhen–Hong Kong Express Rail Link (142 km) - Opened in Sep 2018
2. Hong Kong - Zhuhai - Macau Bridge (55 km) - Opened in Oct 2018
3. Liantang/Heung Yuen Wai Boundary Control Point - completion envisaged towards end of 2019 (7<sup>th</sup> land crossing between Hong Kong & Shenzhen)



## GBA - Projects

### Nansha Bridge 南沙大橋 (also called “*Humen Second Bridge*” 虎門二橋)

- Opened in Apr 2019
- 13 km long x 54m wide - widest steel box girder bridge in the world
- Important expressway across Pearl River
- Shortens 10km travel distance between Dongguan and Panyu District





## GBA - Projects

### Shenzhen-Zhongshan Bridge (深中通道)

Planned to open in 2024

- 24 km long - a sea-crossing bridge, a subsea tunnel, artificial islands and an underground interchange
- Connects Shenzhen, Zhongshan & Nansha Districts
- Four lanes in each direction - speed of 100 km/h
- Direct expressway connecting Shenzhen, Dongguan and Huizhou with Zhuhai, Zhongshan and Jiangmen.
- Travelling time to reduce from 2 hours to 20 min between Shenzhen & Zhongshan





## GBA - Projects

- Expressways Under Construction / Planning
- Railways Under Construction / Planning
- Inter-city Rails Under Construction / Planning
- Potential new Airports
- Potential new Control Points
- Potential new Port Areas
- Potential New Cross Boundary Ferry Terminals
- Cruise Terminals Under Construction / Planning
- High-speed Rail Stations Under Construction / Planning



## GBA – Projects Enhancing Working Environment / Livelihood

- New residential developments
- New commercial developments / shopping centres
- New hospitals / schools / Universities / public housings etc
- Healthcare centres, retirement homes  
(Big Health Market 大健康市場 )



# Chinese Construction Contracts



## Chinese Construction Contracts

- Unlike Hong Kong or England, China doesn't have standard forms of contract for various kinds of projects for international or mega-size complicated projects.
- For international contracts, the FIDIC forms of contracts are widely adopted.
- FIDIC contracts have been translated into Chinese.





## Chinese Construction Contracts

- A recommended construction contract (建設工程施工合同 - 示範文本) is published jointly by:
  - The Ministry of Housing and Urban-Rural Development of the People's Republic of China (MOHURD) (住房城鄉建設部)  
<http://www.mohurd.gov.cn/>; and
  - The State Administration for Industry and Commerce of the People's Republic of China (SAIC) (國家工商行政管理總局)  
<http://www.saic.gov.cn/>
- This form of construction contract have been promoted for use on domestic construction contracts.



## Chinese Construction Contracts



- This form of construction contract was prepared in accordance with established laws in China:
  - Contract Law of the People's Republic of China (中華人民共和國合同法)
  - Construction Law of the People's Republic of China (中華人民共和國建築法)
  - Bidding Law of the People's Republic of China (中華人民共和國招標投標法); and
  - Other relevant laws

## Chinese Construction Contracts - Adversarial in Nature

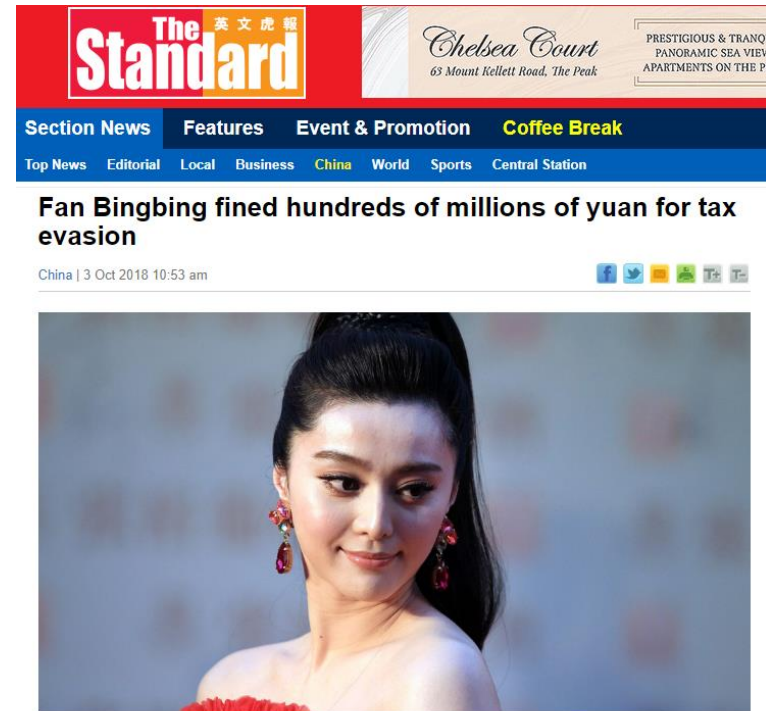
- Scholars refer to traditional cultural values that influence the psyche of Chinese people are harmony, benevolence, righteousness, courtesy, wisdom, honesty, loyalty, and filial piety.
- Of these, the core value is harmony.
- Harmony means “*proper and balanced coordination between things*” and encompasses rationale, propriety, and compatibility.
- Be that as it is, construction contracts used in China are largely adversarial and claims-based contracts.
- To preserve harmony in the construction industry, in particular, the new developments and projects in GBA, perhaps NEC form of contract is the antidote.



