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STUDY REPORT ON THE DEVELOPMENT OF THE LEGAL PROFESSION IN QIANHAI

The Law Society of Hong Kong
Working Party on Qianhai Project

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Executive Summary

In order to implement the new requirements of the "national opening-up" strategy of the PRC and to promote the transformation and upgrading of various industries by way of developing modern service industries, the State and the local government have since 2001 promulgated a series of laws, regulations and policies to facilitate the establishment of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone ("Qianhai"). Taking timely hold of this significant historic opportunity, The Law Society of Hong Kong has set up the Working Party on Qianhai Project ("Working Party"), whose work include: examining how to give full effect to the ascendency of Hong Kong lawyers; exploring a lawyer profession and regulatory framework which befit the national conditions, which are beneficial to long-term national development and which cater for the developmental needs of Hong Kong lawyers; and putting forward suggestions and recommendations which are conducive to the development of the legal profession in Qianhai.

Based as it is on comprehensive studies of legal professions both in the PRC and beyond, this Research Report comprises three sections. Section One sets out the background to the development of the legal profession in Qianhai, points out that Qianhai is presenting significant historic opportunities for the development of the practice of PRC lawyers, and describes the establishment and objectives of the Working Party. Section Two explains the basis of the development of the legal profession in Qianhai, including policy and legal bases and practical basis. Section Three, which forms the highlight of this Report, provides a detailed analysis of the prospects and strategies of the development of the legal profession in Qianhai, including cooperation in six major areas, namely legal services, regulation of lawyers, applicability of law, law investigation, international legal services and training of lawyers, with a view to strengthening Guangdong-Hong Kong cooperation and promoting harmony between the Mainland and Hong Kong legal systems.

Background to development of the legal profession in Qianhai

- Qianhai is presenting significant historic opportunities for the development of the practice of PRC lawyers

- The Law Society of Hong Kong has timely set up the Working Party to look into the development of the legal profession in Qianhai

Basis of development of the legal profession in Qianhai

- **Policy and legal basis:** Since 2001, the State and the local government have promulgated and launched a series of laws, regulations and policies to facilitate the establishment of Qianhai, including CEPA and the

Regulations on Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen Special Economic Zone, as a means to enhancing cooperation between the lawyers industries in Guangdong and Hong Kong.

- **Practical basis:** The Working Party has sent delegates to London (UK), Dubai (UAE) and Australia to conduct in-depth on-site studies of the legislation on and implementation of mixed practice in those countries and territories. These studies have played an important role in this research project as they have assisted the Working Party in forming conclusions regarding the feasibility and pros and cons of implementing (on a trial basis) the various possible modes of legal practice in Qianhai.

Analysis of prospects and strategies of development of the legal profession in Qianhai

- **Cooperation in legal services**

Association is a mode of cooperation into which Mainland law firms and Hong Kong law firms will develop. Such associations should take the form of close collaboration, i.e. partnerships. A possible strategy is for Mainland law firms and Hong Kong law firms to agree to set up partnership associations in Qianhai, which will provide legal services in their own names and independently assume any legal liability in that respect.

The scope of cooperation should be expanded by allowing partnership associations and their Hong Kong lawyers to provide, in Mainland China, comprehensive legal services involving Hong Kong and foreign jurisdictions.

The relevant judicial and administrative authorities should, having due regard to the practical positions of Hong Kong law firms and lawyers, enact laws and regulations with detailed provisions governing the various aspects of cooperation among lawyers, including the scope of practice of associations, the law applicable to the legal practice of partnership associations, etc.

Bearing in mind the characteristics of such modes of practice as “Legal Disciplinary Practice, or LDP”(legal practice with participation by non-lawyer managers), “Alternative Business Structure, or ABS” (legal practice in the form of open-ended joint ventures), and “Multi-Disciplinary Practice, or MDP” (integrated professional practice), mixed practices can be launched in Qianhai phase-by-phase on a trial basis. The initial phase will feature “one-stop” LDPs with no element of mixed practice, and depending on the progress and outcome, the feasibility of transition to ABS mixed practices will be considered.

To facilitate the implementation of the abovementioned cooperation in Qianhai, the relevant preferential measures should be strengthened, such as giving tax

benefits to associations, relaxing foreign exchange controls, providing lawyers at associations and their vehicles with convenience in customs clearance, etc.

- **Cooperation in regulation of lawyers**

There are considerable differences between the existing regulatory systems in Mainland China and Hong Kong, in respect of both the regulation of law firms and the regulation of lawyers. At the same time, there are similarities between the two systems. These directly provide the basis of and rationale for Mainland-Hong Kong cooperation in the regulation of lawyers.

The Mainland and Hong Kong should jointly establish a "Qianhai Lawyers Association" (QLA) as the regulatory body for lawyer associations. The QLA will be a self-regulated legal body responsible for regulating law firms and lawyers in Qianhai. Such regulation will principally take the form of industry regulation, supplemented by administrative regulation.

- **Cooperation in applicability of law**

There is much room for the application of Hong Kong law in Qianhai. The applicable area of Hong Kong law currently is non-PRC civil and commercial cases involving Hong Kong and Macau. The Working Party suggests that the Shenzhen Municipal People's Congress can consider making full use of the legislative powers conferred upon it by the National People's Congress and, pursuant to authority conferred by Article 81 of the *PRC Law on Legislation* and in accordance with the constitutional provisions and the basic principles underlying laws and administrative regulations, enacting modified rules and regulations to expand the scope of application of Hong Kong law in Qianhai. This suggestion is in line with the fundamental principles of PRC law and, to the greatest possible extent, fits into the mode and objectives of development of Qianhai.

The underlying principle is party autonomy, with the doctrine of closest connection being the secondary consideration.

- **Cooperation in law investigation**

Law investigation encompasses both Hong Kong law and foreign law (especially English and American laws) and takes two major forms: (a) establishing an independent institution for law investigation, with Hong Kong lawyers as specialists engaged by courts or arbitration tribunals; (b) Hong Kong lawyers being agents engaged by clients or "officers possessing specialist knowledge".

- **Cooperation in international legal services**

The competitive edge enjoyed by Hong Kong lawyers in the provision of international legal services should be fully realised. A "WTO and International Legal Services Centre" should be established, pooling together legal experts from Shenzhen and Hong Kong to provide comprehensive and professional legal services (including advisory, agency and research services) in respect of WTO legal issues relevant to the PRC and other international commercial issues. Such services will cater for the ordinary commercial needs of natural and legal persons and also provide the State and relevant organisations with the necessary assistance.

- **Cooperation in training of lawyers**

It is proposed to establish a "Shenzhen-Hong Kong Lawyers Institute" in Qianhai as a base for cooperation in training lawyers. By inviting renowned experts, academics and senior judges, arbitrators and lawyers to give lectures and seminars, and by organizing moots in litigation and arbitration, lawyers' forums, contests and other activities, the standard and quality of services provided by Mainland and Hong Kong lawyers will further improve, mutual understanding and friendship among lawyers will be strengthened, and level of cooperation among lawyers will be enhanced.

Foreword

The establishment of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone ("Qianhai") is a major strategic decision made by that State at a historic point of time, namely the 30th anniversary of the establishment of Shenzhen Special Economic Zone. Qianhai shoulders a number of historic missions: to explore new avenues of reform, liberalisation and scientific development; to explore new ways of close cooperation between the Mainland and Hong Kong; and to accumulate new experiences in the transformation of the mode of economic development. Under the "One Country, Two Systems" framework, the Cooperation Zone will work towards becoming a model zone illustrating the innovative collaboration between the modern service industries of Guangdong and Hong Kong.

The legal service industry is an integral part of modern service industries and also provides essential support for other professional services in such areas as finance, modern logistics, information service, and science and technology service.

Taking timely hold of this significant historic opportunity, The Law Society of Hong Kong set up the Working Party on Qianhai Project ("Working Party") on 13 December 2010 in Hong Kong. The Working Party was responsible for carrying out the decision of The Law Society to examine how to give full effect to the ascendency of Hong Kong lawyers and to explore a legal profession and regulatory framework which befit the national conditions, which are beneficial to long-term national development and which cater for the developmental needs of Hong Kong lawyers[1], so as to facilitate further cooperation between Guangdong and Hong Kong and hence promote harmony between the Mainland and Hong Kong legal systems.

