

立法會
Legislative Council

LC Paper No. CB(4)500/12-13(03)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 26 March 2013**

**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 ("the Framework Agreement") relating to co-operation on legal matters, and gives a brief account of the discussions by the Panel on Administration of Justice and Legal Services ("the Panel") on the subject.

Background

The Framework Agreement

2. The National Development and Reform Commission promulgated in January 2009 the "Outline of the Plan for the Reform and Development of the Pearl River Delta" ("the Outline") specifying Hong Kong/Guangdong co-operation as a national policy. To take forward the implementation of the Outline, the Chief Executive of the Hong Kong Special Administrative Region and the Governor of the Guangdong Province signed the Framework Agreement on 7 April 2010 in Beijing.

3. The Framework Agreement consists of two parts, namely the main text and the list of annual major initiatives. It defines clearly the development positioning of Hong Kong/Guangdong co-operation, including co-operation on legal matters. 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 specific measures relating to the implementation of the proposals relating to co-operation on legal matters 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 under the Framework Agreement

6. At the request of the Panel, the Department of Justice ("DoJ") provided in May 2010 an information paper on the implementation of the various measures relating to co-operation on legal matters under the Framework Agreement [LC Paper No. CB(2)1580/09-10(01)] as follows -

Establishing a communication mechanism on legal matters

- (a) the DoJ will reinforce the established links with the relevant authorities of Guangdong to facilitate efficient and timely exchange of laws and legal information;
- (b) 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;

Establishing a co-ordination mechanism for legal matters

- (c) 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 of any co-operation initiatives (such as the construction of the Hong Kong-Zhuhai-Macau Bridge). The DoJ will discuss with the relevant authorities in Guangdong on the tasks and composition of the co-ordination mechanism to be established;

Promoting exchanges and co-operation between the legal sectors of Guangdong and Hong Kong

- (d) the DoJ will work closely with local 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

- (e) 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 Qianhai¹. 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;

Promoting exchanges and co-operation amongst professionals in notary work and forensic examination

- (f) the DoJ will work closely with the "Association of China-Appointed Attesting Officers Limited" to promote exchanges with the notaries in Guangdong²; and

Promoting exchanges between professionals in forensic examination

- (g) the Police Force and the Government Laboratory will facilitate exchanges with the Guangdong Provincial Public Security Department on technical standards, new techniques and procedures of forensic examination to promote co-operation in forensic examination between the two sides.

Past discussions

7. At the Panel meeting on 23 May 2011, the DoJ updated members on the implementation of measures concerning co-operation between Hong Kong and Guangdong on legal matters [LC Paper No, CB(2)1781/10-11(03)]. In the paper, the DoJ also briefed members on the development of legal and arbitration services in Qianhai, Shenzhen. Members noted that in August 2010, the State Council gave in-principle approval to the "Overall Development Plan on Hong Kong/Shenzhen Co-operation on Modern Service Industries in Qianhai Area" ("the Qianhai Development Plan"). The Qianhai Development Plan designated Qianhai as a Hong Kong/Guangdong modern service industry

¹ Qianhai is one of the major co-operation areas under the Framework Agreement on Hong Kong/Guangdong Co-operation.

² The Association of China-Appointed Attesting Officers Limited is an independent body registered under the Companies Ordinance (Cap. 32) 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.

innovation and co-operation exemplary zone with a view to playing a pilot role in promoting co-operation in service industries, including legal and arbitration services, between Hong Kong and the Mainland.

8. To assist Hong Kong legal professionals to gain greater access into the Mainland market, the Law Society of Hong Kong ("the Law Society") proposed implementation of further liberalization measures under the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") such as (a) to develop the mode of association of Hong Kong and Mainland law firms towards the form of partnership in the Mainland; (b) to facilitate the provision and development by Hong Kong lawyers of legal services in the Mainland market; and (c) to permit the employment of Mainland lawyers by representative offices of Hong Kong law firms in the Mainland.

9. As for the Qianhan Development Plan, the Law Society hoped that Qianhan could be a testing ground for two new concepts, i.e. the alternative business structures and the legal disciplinary practices, that had been implemented in the United Kingdom. The alternative business structures allowed lawyers and non-lawyers to establish a firm offering a "one-stop shop" of integrated legal and other professional services such as insurance, real estate or banking. Legal disciplinary practices were law firms providing the type of services offered by solicitors and notaries, but up to 25% of the staff could be non-lawyer partners.

10. The Hong Kong Bar Association ("the Bar Association") hoped that the Supreme People's Court or the Ministry of Justice could announce a set of rules which was capable of implementing the liberalization measure to allow Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens as provided in Supplement III to CEPA signed in 2006.

