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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 23 April 2012**

**Framework Agreement on Hong Kong/Guangdong
Co-operation relating to co-operation on legal matters**

Purpose

This paper provides background information on the Framework Agreement on Hong Kong/Guangdong Co-operation ("Framework Agreement") and co-operation on legal matters under the Framework Agreement, and gives a brief account of the concerns raised by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the subject.

Background

The Framework Agreement

2. In January 2009, the National Development and Reform Commission promulgated the Outline of the Plan for the Reform and Development of the Pearl River Delta ("the Outline"), which elevates the development of the Pearl River Delta region to the strategic level of national development, specifying Hong Kong/Guangdong co-operation as a national policy. One of the most important tasks in deepening Hong Kong/Guangdong co-operation is the joint formulation of the Framework Agreement as an official agreement between the two governments. According to the Administration, the Framework Agreement has translated the macro policies of the Outline into concrete measures, laying a foundation for seeking to incorporate the related initiatives into the National 12th Five-Year Plan. It has also served as an agenda for Hong Kong-Guangdong co-operation. The Chief Executive and the Governor of Guangdong Province signed the Framework Agreement in Beijing on 7 April 2010.

Co-operation on legal matters under the Framework Agreement

3. The Framework Agreement consists of two parts, namely the main text and the list of annual major initiatives. 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 Hong Kong and Guangdong on various aspects of the legal field.

4. 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 co-operation projects;
- (b) establish a co-ordination mechanism on legal affairs, to set up an expert group for consultation and co-operation on legal matters, and to handle issues relating to legal co-operation 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.

5. 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 co-operation 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 co-operation 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

6. At the request of the Panel, the Department of Justice ("DoJ") provided in May 2010 a paper to the Panel setting out the details of the Framework Agreement relating to co-operation on legal matters [issued vide LC Paper No. CB(2)1580/09-10 on 19 May 2010]. The Administration advised that it was the long term policy of DoJ to foster closer co-operation with the Mainland on legal matters. The Framework Agreement had provided 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. In the paper, DoJ has provided information on the implementation of the various measures in establishing a communication mechanism on legal matters, establishing a co-ordination mechanism for legal matters, promoting exchanges and co-operation between the legal sectors of Guangdong and Hong Kong, and promoting exchanges and co-operation among professionals in notary work and forensic examination. Members may wish to refer to the paper for the details.

Relevant concerns expressed by members of the Panel

7. When the Panel was briefed on the initiatives of DoJ in the 2010-2011 Policy Agenda at its special meeting on 22 October 2010, members noted that one of the new initiatives was to enhance legal co-operation with Guangdong pursuant to the Framework Agreement. Some members said that while a number of liberalization measures on legal services had been agreed on under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") and its various Supplementary Agreements and the Framework Agreement had been signed to strengthen co-operation between the legal

professions in Hong Kong and the Mainland, legal professionals in Hong Kong had reflected the concern that they had encountered difficulties in gaining a foothold in the legal service market on the Mainland. These members enquired about the measures taken by the Administration to assist the legal professionals.

8. The Administration advised that it had been in close liaison with the two legal professional bodies to gauge their needs in developing legal services on the Mainland and recognized the difficulties faced by the legal profession in this regard. The initiatives under CEPA were intended for the mutual interest of both sides, and the Mainland authorities would have regard to the needs and development of its legal profession in considering the liberalization measures under CEPA. It should also be noted that the legal service market on the Mainland was very competitive. Legal professionals in Hong Kong were facing keen competition not only from lawyers on the Mainland, but also those from other countries. Furthermore, given the different legal systems in Hong Kong and the Mainland, Hong Kong lawyers who had obtained qualifications as Mainland lawyers were subject to certain restrictions in their practice on the Mainland. Nevertheless, the Administration assured members that it would strive for more liberalization measures under CEPA to facilitate the legal profession's development on the Mainland.