Since its establishment, the Working Party has held 34 meetings and liaised with the PRC Ministry of Justice, the Department of Justice of Hong Kong, the Development and Reform Commission of Guangdong Province, the Department of Justice of Guangdong Province, Guangdong Lawyers Association, Shenzhen Lawyers Association, the Legislative Affairs Office of the State Council, the Qianhai Bureau and enterprises interested in developing their businesses in Qianhai. The Working Party has also sent delegates to London, Dubai and Australia to conduct research studies. The Working Party drew up an *Outline of Qianhai Legal Affairs* and defined the scope of this research project:

1. Consider and formulate one or more modes of close cooperation among lawyers in Qianhai (including the nature of cooperation (the proposed law

[1] References in this Report to "Hong Kong lawyers" mean "solicitors" in Hong Kong and do not include "barristers".

firms in the form of partnership associations), modes of practice (including mixed practice), operational models, mode of regulation and relevant mechanisms) which befit the national conditions, which are beneficial to long-term national development and which cater for the developmental needs of the legal profession ;

2. Consider and examine the establishment of a mechanism for communication between Mainland and Hong Kong lawyers (for example, setting up joint meetings between the All China Lawyers Association and The Law Society of Hong Kong) as well as an authority for regulating the close associations among Mainland and Hong Kong lawyers in Qianhai (for example, setting up a "Qianhai Lawyers Association" and/or a representative office of The Law Society of Hong Kong in Shenzhen);

3. Consider and examine the establishment of the proposed mechanism for law investigation and mechanism for the resolution of commercial disputes, examine the conditions for application of Hong Kong law, and explore the feasibility of establishing a "Shenzhen-Hong Kong Lawyers Institute" and a "WTO and International Legal Services Centre";

4. Prepare a Report on the results of the above studies and carry out promotion and member education work.

Entrusted as it is with the important task of assisting Mainland and Hong Kong lawyers in contributing to the success of "One Country, Two Systems", the Working Party will prepare a research report in accordance with the above terms of reference and submit the report to the PRC Ministry of Justice, the Department of Justice of Hong Kong, the Qianhai Bureau and other relevant departments and authorities, in order to effectively push forward the development of the legal profession in Qianhai!

1 Background to development of the legal profession in Qianhai

1.1 Qianhai presents historic opportunities for development of lawyers' practice in the PRC

On 26 August 2010, the State Council formally approved the *Overall Development Plan on Shenzhen/Hong Kong Cooperation on Modern Service Industries in Qianhai Area*. In March 2011, the State formally incorporated the development of Qianhai into the *12th Five-Year Plan*.

Guided by the ideology of "innovation, marketisation and meeting international standards" and adhering to the principles of open cooperation, mutual benefits, system innovation, scientific efficiency, high-end guidance, intensive development, coordinated planning and exemplary influence, Qianhai is functionally positioned as the modern service industry institutional innovation zone, modern service industry development cluster zone, pioneering zone for cooperation between Hong Kong and the Mainland, and guiding zone for industrial upgrading in the Pearl River Delta Region.

In developing Qianhai, priority is given to four pillar industries, namely finance, modern logistics, information service, science and technology service, as well as other professional services. By 2020, Qianhai shall be built into an international modern service industry cooperation zone with sophisticated infrastructure, and shall possess a modern service industry system which is structurally rational, international and influential, equipped with systems and a legal environment suitable to modern service industries. By attracting world renowned enterprises in modern service industries, Qianhai shall become an important production service centre in the Asia-Pacific region and an important base for international service trade, playing a pivotal role in modern service industries around the world.

The legal service industry is an integral part of modern service industries and also provides essential support for other professional services in such areas as finance, modern logistics, information service, and science and technology service.

The establishment of Qianhai presents significant historic opportunities for lawyers in the PRC, including Mainland lawyers and Hong Kong lawyers!

It was with the national reform and opening-up that the legal profession gradually developed in Mainland China. Compared to their Hong Kong counterparts, Mainland lawyers are more conversant with the Mainland environment including the judicial environment, living environment and market demands. They also have excellent networks on the Mainland and are able to independently handle both litigation work and non-litigation work on

the Mainland. Furthermore, Mainland law firms are more flexible in charging for their services, being able to set levels of fees by reference to the scales of different enterprises including small and medium enterprises. On the other hand, as their profession started to develop at a relatively late point of time, Mainland lawyers are relatively inexperienced in international legal practice, and the small number of experienced lawyers can hardly meet the ever-increasing demands of foreign-related legal practice on the Mainland.

Compared to Mainland lawyers, and for historical reasons, development of the legal profession in Hong Kong has been more persistent. Coupled with the fact that the common law is an integral part of international commercial law, Hong Kong lawyers are very familiar with the rules of common law and international commercial law. With a wealth of experience in international legal practice, excellent international networks, proficiency in foreign languages, extensive knowledge of foreign law, and having steeped themselves in both Chinese and Western cultures and ways of thinking, Hong Kong lawyers enjoy an obvious competitive edge in handling foreign-related legal cases. At the same time, however, the ability of Hong Kong lawyers to provide legal services in Mainland China has been restricted by their unfamiliarity with the Mainland environment, lack of networks and a relatively rigid fee-charging system, in addition to inherent geographical limitations.

It can therefore be seen that Mainland lawyers and Hong Kong lawyers have their own strengths. If they can complement each other, it will certainly go a long way toward promoting the development of lawyers' practice in the PRC! The establishment of Qianhai provides the ideal opportunity and platform for fostering cooperation between Mainland lawyers and Hong Kong lawyers, who will then be able to give full play to their respective strengths and remedy each other's weaknesses, so that they can both expand their practices and at the same time help promote harmony between the Mainland and Hong Kong legal systems.

1.2 Establishment of Working Party on Qianhai Project, The Law Society of Hong Kong: process and objectives

Taking timely hold of the historic opportunity and determined to push forward the development of the legal profession in Qianhai, The Law Society of Hong Kong set up the Working Party on Qianhai Project, The Law Society of Hong Kong ("Working Party") on 13 December 2010 in Hong Kong to carry out various in-depth studies. As at 27 August 2012, the Working Party had held 34 meetings (including internal discussions), liaised with the PRC Ministry of Justice, the Department of Justice of Hong Kong, various enterprises and chambers of commerce, foreign law firms, lawyers associations and other relevant organisations, and also conducted researches and studies both in China

and overseas. All these were done with a view to examining and exploring new ways of legal cooperation between Shenzhen and Hong Kong – in the areas of legal services, supervision of lawyers, application of law, law investigation, dispute resolution, international legal services, policy consultation, training of lawyers, etc. – and formulating modes of cooperation which would befit the national conditions, which would be beneficial to long-term national development and which would cater for the developmental needs of Hong Kong lawyers, thereby achieving a "win-win" situation for both Shenzhen and Hong Kong and positively contributing to the harmony of the regional laws of the State!

2 Basis of development of the legal profession in Qianhai

2.1 Policy and legal basis

In the *Shenzhen 2030 Development Strategy*, the Shenzhen Municipal People's Government pointed out the need to strengthen cooperation with Hong Kong in developing modern service industries in Qianhai in order to build Qianhai into one of the modern service industry centres in the Pan-Pearl River Delta Region. To date, Qianhai has been developing rapidly, with a number of relevant policies and laws taking effect. It is not possible to set out within the confines of this Report each and every policy and law. Listed below are the major policies and laws which form the basis of the development of the legal profession in Qianhai, together with a brief description of the contents of those policies of laws which are directly relevant to such development.

(i) *Measures for the Management of Associations Formed by Law Firms of the Hong Kong Special Administrative Region or the Macau Special Administrative Region and Mainland Law Firms* issued by the Ministry of Justice (effective in 2003, amended in 2005 and 2009)

On 27 November 2003, the Ministry of Justice adopted the *Measures for the Management of Associations Formed by Law Firms of the Hong Kong Special Administrative Region or the Macau Special Administrative Region and Mainland Law Firms* ("the *Measures*"), which came into effect on 1 January 2004. Subsequently, the *Measures* were amended by a decision of the Ministry of Justice on 23 December 2005 and the revised *Measures* came into effect on 1 January 2006. The *Measures* provide that "[t]he term 'association' as mentioned in the present Measures means that a law firm of Hong Kong or Macau that has established a representative office in the Mainland cooperates with a Mainland law firm within the province, autonomous region or municipality directly under the Central Government where the representative office is located, by means of which both parties may, in light of the contractual rights and obligations, jointly operate in the Mainland, and provide respectively Hong Kong, Macau, or Mainland legal services to the clients", and

that “[a]n association … shall abide by the laws, regulations and rules of the State, shall scrupulously comply with the lawyer ethics and disciplines, and shall not impair the security of the State or the public good”. The Measures also contain detailed provisions on the procedure for applying for associations, the rules governing associations, and the regulation of associations. The *Measures* were revised again on 1 September 2009 to provide that “[a] Mainland law firm that has been established for one year and domiciled in Guangdong and has at least one founder of over 5-year practice experience may apply for association”. The revisions came into effect on 1 October 2009.

At the same time, the *Measures* prohibit associations in the form of partnerships or legal persons and provide that, during the period of association, the legal status, names and finances of the parties thereto shall be kept separate and each party shall independently assume civil liability. To some extent, these provisions restrict the closeness of associations and the practical effects of cooperation.

