

For Information

LegCo Panel on Administration of Justice and Legal Services Framework Agreement on Hong Kong/Guangdong Co-operation

Introduction

This paper briefs Members on the details of the Framework Agreement on Hong Kong/Guangdong Co-operation (“Frameworks Agreement”) relating to co-operation on legal matters.

Co-operation on legal matters under the Framework Agreement

2. The specific policies and measures to attain greater co-operation in legal matters are set out in Clause 7 of Chapter 5 (Business Environment) of the main text of the Framework Agreement. The overall objective is to facilitate trade and investment by promoting greater co-operation between government organs as well as among legal professional bodies of the two places on various aspects of the legal field.

3. On the co-operation on legal matters, the two sides agreed to -
- (a) establish a regime for the exchange of documents on laws and regulations, to provide guidelines on the operational procedures and rules for trade and investment; to establish a communication mechanism for the notification and consultation of legislative proposals concerning joint cooperation projects;
 - (b) establish a co-ordination mechanism on legal affairs, to set up an expert group for consultation and cooperation on legal matters, and to handle issues relating to legal cooperation and to make recommendations on legislative proposals concerning the strengthening of co-operation on specific areas where necessary; and

- (c) support law firms of both sides to launch legal consultation services, and to promote exchange and co-operation among lawyers, public notaries and professionals in forensic examination.

4. The Framework Agreement also contains a list of major initiatives which set out the measures to be adopted to implement the Framework Agreement. The specific measures relating to the implementation of the co-operation proposals in 2010 are –

- (a) to establish a communication mechanism for the notification and consultation of legislative proposals concerning joint cooperation projects;
- (b) to establish a mechanism to consider the relevant practices, standards and procedures for forensic examination and to facilitate exchange between forensic examination bodies and academic institutes;
- (c) to explore the feasibility of establishing a Hong Kong-Guangdong co-ordination mechanism for notary services and to promote co-operation in areas such as the verification of notarized instruments, promotion of laws and regulations relating to notary services and facilitating exchange and communication on information of notary work; and
- (d) to establish a mechanism for the exchange and cooperation of appointed notaries between Hong Kong and Guangdong; to set up a scheme to provide for mutual visits between public notaries between the two sides and to provide training on notary matters on a regular basis.

Implementation of the various measures relating to co-operation on legal matters

5. It is the long term policy of the Department of Justice (“DoJ”) to foster closer co-operation with the Mainland on legal matters. The

Framework Agreement provides a new platform for enhancing co-operation with the relevant authorities in Guangdong and to help promoting the legal services of Hong Kong in the Province, particularly in the context of trade and investment.

(1) **Establishing a communication mechanism on legal matters**

Exchange of laws and regulations

6. Under the Framework Agreement, Guangdong and Hong Kong agree to set up a communication mechanism for the exchange of documents on laws and regulations. The DoJ has maintained regular contacts with the judicial and legal bodies in Guangdong and have exchanged information on laws and regulations with them from time to time. The laws of Hong Kong are uploaded on the website of DoJ and are available for viewing by the interested parties. In addition to the ongoing exchanges between certain Guangdong authorities and the DoJ, it is understood that other departments of the Government of the HKSAR would also exchange information on the laws and regulations under their purview with the relevant Mainland authorities.

7. To implement the Framework Agreement, the DoJ will reinforce the established links with the relevant authorities of Guangdong to facilitate efficient and timely exchange of laws and legal information in the future.

Notification and consultation of legislative proposals concerning joint co-operation projects

8. In Hong Kong, the implementation of certain cross-boundary co-operation projects may have to be underpinned by legislation, the passage of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) and the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) are but some examples. At present, there are certain co-operation projects between Guangdong and Hong Kong such as those on the construction of cross-boundary infrastructure facilities.

9. If the implementation of any co-operation projects between Guangdong and Hong Kong should give rise to any legal issues, the Administration will discuss with the relevant Guangdong authorities in order to resolve the issues in accordance with the principle of “One Country, Two Systems” enshrined in the Basic Law. If the implementation of any of such co-operation projects should entail the introduction of any legislation in the future, the Administration will consult the LegCo and other stakeholders concerned.

(2) **Establishing a co-ordination mechanism for legal matters**

10. For the implementation of co-operation initiatives (such as the construction of the Hong Kong-Zhuhai-Macau Bridge), a standing co-ordination mechanism might, according to the needs, be established by the Administration and the relevant authorities in the Mainland to monitor the specific task.