## Chinese Construction Contracts - “*Black - White*” or “*Yin - Yang*” Contracts

Some film stars were alleged to have used so-called "*yin-yang contracts*"

A practice where one contract sets out an actor's real earnings, and another details a lower figure, with the latter submitted to the tax authorities.



Wealthy Chinese actress Fan Bingbing has not been seen in public for nearly three months.

Wealthy Chinese actress Fan Bingbing, who has not been seen in public for about three months, has been ordered to pay taxes and fines worth hundreds of millions of yuan over tax evasion, the country's taxation authorities said today after an investigation, Xinhua reports.

Last year, Forbes magazine estimated her income at 300 million yuan.

Citing a Xinhua report in Chinese, CNN said Fan has been ordered to pay almost US\$130 million, after she misreported how much money she had received for certain film projects, using so-called "yin-yang contracts" to conceal from the authorities her true remuneration and avoid millions of dollars in taxes.

Fan and companies related to her were ordered to pay around US\$42 million in late taxes and



## Chinese Construction Contracts - “*Black - White*” or “*Yin - Yang*” Contracts

- The developer and the contractor sign two different versions of the contract for the same construction project
  1. a formal contract (the White Contract); and
  2. a contract in which the content is inconsistent with the winning bid (the Black Contract).
- The term “Black - White” Contracts first appeared in the “*Report on the Implementation of the Construction Law of the People's Republic of China*” in 2003



## Chinese Construction Contracts - “*Black - White*” or “*Yin - Yang*” Contracts

- The report states that *"the construction unit colluded with the bidding unit or the bidding agency, engaged in false bidding, and signed the “Black - White” contracts. The problem is quite significant."*
- The report also states that the Black contract:
  1. violates the relevant provisions of the Mainland's *"Tendering and Bidding Law"*, *"Contract Law"* and *"Construction Law"*,
  2. damages the interests of contractors; and
  3. lowers the engineering, standard quality and damages the interests of the contracting agencies.





## NEC form of contract

- Renowned for its non-adversarial nature, offering greater flexibility and adaptability, providing clarity and simplicity
- Written in plain language avoiding use of subjective terminology such as “*reasonable*” and “*fair*”.
- Widely used in developed countries - England, Middle East countries & Hong Kong.
- In the Middle East, NEC contracts have been translated into Arabic.
- In Hong Kong, a well-experienced NEC practitioner said that NEC2 contract was once translated into Chinese. However, such efforts have not been continued on NEC3 or NEC4.



## NEC Experience

- Personal experience of using NEC contract for the Kennedy Town Swimming Pool – an MTR project (from Sep 2014 to Oct 2016)
- Following the NEC spirit, mutual understanding, joint effort to resolve problems (such as: design constraints and construction constraints, changes, underground obstructions, expedite progress of the works, etc).
- Won the NEC Large Project of the Year 2016 award.
- Gave a Presentation of the Project in the headquarters of ICE in London in April 2016.





# NEC Experience



## NEC Crystal Ball

- Future of NEC in GBA? In China?
- Way Forward?
- Translation into Chinese?
- Promotion of use in GBA and in China?



***Thank you for your participation***

**Any Question?**