(ii) *Mainland and Hong Kong Closer Economic Partnership Arrangement* (CEPA 2003) and its *Supplement III* (2006)

The Central Government and the Hong Kong SAR Government entered into the *Mainland and Hong Kong Closer Economic Partnership Arrangement* (“CEPA”) on 29 June 2003. Covering three main areas including the liberalisation of trade in services, CEPA specifically provides (among other things) that: either side will progressively reduce or eliminate existing restrictive measures against services and service suppliers of the other side; at the request of either side, the two sides may, through consultation, pursue further liberalisation of trade in services between them; and the two sides shall encourage mutual recognition of professional qualifications and promote the exchange of professional talents between each other. Annex 4 to CEPA, entitled “Specific Commitments on Liberalisation of Trade in Services” expresses the following commitments in respect of legal services (CPC 861): (a) to allow Hong Kong law firms (offices) that have set up representative offices in the Mainland to operate in association with Mainland law firms, except in the form of partnership, but Hong Kong lawyers participating in such association may not handle matters of Mainland law; (b) to allow Mainland law firms to employ Hong Kong legal practitioners, but such practitioners who are employed by Mainland law firms must not handle matters of Mainland law; (c) to allow the 15 Hong Kong lawyers who have already acquired Mainland lawyer qualifications to intern and practise on non-litigation legal work in the Mainland; (d) to allow Hong Kong permanent residents with Chinese citizenship to sit the legal qualifying examination in the Mainland and acquire Mainland legal professional qualification in accordance with the *State Judicial Examination Implementation Measures*; (e) to allow those who have acquired Mainland legal professional qualification under item (d) above to engage in

non-litigation legal work in Mainland law firms in accordance with the *Law of the People's Republic of China on Lawyers*; (f) the minimum residency requirement is waived for all Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms (offices) located in Shenzhen and Guangzhou, and for the Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms (offices) located in places other than Shenzhen and Guangzhou, their minimum residency requirement is 2 months each year.

With the approval of the State Council, the Ministry of Commerce on behalf of the Central Government and the Financial Secretary on behalf of the Hong Kong SAR Government entered into *Supplement III to the Mainland and Hong Kong Closer Economic Partnership Arrangement* ("*Supplement III*") on 27 June 2006 in Hong Kong. *Supplement III* provides for the further liberalisation of trade in services in the Mainland for Hong Kong pursuant to CEPA and its two previous Supplements. *Supplement III* provides that, from 1 January 2007 and on the basis of the commitments on liberalisation of legal and other areas, the Mainland shall take 15 further specific liberalisation measures and further relax the market access conditions. The measures to be taken in respect of legal services (CPC 861) include: (a) waiving the requirement on the number of full-time lawyers employed by Mainland law firms that operate in association with Hong Kong law firms (offices); (b) waiving the residency requirement in the Mainland for representatives stationed in representative offices of Hong Kong law firms (offices) in the Mainland; (c) allowing Hong Kong residents who have acquired Mainland lawyer qualifications or legal professional qualifications and hold a Mainland lawyer's practice certificate to engage in activities as agents in matrimonial and succession cases relating to Hong Kong in the capacity of Mainland lawyers; (d) allowing Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens; (e) allowing Hong Kong residents who have acquired Mainland lawyer qualifications or legal professional qualifications to undergo internship in a branch office of a Mainland law firm set up in Hong Kong in accordance with the *Outline for Practical Training and the Guidelines on Practical Training* as required in the Mainland.

(iii) *Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*

On 17 December 2008, the State Council deliberated on and adopted in principle *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*, which expressly supports Guangdong-Hong Kong and Guangdong-Macau cooperation in developing service industries; provides for the stepping up of efforts in facilitating mutual recognition of professional qualifications for legal and other industries in order to create the conditions for developing service industries; and provides for the planning and

establishment of cooperation zones such as Guangzhou Nansha Pilot Zone, Qianhai, Shenzhen-Hong Kong Boundary District, Zhuhai Hengqin Pilot Zone and Zhuhai-Macau Cross-Border Cooperation Zone, all of which will become media for Guangdong-Hong Kong and Guangdong-Macau cooperation in various industries including service industries and high-tech industries.

(iv) ***Framework Agreement on Guangdong/Hong Kong Cooperation***

The People's Government of Guangdong Province and the Hong Kong SAR Government entered into the *Framework Agreement on Guangdong/Hong Kong Cooperation* on 7 April 2010 in Beijing. This Agreement gives effect to and contains specific provisions for Guangdong-Hong Kong cooperation in building up a world-class economic zone.

(v) ***Overall Development Plan on Shenzhen/Hong Kong Cooperation on Modern Service Industries in Qianhai Area***

On 26 August 2010, the State Council approved and adopted the *Overall Development Plan on Shenzhen/Hong Kong Cooperation on Modern Service Industries in Qianhai Area* ("*Qianhai Plan*"), which formally came into effect on 10 October 2010.

In relation to the legal environment, the *Qianhai Plan* provides that: "The National People's Congress has conferred legislative powers on the Shenzhen Special Economic Zone. Pursuant to such powers, Shenzhen has taken the first step in exploring legislation in finance, professional services and other modern service industries and has accumulated legislative experience. Qianhai can fully manifest the legislative powers of the special economic zone and implement first and pilot schemes and system innovation, so as to create a legal environment which facilitates the liberalisation and development of service industries."

In relation to the development of professional services, the *Qianhai Plan* provides that: "Vigorously develop professional services. Relax entry requirements as appropriate. Explore the delegation powers of approval. … **Support service suppliers from Hong Kong in setting up in Qianhai professional service organisations whether as sole proprietorships, joint ventures, cooperations or other modes**, so as to provide personalised and high-end professional services. Consider refining and shortening the approval processes. Develop accounting and legal services to such extent as is appropriate."

In relation to policies and measures, the *Qianhai Plan* provides that: "Create a favourable environment for talents. Build up a sophisticated mechanism conducive to the pooling of talents in modern service industries. Explore

supportive packages to attract high-end and skilled talents in service industries. Strengthen information sharing and training of talents between Shenzhen and Hong Kong and explore mutual recognition of qualifications to make Qianhai a more convenient and enjoyable place to work and live in. Place more input to education and training. Fully realise the functions of higher education institutions, vocational education institutions and relevant research institutes. Strengthen the professional establishment of subjects relating to productive and daily service industries. Speed up the formation of a system for training up skilled and innovative talents which is consistent with the conglomeration and development of modern service industries in Qianhai, in order to provide talent support to the establishment of the Qianhai Modern Service Industries Cooperation Zone."

(vi) *Opinions on Speeding Up the Development and Liberalisation of Shenzhen/Hong Kong Modern Service Industries in Qianhai*

To give effect to the *Qianhai Plan* as approved by the State Council and the *Notice on the Publication of the Overall Development Plan on Shenzhen/Hong Kong Cooperation on Modern Service Industries in Qianhai Area* issued by the National Development and Reform Commission, which points out the need to accelerate the opening up and development of Qianhai, push forward the development of Shenzhen into a modernised and international city and further perform the function of the special economic zone as a pacesetter in reform, liberalisation and scientific development, the Shenzhen Municipal People's Government issued the *Opinions on Speeding Up the Development and Liberalisation of Shenzhen/Hong Kong Modern Service Industries in Qianhai* ("*Opinions*") on 17 December 2010.

Section 4 of the *Opinions*, headed "Work Arrangement and Preparation", points out in Item (8) that: "Speed up the formation of new systems, mechanisms and policy framework, so as to create a globally competitive business environment. Manifest the role of the special economic zone as a pioneer and leader, and actively explore the systems, mechanisms and policies conducive to the conglomeration and development of modern service industries, in order to build Qianhai into one of the regions in the world with the best business environment."

Point No.2 under the said Item (8) sets out in detail the opinions on the development of the legal profession in Qianhai. Under the general heading of "Speed up the creation of a legal environment which facilitates the development of modern service industries", Point No.2 states: "Implement regulations governing the Qianhai Cooperation Zone, Measures for the Administration of the Qianhai Bureau and Measures for the Administration of Qianhai Bay Bonded Port as soon as possible. Actively commence the studying and drafting of regulations and rules necessary for the development of modern

service industries in Qianhai. Establish a specialist commercial court in Qianhai; actively encourage arbitration institutes from Hong Kong to develop arbitration services in Qianhai; explore the possibility of Chinese nationals from Hong Kong participating, as lay jurors or in other capacities, in trials of Hong Kong-related commercial cases in Qianhai; explore the establishment of a mechanism for proof of Hong Kong law; support foreign investment enterprises registered in Qianhai in agreeing upon an effective way to select the applicable laws for commercial contracts. Formulate plans for the efficient and authoritative implementation of mechanisms against corruption and bribery, including mechanisms for reporting, receiving, handling and investigating cases and complaints involving corruption and bribery. Make efforts in exploring the establishment of an internationally renowned anti-corruption and anti-bribery model zone."