9. At the Panel meeting on 23 May 2011, DoJ further updated members on the progress of implementation of measures concerning cooperation on legal matters under the Framework Agreement and the promotion of Hong Kong legal services in Guangdong under CEPA. Some members considered that there had not been much progress in the development of Hong Kong legal services on the Mainland under CEPA. They considered that the Administration should assist the Hong Kong service providers to provide one-stop integrated legal service in Qianhai and enhance the cooperation among the different professions in Hong Kong to leverage on the opportunities arising from the Qianhai Development Plan. Some members expressed concern that while Hong Kong was willing to open its market to the Mainland, the latter seemed not eager to open its door to Hong Kong legal services.

10. The Administration advised that clause 3 of the Framework Agreement had set out the basic principles and direction on the co-operation between Hong Kong and the Mainland and the co-operation in legal matters would also be taken forward along such direction under the principle of reciprocity and mutual respect. While the Administration would facilitate actively the provision of Hong Kong legal services on the Mainland, it should be decided by the Mainland counterpart on how to open its legal service market based on the mutual discussion between the two sides. The Administration assured

members that the Mainland side had opened its market for Hong Kong services providers in phases under CEPA and initiatives relating to legal matters could also be explored under the Framework Agreement and the Qianhai Development Plan.

11. Noting that expert witnesses from the Mainland would be summoned by the Hong Kong courts to give evidence, some members enquired whether a similar mechanism would be adopted on the Mainland to allow Hong Kong lawyers or expert witnesses to give evidence in the Mainland courts. The Administration advised that as a mechanism for the verification of evidence had not yet been established, issues relating to the admissibility of evidence on the Mainland courts had to be dealt with according to the law of the Mainland. It was noted that Hong Kong lawyers at present were not recognized as expert witnesses on the law of Hong Kong in the Mainland courts.

12. Members also noted that the Hong Kong Bar Association ("The Bar Association") was particularly concerned about the establishment of a mechanism for the verification of the law of other jurisdictions in the light of the increased commercial activities among Hong Kong, Macao and Taiwan with the Mainland. The Bar Association was of the view that the Administration should take the lead to facilitate the courts on the Mainland in the establishment of a mechanism for understanding the procedural aspect of the Hong Kong law. The Hong Kong Law Society ("the Law Society") hoped that there would be further liberalization measures under CEPA, especially in the following three aspects: (a) association of Hong Kong and Mainland law firms with a view to achieving real profit-sharing and risk-sharing; (b) lowering the threshold for the entry of Hong Kong lawyers into the Mainland market; and (c) allowing representative offices set up by Hong Kong law firms to employ Mainland practicing lawyers.

13. The Administration advised that since the establishment of a mechanism for the verification of the law of other jurisdictions was a new concept to the Mainland, the Mainland authorities had not provided any concrete response to the Administration's enquiry in this respect. With respect to the Law Society's views on the liberalization measures under CEPA, the Administration had raised the issue with the relevant Mainland authorities on many occasions. The Mainland had been considering the views and would require more time to study them in detail. While there would be difficulties in engaging Mainland lawyers by Hong Kong law firms in the entire Mainland, the Administration would pursue actively such initiative in the Guangdong Province or in the context of the Qianhai Development Plan.

Recent position

14. The Administration is scheduled to brief the Panel on the development of legal co-operation pursuant to the Framework Agreement and to respond to the views and concerns expressed by members and the two legal professional bodies on the subject at the upcoming meeting on 23 April 2012.

Relevant papers

15. A list of the relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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**Relevant papers on framework agreement on Hong Kong/Guangdong
Co-operation relating to co-operation on legal matters**

Committee	Date of meeting	Paper
Panel on Administration of Justice and Legal Services	24.5.2010 (Item II)	Agenda Minutes
	22.10.2010 (Item I)	Agenda Minutes
	23.5.2011 (Item IV)	Agenda

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