11. For the implementation of the Framework Agreement, the DoJ will discuss with the relevant authorities in Guangdong on the tasks and composition of the co-ordination mechanism to be established.

(3) **Promoting exchanges and co-operation between the legal sectors of Guangdong and Hong Kong**

Promoting exchanges and co-operation with legal personnel and professionals

12. The DoJ is keen to promote exchanges and co-operation with legal personnel and professionals of the Mainland. In addition to mutual visits with the legal and judicial authorities in Guangdong, the DoJ will also provide opportunities for training in common law and short-term attachments to government law departments to enable Mainland officials or legal professionals to have a better understanding of the Hong Kong legal system and to identify matters of mutual interest where co-operation may be further enhanced.

13. The DoJ will also take part in promotional activities organized by the local legal professional bodies in order to enhance working

relationship with the relevant legal and professional bodies in the Mainland. To better achieve the purpose stipulated in the Framework Agreement, the DoJ will work closely with the legal professional bodies to map out further measures on strengthening ties and co-operation with the Guangdong counterparts.

Promoting Hong Kong legal services in Guangdong

14. The DoJ works closely with the Hong Kong legal profession in seeking greater access to the legal services market in Guangdong within the framework of CEPA. There have been regular discussions with the legal professional bodies in order to resolve any problems arising from the implementation of the liberalization measures under CEPA and to strive for the introduction of pilot measures in Guangdong to better serve the interests of the two sides. According to the latest Supplement to CEPA (CEPA VI) which came into effect on 1 October 2009, a new pilot measure was introduced whereby Hong Kong law firms which have set up representative offices in the Mainland may form association with law firms in Guangdong on more relaxed terms.

15. Under the Framework Agreement, Guangdong and Hong Kong agreed to jointly set up a Joint Task Force on Qianhai Shenzhen-Hong Kong Co-operation to forge a regional integrated transportation hub focusing on the development of modern service industries in Qianhai. The DoJ will provide the relevant assistance and suggestions with a view to capturing the opportunities arising from Qianhai development to explore the Mainland markets for legal service providers in Hong Kong.

(4) Promoting exchanges and co-operation among professionals in notary work and forensic examination

Exchanges between professionals in notary work

16. Since the 1980's, individual Hong Kong lawyers have been appointed by the Ministry of Justice as "China-Appointed Attesting Officers" to attest and certify acts, matters and documents of legal significance occurring in or emanating from Hong Kong for use in the

Mainland. Likewise, documents from the Mainland required for use in Hong Kong may have to be notarized by the notaries of the Mainland in accordance with the Mainland laws.

17. All China-Appointed Attesting Officers of Hong Kong are members of the “Association of China-Appointed Attesting Officers Limited”. The Association is an independent body registered under the Companies Ordinance and one of its objectives is to promote and arrange exchanges and visits with Mainland judicial, legal and other government authorities or professional bodies in the Mainland.

18. The DoJ will work together with the Association to promote exchanges with the notaries in Guangdong. The Association will also provide training opportunities for Mainland personnel on matters concerning notary services. It is understood that a significant amount of notarized documents are prepared by China-Appointed Attesting Officers in Hong Kong for the purpose of service on the relevant Guangdong authorities. With better communication between members of the Association and notaries of Guangdong, it is believed that the quality of the notarial services between the two sides would be improved.

Exchanges between professionals in forensic examination

19. The Police Force and the Government Laboratory will facilitate exchanges with the Guangdong Provincial Public Security Department (GDPPSD) on technical standards, new techniques, and procedures of forensic examination which will contribute to continuous improvement of forensic technology and practices. They hope to work with the GDPPSD to enhance the exchange mechanism through participating in the Hong Kong-Guangdong-Macao Tripartite Technical Interface Meeting, conducting reciprocal visits and organising technical or professional activities on a regular basis.

Conclusion

20. To achieve the objective of closer cooperation on legal matters under the Framework Agreement, the DoJ will continue to maintain close

tie with the relevant legal authorities and legal professionals in Guangdong to foster better mutual understanding and greater cooperation in legal matters. The DoJ will monitor the effectiveness and efficiency of the communication and co-ordination mechanism to be established under the Framework Agreement and when required, discuss with the Guangdong authorities on the ways to improve the mechanism.

Department of Justice
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