(vii) ***Ordinance of the Shenzhen Special Economic Zone on Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone***

On 6 July 2011, the Standing Committee of the 5th Shenzhen Municipal People's Congress promulgated the *Ordinance of the Shenzhen Special Economic Zone on Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone* ("*Ordinance*"), which came into effect on the date of promulgation. Article 3 of the *Ordinance* provides that: "The Qianhai Cooperation Zone should focus on productive service industries and innovatively develop finance, modern logistics, information service, science and technology service and other professional service industries." Article 5 provides that: "The Qianhai Cooperation Zone should persist in close cooperation with Hong Kong, explore new mechanisms, modes and ways of developmental cooperation with Hong Kong, and promote integrated development with Hong Kong. In its development, construction and management, the Qianhai Cooperation Zone should draw on the conceptions and experiences of Hong Kong and other regions in the world in respect of the rules governing market operations, and should also refer to the prevailing international rules and customs."

Chapter 7 of the *Ordinance* contains specific provisions on "legal environment". One of those provisions is Article 48, which reads: "In respect of legislation enacted by this municipality, the Municipal Government may request the Municipal People's Congress and its Standing Committee to make corresponding provisions regarding the application of such legislation to the Qianhai Cooperation Zone; in respect of regulations enacted by this municipality, the Qianhai Bureau may request the Municipal Government to make decisions regarding the application of such regulations. For the purpose of implementing the *Qianhai Development Plan*, the Municipal Government may enact relevant regulations, decisions and decrees for implementation in the Qianhai Cooperation Zone and submit those regulations, decisions and decrees

to the Standing Committee of the Municipal People's Congress for records, provided that no such regulations, decisions and decrees shall be contrary to the basic principles set out in the legislation of this municipal economic zone. The Qianhai Bureau may, in accordance with the provisions of this Ordinance, draw on the experience of Hong Kong and enact, for implementation in the Qianhai Cooperation Zone, such rules, guidelines and other instruments as are relevant to the promotion of the development of modern service industries."

(viii) *Cooperative Arrangement on Legal Matters* between Shenzhen Municipal Government and Hong Kong Department of Justice

On 25 November 2011, the Chief Secretary for Administration of the Hong Kong SAR, Mr. Stephen Lam, and the Mayor of the Shenzhen Municipal Government, Mr. Xu Qin, co-chaired the 2011 Shenzhen/Hong Kong Cooperation Meeting in the new Central Government Offices. The two sides reviewed the work progress of the past year and conducted in-depth discussions on cooperation in a number of key areas including Qianhai development. The two sides agreed to continue to deepen and expand cooperation, including legal and arbitration cooperation, guided by the directions of national economic development. The two Governments signed four cooperation agreements at the meeting, including the *Cooperative Arrangement on Legal Matters*, which serve to provide important platforms and exchange mechanisms for further cooperation between Shenzhen and Hong Kong in the relevant areas.

The *Cooperative Arrangement on Legal Matters* begins by setting out "the main objectives and principles of cooperation": "Both parties hereto agree to establish a mechanism for cooperation on legal matters between the Shenzhen Government and the Hong Kong Government, in order to provide a high-level platform for exchange between government departments and members of the legal profession in Shenzhen and their counterparts in Hong Kong. On the premises that the *Constitution of the People's Republic of China* and the *Basic Law of the Hong Kong Special Administrative Region* are complied with and that the principle of "One Country, Two Systems" is adhered to, both parties will, by means of the said exchange mechanism, promote cooperation and exchange in relation to government legal affairs and the creation of the relevant legal environment, establish a mutually beneficial cooperative relationship, push forward the development of legal and arbitration services in Qianhai and other regions, and encourage active exchange and cooperation between legal and arbitration professionals on both sides."

According to the *Cooperative Arrangement on Legal Matters*, the main areas of cooperation include: "(1) Each side will timely communicate major legal issues which may be relevant to the other side and may, if necessary, seek the opinion of the other side. (2) If it becomes necessary during the law-making process to examine or draw on the relevant law of the other side, each side may request

the other side to assist by providing the requisite legal information and case law. (3) Both sides will timely communicate and exchange opinions on issues relating to Shenzhen-Hong Kong cooperative projects, particularly issues pertaining to the promotion of development of modern service industries in Qianhai, and may, if necessary, jointly conduct studies and discussions and exchange views and suggestions as to possible solutions to the relevant legal issues. (4) Insofar as their legal resources so permit, both sides will organize mutual exchange and training for their officials and each side will provide training opportunities to officials of the other side."

According to the *Cooperative Arrangement on Legal Matters*, the major forms of cooperation include: "(1) Establish an arrangement for joint legal meetings between Shenzhen and Hong Kong, whereby senior officials of both sides meet once a year to discuss important topics relating to Shenzhen-Hong Kong cooperation on legal affairs and the creation of the legal environment in Qianhai. (2) If necessary, set up a taskforce on Shenzhen-Hong Kong legal cooperation to conduct exchange and communication in respect of legal affairs relating to such cooperation. If circumstances so require, representatives and experts in the areas of law, arbitration and mediation in the Mainland, Shenzhen and Hong Kong can be invited to participate and jointly study and examine the relevant legal issues. (4) Insofar as resources so permit, both sides may, if necessary, jointly organise forums and seminars on legal cooperation, to which members of the legal, arbitration and mediation professions can be invited to attend, so as to enhance the standard of professional services on both sides."

(ix) *Approval by the State Council to Support the Policies Relating to the Development and Opening-up of Shenzhen's Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone*

In response to the *Request for Instructions Relating to the Submission of Policies (Draft for Approval) in Support of the Development and Opening-up of Shenzhen's Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone* issued by the Shenzhen Municipal People's Government and National Development and Reform Commission, the State Council issued a written approval on 27 June 2012 confirming that it **"support[s] the implementation in Shenzhen's Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone of first and pilot policies which are even more special than those in the special economic zone, in order to create an innovative zone for modern service industry systems and mechanisms, a cluster zone for the development of modern service industries, a pioneering zone for close cooperation between Hong Kong and the Mainland, and a leading zone for the upgrading of industries in the Pearl River Delta Region."**

Article 4 of the *Approval* addresses "strengthening cooperation in legal affairs" and puts forward the following specific measures: "(1) Explore the establishment by Hong Kong arbitration institutes of branch institutes in Qianhai. (2) Further foster cooperation between Mainland lawyers and Hong Kong lawyers, consider refining the mode of associations of Mainland law firms and Hong Kong law firms, and further implement the various liberalisation measures in favour of Hong Kong as provided for in CEPA and its Supplements." Article 5 relates to the "establishment of Shenzhen-Hong Kong Talents Special Region", and item (2) thereof reads: "Include Qianhai as one of the pilot zones for the pilot implementation of mutual recognition of professional qualifications in Guangdong as approved by the State." Item (3) reads: "Allow professionals who have obtained qualification to practise in Hong Kong to directly provide professional services to enterprises and residents in Qianhai. The scope of such services is confined to Qianhai, and specific policies and measures including administrative measures shall be enacted by the relevant competent authority of the profession." These statements reflect national policies which strongly support the promotion of development of the legal profession and cooperation between Guangdong lawyers and Hong Kong lawyers.

2.2 Practical basis

(i) Practical basis within the PRC: *Study on the Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region: Research Report*

From 2010 to 2011, the Mainland Legal Affairs Committee of The Law Society of Hong Kong commissioned the School of Law of the Sun Yat-Sen University to conduct a research study on the prospects of development of legal practice by Hong Kong law firms in the Pearl River Delta Region ("PRD Region"), as a result of which the *Study on the Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region: Research Report* ("*Research Report*") was prepared and published. The *Research Report* points out that, in the new phase of development of the PRD Region, service industries form the main focus of Guangdong-Hong Kong cooperation, and with the ever-increasing demand in the PRD Region for legal services, the legal service industries in both places are presented with more opportunities for cooperation. Furthermore, the PRD Region is covered by the preferential policy of "early and pilot implementation" of CEPA and the liberalisation offered to service industries in Hong Kong.

The *Research Report* studies and analyses in detail the current situation on cooperation between Hong Kong law firms and law firms in the PRD Region ("PRD firms") and notices that there are frequent contacts between Guangdong

law firms and Hong Kong law firms and that these contacts mainly take the form of direct business dealings – the survey data shows that 73.1% of the sampled PRD firms have previously cooperated with Hong Kong law firms and that as many as 25 of the 26 sampled PRD firms (which translates to 96.2%) have had contacts with Hong Kong law firms. This shows that, although there are considerable restrictions on Mainland legal practice of Hong Kong law firms, as the economic link between the Mainland and the world strengthens, coupled with the competitive edge enjoyed by Hong Kong law firms, there is a demand for cooperation between Guangdong law firms and Hong Kong law firms and both sides are actively seeking opportunities for and means of interaction. In fact, ever since the Mainland formally opened up its legal service market in 1992, Guangdong law firms and Hong Kong law firms have engaged in close interaction. As for the forms of interaction, the survey data reveals that 96.0% took the form of "to-the-point" business dealings whereas interactive activities and social/personal interaction accounted for 40.0% and 64.0% respectively. More and more Hong Kong law firms are setting up representative offices in the PRD Region, thereby providing platforms for cooperation and exchange.