11. As the courts in the Mainland had experienced difficulties in ascertaining Hong Kong law when they were handling disputes involving Hong Kong and Mainland parties, the Bar Association requested the DoJ to take the lead to facilitate the courts in the Mainland on establishing a mechanism to verify Hong Kong law. The Bar Association was willing to offer assistance in this regard if necessary³.

12. Members shared the concerns of the two legal professional bodies about the slow development of Hong Kong legal services in the Mainland. They

³ The Bar Association of Hong Kong has subsequently provided an information note on "Amicus Curiae (Friends of the Court) and its Role" to the Department of Justice ("DoJ") and the Chinese translation of the note has been passed by the DoJ to the Shenzhen side for their information.

urged the Administration to step up efforts on promoting the provision of Hong Kong legal services in the Mainland. The DoJ undertook to convey the views of members and the two legal professional bodies to the Mainland authorities for consideration and provide a response in due course.

13. At the Panel meeting on 23 April 2012, the DoJ advised members that Supplement VIII to CEPA signed in Hong Kong on 13 December 2011 provided, amongst others, liberalization measures in legal services. The new measures introduced included (a) to further develop closer co-operation between the legal professions of the Mainland and Hong Kong, and to explore ways of improving the mode of association of law firms of the two places⁴; and (b) to consider broadening the scope of business of Hong Kong residents with Mainland legal professional qualification and holding a Mainland lawyer's practice certificate in acting as agents in civil litigation cases relating to Hong Kong residents and juridical persons.

14. As regards the Qianhai Development Plan, members noted that the People's Congress of Shenzhen Municipality promulgated in June 2011 the "Regulations on Qianhai Shenzhen-Hong Kong Modern Services Industries Co-operation Area" ("the Regulations") which provided that a special tribunal would be set up to deal with commercial disputes in Qianhai. The Regulations further specified that steps would be taken to encourage (a) the establishment of a mechanism to verify Hong Kong law (where it was relevant to the matter in question); and (b) Hong Kong arbitration bodies to provide arbitration services in Qianhai. The DoJ and the Shenzhen Municipal Government signed the "Co-operative Arrangement on Legal Matters" on 25 November 2011. Both sides agreed to enhance communication and exchange on legal matters, explore and discuss ways to strengthen co-operation in building the legal environment to promote greater use of legal and arbitration services in Qianhai, and explore possible pilot measures under the framework of CEPA for implementation in Qianhai.

15. Members were of the view that whilst both the Mainland side and the Hong Kong legal service providers had been positive to enhancing mutual co-operation, the relevant details for implementation should be followed up rigorously.

⁴ Under Supplement IX to the Mainland and Hong Kong Closer Economic Partnership Arrangement signed in June 2012, Hong Kong law firms that have set up representative offices in the Mainland are allowed to operate in association with one to three Mainland law firms.

Latest developments

16. At the Panel meeting on 22 January 2013 to receive a briefing from the Secretary for Justice on the Chief Executive's 2013 Policy Address in relation to legal matters, members were briefed that -

- (a) in September 2012, the State Council approved the Plan for the Development of Nansha New District of Guangzhou. The Plan contained provisions which sought to further develop co-operation with Hong Kong in legal and arbitration services and to improve the mode of association between Hong Kong and Mainland law firms;
- (b) in June 2012, the State Council promulgated "The Supporting Policies of the Development and Opening up of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen" which stated clearly that pilot policies were adopted in Qianhai to step up closer co-operation between the Mainland and Hong Kong. The policies covered legal and arbitration affairs; and
- (c) in 2012, the Shenzhen Court of International Arbitration was established. Its council consisted of members from Hong Kong. Furthermore, one third of the arbitrators to be retained by the Court would be from other places including Hong Kong.

17. Members were further briefed that with these positive developments, the DoJ would actively pursue with Mainland authorities to promote (a) the use of Hong Kong law in contracts concluded by enterprises conducting business in Qianhai and Nansha, (b) the choice of Hong Kong as an ideal arbitration and dispute venue for commercial disputes, and (c) the implementation of the initiative to establish association in the form of partnership between Hong Kong and Mainland law firms.

18. The DoJ will brief the Panel on 26 March 2013 on the implementation of measures to facilitate the provision of legal and arbitration services by Hong Kong professionals and institutions in Qianhai.

Council Business Division 4
Legislative Council Secretariat
19 March 2013

**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 Minutes
	23.4.2012 (Item V)	Agenda Minutes
	22.1.2013 (Item III)	Agenda