

**Submission of the Hong Kong Bar Association
on Framework Agreement on Hong Kong/Guangdong Co-operation
Relating to co-operation on legal matters**

(For Panel on Administration of Justice and Legal Services Meeting on 23 April 2012)

Introduction

1. The Hong Kong Bar Association (“Bar Association”) submits the following views on the development of legal services under the Framework Agreement on Hong Kong/Guangdong Co-operation and the Closer Economic Partnership Arrangement between Hong Kong and the Mainland (“CEPA”).
2. In general, the Bar Association welcomes provisions to suitably relax market entry requirements for modern services, of which professional services must be regarded as one of them.

On People’s Representative

3. The 2006 Supplement III to CEPA provides the liberalization measure “To allow Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens”. The Bar Association hopes that the Supreme People’s Court or the Ministry of Justice can announce a set of rules which is capable of implementing the measure, so that Hong Kong Barristers can provide their legal services in the courts in Mainland as provided in the 2006 Supplement III to CEPA.

On the mechanism to ascertain Hong Kong law

4. The Bar Association proposed at the last meeting on 23 May 2011 for the establishment of a mechanism to ascertain Hong Kong law in relevant disputes heard by the courts in the Mainland. The Bar Association has been informed that the courts in the Mainland had experienced difficulties in ascertaining Hong Kong law when they were handling disputes involving Hong Kong and Mainland parties. In 2011, the courts in the Mainland handled 22,000 cases involving foreign commercial and maritime matters, 15,000 cases were related to Hong Kong, Macau and Taiwan¹. The Bar Association maintains the proposal to establish a

¹ Paragraph 3 of the 2011 Working Report of the Supreme People’s Court of the PRC, submitted to the 11th National People’s Congress on 11th March 2012

mechanism to ascertain Hong Kong law for the purposes of the hearing and determination of these cases before the Courts in Mainland.

5. The courts in the Mainland may engage / retain barristers (other than the legal representatives of the plaintiffs and defendants) as “Friends of Court” to provide independent legal advice when required. Under this proposed mechanism, the courts in the Mainland will be more impartial when obtaining overseas legal advice.

Qianhai

6. Qianhai is to be developed into a centre for modern services (including financial services) and logistics to be managed by Shenzhen People’s Government. In relation to dispute resolution and the provision of legal and related services, the Shenzhen People’s Government has formulated proposals relating to the establishment of a mechanism to ascertain Hong Kong law. The Bar Association takes a positive attitude towards these proposals, and these proposals should be finalized and implemented as soon as possible.

Hong Kong Bar Association

20th April 2012