The above facts clearly illustrate that there is a basis for cooperation between Guangdong lawyers and Hong Kong lawyers and that both sides intend to so cooperate. This provides a solid practical foundation for further cooperation between Guangdong lawyers and Hong Kong lawyers in Qianhai.

However, the *Research Report* also points out that at present Hong Kong law firms handle Mainland legal matters mainly with the assistance of *ad hoc* or long-term business partners. 63% of the sampled Hong Kong law firms indicated that they would instruct Mainland law firms to handle Mainland legal matters. This shows that Hong Kong law firms tend to look for *ad hoc* business partners in the Mainland to handle specific cases. This approach has the advantage of being flexible, allowing Hong Kong law firms to find the most suitable partners to handle particular cases. 19.6% of the sampled Hong Kong law firms opted for cooperation with specific Mainland law firms on a long-term basis. The advantage of this approach is that both sides have a good understanding of the work practice or style of each other, and this will facilitate communication and cooperation between them. 15.2% of the sampled Hong Kong law firms opted for setting up offices in the Mainland to handle Mainland legal matters.

The *Research Report* further points out that, although the mode of associations is widely recognised by PRD firms and Hong Kong law firms, it is seldom implemented in practice. Although the mode of associations is the priority for both sides, the survey about the current mode of cooperation reveals that as many as 84.2% of the sampled PRD firms opted for "cooperation over specific

cases”, 15.8% opted for cooperation through “information sharing”, only 10.5% opted for “associations”, and 10.5% opted for “others”.

The above shows that at present the cooperation between Guangdong law firms and Hong Kong law firms is by and large piecemeal and on a “case-by-case” basis. The mode of associations is widely recognised by both sides but seldom put into practice. To cater for the demands of the Qianhai Cooperation Zone, cooperation between both sides has to move to a higher level by implementing close associations.

(ii) Practical basis outside of the PRC: Research Report of the Working Group

With a view to gaining a deeper understanding of the legislation on and actual implementation of mixed practice in the countries and territories which do adopt this mode of practice, and assessing the feasibility and pros and cons of implementing (on a trial basis) various modes of practice in Qianhai, a delegate of the Working Party, led by Mr. Ambrose Lam, Vice-President of The Law Society of Hong Kong, travelled to London (UK), Dubai (UAE) and Australia in September 2011, November 2011 and February 2012 respectively to conduct on-site studies. The provisional conclusions reached pursuant to these studies form one of the bases of this research project.

(1) Studies in Australia

The objective of the studies in Australia was to examine the actual implementation of Multi-Disciplinary Practice, or “MDP” and Incorporated Legal Practice (“ILP”) by studying the development of lawyers’ practice in Australia.

MDP allows lawyers and other professionals such as accountants, surveyors and tax agents to carry out “mixed practice” and provide legal and other professional services from one single organization. In other words, an MDP organization does not solely provide legal services; instead, legal services may be but one of many services offered by such an organization.

Pursuant to the provisions of its *Corporations Act 2001 (Cth)*, since 1 July 2001 ILPs were allowed in New South Wales. ILP allows lawyers to set up corporations to provide legal services, and those corporations can be listed. Where investment management plans are in place, legitimate services in any other form or legitimate business can be provided or conducted. The *Legal Profession Act 2004* provides that notification to the Law Society must be made when an ILP intends, begins or ceases to provide legal services. The Office of the Legal Services Commissioner (“OLSC”) is responsible for regulating ILPs and ensuring that they comply with the relevant legislation

(including the *Legal Profession Act*, the regulations and the legal profession rules). As at October 2011, there are approximately 2,000 ILPs in Australia.

Following the studies, the Working Party takes the view that ILPs and MDPs are, to varying degrees, conducive to the development of lawyers' practice. In particular, there is much to be learnt from the ILP model: ILPs can raise capital by listing, they help revitalise the traditional legal services sector, and they benefit from more sophisticated management systems. These are all in line with the direction toward which the lawyer profession is moving, namely expansion and strengthening of the profession. On the other hand, such a model poses problems including conflict with the three core values under the common law which govern the profession – namely independence, confidentiality and professional privilege – as well as issues regarding coordination with regulatory authorities.

(2) Studies in London

At present, law firms in England are allowed to engage in Legal Disciplinary Practice, or "LDP" (legal practice with participation by non-lawyer managers), although the profession is gradually moving toward Alternative Business Structure, or "ABS" (legal and other practices in the form of open-ended joint ventures).

An LDP-type law firm can be established by lawyers together with non-lawyer managers. The characteristics of an LDP are: (1) lawyers and professionals in specified professions or permitted professionals are allowed to provide legal services from one and the same firm; (2) other professionals such as human resources professionals and accountants are allowed to become partners of an LDP; (3) the work performed by non-lawyer partners aims to assist in enhancing the standard of legal services. Non-lawyer partners are not allowed to independently provide professional services other than legal services. Non-lawyer partners cannot hold more than 25% of an LDP, while lawyer partners must hold at least 75% of an LDP.

In an ABS-type law firm, non-lawyers are allowed to become partners, directors or members or become owners, investors or shareholders. Non-lawyers are allowed to hold up to 100% of the shares of an ABS, although ownership of more than 10% has to be approved by relevant authorities. An ABS can provide both legal services and non-legal professional services. An ABS must appoint two of its managers or employees as compliance officers, including: (1) a compliance officer for legal practice ("COLP"); and (2) a compliance officer for finance and administration ("COFA"). One of their duties is to report to the Solicitors Regulation Authority ("SRA") any failure to comply with the relevant rules and regulations.

In future, LDPs whose partners include non-lawyer managers will be required to convert into ABSs, but LDPs whose partners comprise exclusively of lawyers will not have to do so.

(3) Studies in Dubai

The Working Party delegation studied the administrative authorities, courts and law firms in Dubai International Financial Centre ("DIFC"). DIFC is designed to be an international financial centre which attracts major international banks and financial institutions. In the course of establishing DIFC, Dubai engaged internationally renowned consultant firms to give advice to the government, and the consultants took the view that DIFC must adopt a globally used or recognised legal system in order to achieve the goal of attracting international financial institutions. As the international financial system is based on the common law, DIFC adopted the common law system. Commercial and civil cases are heard by DIFC courts. Starting from last year, as long as parties to a commercial case have expressly provided in the relevant contract that the parties agree to submit to the jurisdiction of DIFC courts, then DIFC courts will have jurisdiction over the case. This represents a relaxation of the previous restriction which limited the jurisdiction of DIFC courts to cases which had a connection to DIFC.

By studying the implementation of the various systems and the common law in DIFC, the Working Party reached the following conclusions: (1) It is necessary to have a proper positioning: by relying on its superior geographical location and a clear positioning as an international trade and financial centre, a region can highlight its unique competitive edge and developmental direction. (2) It is necessary to have resolute decision-makers and non-restrictive policies: government interference with the economy should be minimised as far as possible. (3) The DIFC model proves that, even within a continental law country, it is possible to demarcate and establish a special zone which adopts the common law, such adoption being beneficial to the development of that zone into an international financial centre.

3 Analysis of prospects and strategies of development of the legal profession in Qianhai

3.1 Cooperation in legal services

3.1.1 Mode of association among law firms: close association

(1) Current situation regarding associations between Guangdong law firms and Hong Kong law firms

As stated above, the implementation of CEPA and its *Supplement III* has created an increasingly liberal environment for the cooperation between Hong Kong lawyers and Mainland lawyers. However, by reason of the inadequacies of the supporting regulations, the cooperation between Hong Kong law firms and Mainland law firms under the CEPA framework leaves much to be desired. This can be illustrated by the current situation regarding law firm associations between the two sides[2].

(a) Development of associations hindered by lack of relevant provisions in CEPA and supporting regulations

It is obviously advantageous for a Hong Kong law firm and a Mainland law firm to operate in the form of an association as provided for under CEPA. First, an association can provide clients with "one-stop" services in respect of matters involving both jurisdictions of the Mainland and Hong Kong. Second, an association helps expand the practices of both the Hong Kong law firm and the Mainland law firm. Furthermore, both firms will greatly benefit from the sharing of information, exchange of managerial experiences and mutual training of personnel that an association entails.

For these reasons, the idea of an association has been well received by both Hong Kong law firms and Guangdong law firms. The survey results show that, as far as Guangdong is concerned, as many as 76% of the sampled lawyers took the view that forming associations with Hong Kong law firms would facilitate both sides in expanding their practices, 60% considered that associations would help integrate legal service resources of Hong Kong and the Mainland, and 36% considered that associations would give law firms more room for development.

On the Hong Kong side, 64.4% of the sampled lawyers took the view that forming associations with Mainland law firms would facilitate both sides in expanding their practices, 55.6% considered that associations would help integrate legal service resources of Hong Kong and the Mainland, and 55.6% considered that associations would give law firms more room for development. Only 8.9% took the view that associations would not mean much.

Notwithstanding the above, the development of associations has to some extent been hindered by certain defects in the provisions regarding associations, both in the CEPA agreement itself and in the supporting regulations. The major concerns raised by respondents in the survey summarized in the *Study on the*

[2] The following conclusions and data are extracted from the *Study on the Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region: Research Report*, based on the research jointly conducted by The Law Society of Hong Kong and the School of Law of the Sun Yat-Sen University.

Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region: Research Report are as follows:

(b) Expansion of representative offices restricted by prohibition against employing Mainland lawyers to provide legal services

A number of Hong Kong law firms have set up representative offices in the Mainland. The results of the survey indicate that, while the establishment of representative offices is conducive to the development of the legal service industries in both the Mainland and Hong Kong, the current regulations do not contain detailed provisions or measures to govern and support representative offices; instead some of the provisions are hindering the development of such offices.

As it stands, CEPA is silent as to whether representative offices of Hong Kong law firms in the Mainland can employ Mainland practising lawyers and as to the scope of Mainland practice of lawyers employed by such offices. These aspects are therefore still governed by the *Measures for the Administration of the Representative Offices Stationed in the Mainland of China by Law Firms of the Hong Kong Special Administrative Region and the Macau Special Administrative Region*.

Article 16 of the said *Measures* provides that a representative office of a Hong Kong law firm in the Mainland cannot employ any Mainland practising lawyer, and that the support staff employed by that office cannot provide legal services. Where a representative office contravenes that provision, the justice department (bureau) of the relevant province, autonomous region or municipality will issue a warning notice ordering the office to rectify the mistake within the specified time period; where the circumstances of the contravention are serious, the relevant justice department (bureau) will make an order suspending the office from practising for a specified period of time; and where the office still fails to rectify the mistake within the specified time period, the Ministry of Justice will revoke the certificate for practice of the office. "This provision makes it clear that the Mainland is still taking a cautious and conservative approach towards the liberalisation and opening up of the legal service industry, and that there is still a long way to go to meet the requirement of full liberalisation of the cooperation of legal services on both sides."

In view of the core importance of lawyers to a law firm, a representative office which is governed by the current provisions has no alternatives but to assign solicitors from the "mother firm" in Hong Kong to the Mainland to provide services. This will inevitably increase the cost of operating the office and form a big obstacle to practice development. The results of the research show that, although the representative office makes a lot of profits for its "mother firm" in Hong Kong, the inability to employ Mainland practising lawyers means that the

office can only act as a bridge between the Mainland and Hong Kong. In fact, 88.9% of the representative offices are operating at a deficit and require support by their "mother firms". This is without doubt a serious handicap to the normal activities of representative offices and a hindrance to their development.

(2) The necessity for close associations[3]

(a) Associations as mode of cooperation into which Guangdong law firms and Hong Kong law firms will develop

At present, cooperation between Guangdong law firms and Hong Kong law firms mainly takes the form of collaboration over specific cases. This very form of cooperation serves to promote mutual understanding, with the result that both sides evince an intention to cooperate more closely with each other. 80% of the sampled PRD firms have chosen to form associations with Hong Kong law firms in the course of exploiting the Hong Kong market. Of the sampled Hong Kong law firms, 64.4% considered that associations with Mainland law firms would facilitate practice development on both sides, and 55.6% considered that such associations would help integrate the legal service resources in Hong Kong and the Mainland. Furthermore, 55.6% of the respondents considered that associations would allow law firms more room for development. The voices opposing associations are relatively weaker. Only 8.9% of all respondents did not consider associations to have much meaning. It is therefore clear that the vast majority of the sampled lawyers are still positive about and receptive of the mode of associations.

The views of Guangdong law firms and Hong Kong law firms on the question of associations are basically consistent. Most of the law firms believe that associations will create a "win-win" situation and are inclined to cooperate with each other by means of associations. It is true that the mode of associations as it currently stands has a lot of problems. However, as both sides become more acquainted with each other through collaborating on specific cases, further interaction will certainly take place between the two sides, and the mode of associations, which is familiar to and recognised by both sides, will represent the direction of development of cooperation between the two sides.

(b) Implement the mode of close associations in Qianhai first

As stated above, both Guangdong law firms and Hong Kong law firms regard associations as an excellent way to expand their respective practices and integrate their resources. However, the development of associations between the two sides has been rather tardy. In this connection, it is noted that

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[3] See the speech of Ms. Elsie Leung "Exploring the Forms of Association Between Guangdong Law Firms and Hong Kong Law Firms" in Annex 1.

Guangdong law firms and Hong Kong law firms are holding different views on mutual communication and profit sharing between the parties to associations. The mode of associations should be further refined.

A. At present, the law firms on both sides cooperate by way of piecemeal collaborations over specific cases, and associations are nothing more than a formality. This should be changed. Both sides should extend the scope of cooperation, integrate resources and promote more substantive and closer cooperation, with a view to providing clients with a complete range of services;

B. The parties to an association should step up communication and understanding. They should familiarise themselves with each other's daily operation through staff exchange and training programmes. Hong Kong law firms should provide conduits through which Mainland lawyers can gain a better understanding of the legal practice in Hong Kong and develop more practice in Hong Kong with the help of Hong Kong law firms;

C. Hong Kong law firms should use Chinese more frequently in interacting with PRD law firms to remove unnecessary obstacles in communication. Both sides should establish a convenient and efficient system of communication.

To sum up, given the favourable condition creating by the State speeding up reform and development of pilot regions, it is a most timely and effective measure to implement the Guangdong-Hong Kong law firm association model first in the Qianhai Cooperation Zone. These measures, together with the implementation of the various policies, laws and regulations described above, will serve to take Guangdong-Hong Kong legal cooperation to new heights.

(3) Feasibility of close associations

Section Two of this Report has clearly set out the policy and legal bases of development of the legal profession in Qianhai. In light of the pioneering cooperation between Guangdong law firms and Hong Kong law firms, the State Council in its above-mentioned *Approval to Support the Policies Relating to the Development and Opening-up of Shenzhen's Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone* expressly puts forward the following requirements: "<u>Further foster cooperation between Mainland lawyers and Hong Kong lawyers, consider refining the mode of associations of Mainland law firms and Hong Kong law firms, and further implement the various liberalisation measures in favour of Hong Kong as provided for in CEPA and its Supplements."</u> and <u>"Allow professionals who have obtained qualification to practise in Hong Kong to directly provide professional services to enterprises and residents in Qianhai. The scope of such services is confined to Qianhai, and specific policies and measures including administrative measures shall be enacted by the relevant competent authority of the</u>

profession.” It follows that, as part of the measures giving effect to close associations, specific rules and regulations governing cooperation between Mainland lawyers and Hong Kong lawyers should be enacted by the relevant judicial administration authorities such as the Ministry of Justice. It is desirable for the new legislation to make clear its objectives along the following lines: “to promote the establishment of closer economic partnership between Hong Kong and Mainland China, to give effect to the *Mainland and Hong Kong Closer Economic Partnership Arrangement*, to provide for and regulate partnership and association activities between Hong Kong law firms and Mainland law firms, and to promote exchange and cooperation between Hong Kong and the Mainland in the legal service sector as well as joint development of both sides”.

3.1.2 Scope and mode of lawyers associations

(1) Mode of close associations

Given the drawbacks of the above-mentioned loose collaborations, a close form of association is the natural choice for Guangdong law firms and Hong Kong law firms which enter into cooperation. In this connection, it is desirable for the new legislation to include an express provision along the following lines: “[t]he term ‘partnership association’ as mentioned in the present Measures means a law firm in the form of a partnership association established in Qianhai by a Hong Kong law firm and a Mainland law firm in accordance with the contractual rights and obligations of both parties as stipulated in the partnership association contract, such an association law firm being an entity which provides legal services in its own name and which independently assumes legal liability.” Such a provision would certainly alter the current mode of cooperation which only allows Hong Kong law firms that have established representative offices in the Mainland to establish associations with Mainland law firms, and would also alter the present situation in which law firms cooperate in a loose fashion and associations are nothing more than a formality. With these changes, a brand new setting would be created for cooperation between Guangdong law firms and Hong Kong law firms!

(2) Applications for associations and establishment of, changes to and cancellation of associations

The new legislation should specifically provide for matters including applications for associations and the establishment of, changes to and cancellation of associations, so as to ensure the smooth operation of associations and, at the same time, to effect certain significant breakthrough.

For example: “In a partnership association, the partners from the Hong Kong law firm should be practising lawyers in Hong Kong, and at least one of them

should possess at least 3 years' experience as a partner in the Hong Kong law firm …".

(3) Specific provisions on scope of practice of associations and rules governing associations

The new legislation should contain specific provisions on the scope of practice of associations and the rules governing associations, such as provisions allowing Hong Kong lawyers to engage, without limitation, in the provision of foreign-related and Hong Kong-related legal services in the Mainland, and allowing any lawyer at a partnership association in Qianhai who passes prescribed examinations to provide, without limitation, legal services in respect of all matters arising within the jurisdiction of or in Qianhai. These provisions would to some extent serve to relax the limitation that Hong Kong lawyers can only deal with non-litigation legal matters. The new legislation should also specifically provide for the internal management of associations, such as meetings and functions of partners, and should provide that the members of the internal management body should comprise representatives from both parties to the association, in order to achieve geographical balance.

(4) Law applicable to legal activities carried out by partnership associations

The new legislation should contain provisions on the law applicable to legal activities carried out by partnership associations, taking into account the possibility that Hong Kong law firms and lawyers will be bound by the relevant Hong Kong law. The provisions may, for example, specify as follows: "In the course of practice, a partnership association shall comply with the *Law of the People's Republic of China on Lawyers* and other relevant legislation and regulations and shall not contravene the lawyer ethics and disciplines." In this context, "other relevant legislation and regulations" should be construed to include rules and regulations under Hong Kong law which relate to law firms and lawyers' practice.

3.1.3 Attempt at mixed practice

(1) Mode of mixed practice and its superiority

As stated above, having conducted on-site studies in London, Dubai and Australia, the Working Party came up with the unique characteristics of each of the three models of mixed practice, namely LDP, ABS and MDP.

In an LDP, a non-lawyer manager is a natural person authorised by the SRA and is entitled to participate in the management of the LDP firm. Companies in non-legal professions are not eligible to become non-lawyer managers. The

number of non-lawyer managers cannot exceed 25% of the management, and non-lawyer managers cannot hold more than a 25% stake in the LDP. The advantages of an LDP include: (a) equity can be raised from a broader base of members; (b) as non-lawyers have the opportunity to become partners, members or directors, an LDP is able to recruit outstanding non-lawyer employees and attract talents from non-legal professions; and (c) an LDP is able to diversify the range of legal services provided by the practice by becoming a "one-stop shop" or speeding up specialisation in various areas of legal services. The disadvantage of an LDP is that it can only provide legal services.

In ABS and MDP, non-lawyers are allowed to own an interest in the practice, which can provide clients with both legal and other professional services. There are supporters throughout the world for these two convenient practice models, but there are also people who are opposed to them, being worried that these models would to a considerable extent undermine the core values of lawyers such as independence and confidentiality.

(2) History of and practical need for mixed practice in the PRC

Among the items preserved at the exhibition centre which was formerly occupied by the Shanghai Lawyers Association are two documents which record a legal case: on 18 September 1936, by reason of its registered business name having been unlawfully used by others, pharmaceutical company "Tonghanchun" executed a document instructing Mr. Li Wen Jie of the Shanghai Lawyers Association to commence private criminal prosecution and civil proceedings against the wrongdoers. Mr. Li then wrote a letter to the wrongdoers demanding them to immediately stop using Tonghanchun's name. That letter bears the letterhead of "Li Xin Accounting Firm". This illustrates that in those times there already existed mixed legal-accounting practice.[4]

Furthermore, in the *Shanghai Street Directory* published by The Free Trading Co. Ltd. in 1947, there were listings of organisations such as "Jiu Xin Accounting and Law Firm" and "Min Xin Law and Accounting Firm", which were listed as mixed practices comprising lawyers and accountants who provided two types of services to clients at the same time.[5]

Since more than 30 years ago when the PRC started implementing the "reform and opening-up" policy, foreign investments and trade in the State have increased steadily. In recent years, with the strengthening of the State's economic power and the implementation of the "reaching out" strategy, external investments by the State started to increase. All these require high-quality, speedy, convenient and efficient all-round services. For example, in a

[4] See the photocopied materials in Annex 2.
[5] See the photocopied materials in Annex 3.

survey conducted by The Law Society of Hong Kong on legal service users, The Hongkong and Shanghai Banking Corporation expressed their hope that in other jurisdictions the Hong Kong legal profession would assist Mainland enterprises to be listed and assist State enterprises in making external investments. In practice, clients hope that all the relevant resources including those of legal services are pooled together so that clients can have all the issues resolved by and at one single integrated service agency instead of having to run around for different services. If the State is able to establish such an agency and properly coordinate the relationships among the various authorities and departments involved, then this will go a long way toward augmenting the attractiveness of the "soft" environment, facilitating the speedy expansion and strengthening of the PRC lawyer profession, and rapidly enhancing the international competitiveness of the service agencies of the State. Furthermore, with its ability to supply international commercial talents and channels of financing and its familiarity with both oriental and western culture and social skills, the Hong Kong lawyer profession will greatly assist the State in carrying out the "reaching out" strategy.

(3) First and pilot implementation of mixed practice in Qianhai

Similar to DIFC, Qianhai enjoys an enviable geographical location. Coupled with the fact that its positioning has been clearly defined by the State, namely as a "Shenzhen/Hong Kong Modern Service Industry Cooperation Zone", Qianhai is having a unique core competitiveness and developmental direction. Therefore, the Working Party takes the view that the various models of mixed practice, namely LDP, ABS and MDP, should be implemented on a trial basis in Qianhai, having regard to the characteristics of each model. Such implementation should be done phase by phase, initially in the form of "one-stop" LDPs which do not involve mixed practice, and subsequently considering, in light of the experience gained from the initial implementation, the feasibility of moving to mixed practice in the form of ABS.

Article 4(2) of the above-mentioned *Approval by the State Council to Support the Policies Relating to the Development and Opening-up of Shenzhen's Qianhai Shenzhen/Hong Kong Modern Service Industry Cooperation Zone* proposes to "[f]urther foster cooperation between Mainland lawyers and Hong Kong lawyers, consider refining the mode of associations of Mainland law firms and Hong Kong law firms, and further implement the various liberalisation measures in favour of Hong Kong as provided for in CEPA and its Supplements." Article 5(3) proposes to "**[a]llow professionals who have obtained qualification to practise in Hong Kong to directly provide professional services to enterprises and residents in Qianhai. The scope of such services is confined to Qianhai, and specific policies and measures including administrative measures shall be enacted by the relevant competent authority of the profession**". These provisions lay down the

foundation for the trial implementation in Qianhai of mixed professional practice (including legal services) similar to MDP or ABS.

Specifically, the Working Party suggests that, as first steps, Mainland lawyers and Hong Kong lawyers should be allowed to jointly operate close partnership law firms in Qianhai and provide "one-stop" legal services to clients; authorised non-lawyer professionals (natural persons) should be allowed to become partners of and participate in the ownership and operation of such law firms, subject to the limitation that such partners cannot hold more than 25% of the shares of such a firm; or non-lawyer managers can be employed to participate in the management of such law firms subject to the limitation that the number of non-lawyer managers cannot exceed 25% of the management, and non-lawyer managers cannot hold more than 25% of the shares of the partnership. Such law firms should be allowed to employ accountants, tax agents, valuers and other professionals insofar as they are relevant to the provision of legal services; but these professionals may only provide, together with lawyers, legal services and relevant advice (for example, in respect of finance and tax planning) and cannot carry on auditing or other businesses independently.

After LDP is implemented for a period of time, the feasibility of moving to some form of limited mixed practice can be considered in light of the experience gained from such implementation. Such limited mixed practice may take the form of "integrated high-end services companies" which, apart from providing mainly legal services, will also offer services pertaining to foreign-related commercial activities, such as accounting, tax, customs and foreign exchange, so as to provide clients with greater convenience and enhance the efficiency and overall coordination of services. At the same time, measures should be formulated and taken as necessary to safeguard the core values of lawyers and ensure the independence and confidentiality of lawyers' services.

At its initial stage, such "one-stop" legal services may be provided only to State enterprises which make external investments or enter into relevant foreign-related transactions. The reasons are: (1) to cater for the needs of clients including financial institutions for convenience; (2) given that countries such as England and Australia have been implementing LDP or even ABS, the PRC should also commence, stage by stage, the trial implementation of similar models in order to enhance the competitiveness of the PRC legal service industry.

3.1.4 Relevant preferential measures

The implementation of the above-discussed legal service cooperation in Qianhai requires not only the continual enactment by the State of directly

supportive policies, laws and regulations, but also the reinforcement of relevant preferential measures. For example, tax benefits should be given to associations and foreign exchange controls should be relaxed, to enable associations to expand and strengthen themselves in order to compete with foreign law firms; and convenience in customs clearance should be provided to lawyers of associations and their vehicles, in order to enable them to travel more smoothly between Shenzhen and Hong Kong and hence provide better legal services.

3.2 Cooperation in regulation of lawyers

3.2.1 Rationale for and basis of cooperation in regulation of lawyers: similarities and differences between regulatory systems in Mainland China and Hong Kong

(1) Differences between regulatory systems in Mainland and Hong Kong

In Mainland China, the regulatory system for lawyers was established back in the 1980s. With the promulgation in May 1996 of the *Law of the People's Republic of China on Lawyers* ("*PRC Lawyers Law*"), which laid down a solid legal foundation for the lawyer profession in the PRC, Mainland lawyers and law firms started to develop into a more professional and large-scale industry. In Hong Kong, the lawyer profession has a history of 150 years, and the regulatory system for lawyers was established as early as in 1841 when Hong Kong established a legal system based on the English system. Today, the lawyer profession in Hong Kong is completely autonomous and the regulatory system is in line with international standards, adopting the sophisticated regulatory models in use in the contemporary international community. The regulatory system currently in place in the Mainland is rather different from that in Hong Kong, in respect of both the management of law firms and the management of lawyers.

(a) Differences regarding regulation of law firms

The differences are manifested mainly in two aspects: the nature of law firms and provisions on the employment of staff.

(i) Nature of law firms

According to the *PRC Lawyers Law*, Mainland law firms are classified into three types, namely law firms established with capital contribution from the State, cooperative law firms and partnership law firms. Different types of law firms assume different liabilities, but in respect of all types of law firms, all written legal opinion to clients must be signed by lawyers and affixed with the seal of the law firm concerned.

On the other hand, in Hong Kong, according to the *Solicitors' Practice Rules* (Cap.159H of the Laws of Hong Kong), there are only two types of law firms, namely sole proprietorships and partnerships. Recently, legislation was passed in Hong Kong to allow lawyers to practise as corporations, and the legislation will be implemented once the relevant subsidiary legislation and details of implementation are put in place. Furthermore, in mid July 2012, the Legislative Council of Hong Kong passed legislation allowing lawyers to practise in the form of limited liability partnerships, and the legislation will take effect once the relevant administrative measures are put in place. At present, whether a law firms operates as a sole proprietorship or a partnership, the sole practitioner or partners assume(s) unlimited joint and several liability in respect of debts incurred by the law firm. Legal documents have to be signed by lawyers but do not have to bear the seal of the law firm concerned.

(ii) Provisions on employment of staff

In Mainland, there are no provisions governing the number of staff members employed by Mainland law firms. Mainland law firms consist of three groups of people, namely lawyers, trainee lawyers and other staff members. At the same time, the *Internal Management of Law Firms Rules (Trial Implementation)* enacted by the All-China Lawyers Association provide that law firms should accept and manage trainee staff members in accordance with the law. Law firms are not allowed to designate trainee staff members to deal on their own with lawyers' business. Other staff members who are not qualified to be lawyers can only undertake non-legal work.

In Hong Kong, the professional rules provide that a Hong Kong law firm cannot employ unqualified persons in a number more than 6 plus 8 times the number of resident principals and lawyers employed full-time in that firm.

(b) Differences regarding regulation of lawyers

The difference are manifested mainly in the following aspects: the regulation of lawyers, obtaining of lawyer's qualification, provisions on practice promotion and advertising by lawyers, insurance premiums for lawyers, lawyers' fees and charges, and professional training for lawyers.

(i) Regulation of lawyers

In the Mainland, lawyers are currently still managed by the joint efforts of judicial administration authorities and lawyers associations. Judicial administration authorities reserve the power to directly regulate lawyers and law firms and sometimes still take regulatory measures (including sanctions) against lawyers or law firms directly, but are also gradually strengthening

supervision of lawyers associations to check whether they are properly performing their supervisory functions.

Lawyers associations are mainly responsible for ensuring that lawyers practise according to the law and protecting lawyers' lawful rights and interests; organising professional training for lawyers; and conducting education in, inspections of and supervision over professional ethics and practice discipline. Lawyers associations may award or take disciplinary measures against lawyers in accordance with the articles of association. Judicial administration authorities are responsible for the registration of lawyers. In the Mainland, the assessment of rankings of lawyers and the assessment of rankings of other professionals are collectively known as professional title assessment. Such assessment is conducted by the local judicial administration authorities following the procedures of application, recommendation and assessment. The criteria for assessment may differ among localities. Professional titles are tenured.

In Hong Kong, the lawyer profession is essentially self-regulated, with The Law Society of Hong Kong being responsible for managing lawyers. The Council of The Law Society, whose members are elected, is under wide-ranging duties in maintaining the professional standard and regulating the professional conduct of lawyers. The Council is also responsible for approving and issuing the practising certificates of lawyers. In Hong Kong, section 3 of the *Legal Practitioners Ordinance* provides that every lawyer is an officer of the court. The power to strike off a lawyer's name is exercised by the Hong Kong High Court.

(ii) Obtaining of lawyer's qualification

In the Mainland, the *PRC Lawyers Law* provides that a lawyer has to obtain the requisite qualification and a practising certificate before he/she can practise. Generally speaking, a person who has acquired an undergraduate legal education or more in an institution of higher learning, or a person who has acquired an undergraduate education or more in another major in an institution of higher learning and possesses legal professional knowledge, may acquire qualification as a lawyer upon passing the National Judicial Examination. That person then undergoes practice training at a law firm for one full year and will be issued a practising certificate upon examination and approval by the judicial administration department of the people's government at or above the level of province, autonomous region or municipality directly under the Central Government.

In Hong Kong, a law student who has acquired a Bachelor of Laws degree (LL.B.) or an equivalent professional diploma is required to complete a one-year Postgraduate Certificate in Laws (P.C.LL.) course in which the student

studies subjects with a stronger practical element and receives training in practice skills and professional conduct. Upon completing the course and passing the P.C.LL. examination administered by the relevant school of law, the student can choose between becoming a solicitor or becoming a barrister, but whatever the choice is, he/she has to complete a period of traineeship before he/she is qualified to practise. The legal profession in Hong Kong is, following the English tradition, divided into the two distinct branches of solicitors and barristers, and in the absence of a uniform qualifying examination, the two branches impose different requirements on graduates as regards traineeship. The qualification to practise as a solicitor is granted by the High Court, and The Law Society is responsible for issuing practising certificates annually.

(iii) Provisions on practice promotion and advertising by lawyers

The *Standards Governing Professional Ethics and Practice Discipline* enacted by the All-China Lawyers Association prohibit lawyers from engaging in improper competition by various means, for example, printing on their name cards information regarding their academic qualifications, non-lawyer titles, public offices/social services and honours/awards. At the same time, local lawyers associations impose stringent restrictions on the contents of law firm advertisements, providing that such contents are normally confined to the name, office address, telephone number, fax number, postal code, e-mail address and website of a law firm and the types of legal services that the law firm is able to provide in accordance with the law.

In Hong Kong, since 1992, law firms and lawyers have been allowed by the Professional Guide to promote their practice, but the form of promotion is subject to a number of restrictions, for example: practice promotion must be decent, appropriate, legal and truthful; it must not be deceptive, exaggerated or misleading; it must not claim or imply that a lawyer is an expert; it must not refer to a lawyer's success rate; it must not make any adverse comparison with the services offered or fees charged by other law firms; and it must not be defamatory.

(iv) Insurance premiums for lawyers

In the Mainland, with the expansion of the scope and scale of lawyers' practice, and in order to protect clients' interests and assist lawyers in reducing risks associated with their legal practice, the *Administrative Measures for Partnership Law Firms* were promulgated on 16 June 2004 to expressly provide for practice liability insurance: "Partnership law firms shall, in accordance with the relevant regulations, participate in the lawyers' practice liability insurance scheme."

In Hong Kong, rule 6 of the *Solicitors (Professional Indemnity) Rules* (Cap.159M) provide that: "(1) Subject to rule 7, every solicitor who is, or is held out to the public as, a solicitor in practice in Hong Kong shall be required to have and maintain indemnity. (2) Any current practising certificate which has been issued to a solicitor who is required to have and maintain indemnity and who fails to have indemnity shall be suspended and such person shall not be qualified to act as a solicitor pursuant to section 7 of the [Legal Practitioners] Ordinance while he shall fail to have indemnity." The Professional Indemnity Scheme states that "[t]he Scheme is compulsory and has been in operation since 1986." And that "the Scheme has operated smoothly since 1986. After deducting administrative expenses and insurance costs, the contributions received are applied to prudent investments in order to build up a long-term claims reserve fund." In Hong Kong, a lawyer who does not join the professional indemnity scheme in a particular year will not be issued any practising certificate for that year. Contributions, which leads to coverage up to $10 million per event, are paid every year at the time of registration. The amount of contribution is calculated by reference to the level of the paying firm's fee income during the preceding year and usually represents 3% to 5% of such fee income. Some law firms have to pay contributions over and above the said amount, depending on the subject matters of the cases they handle.

(v) Lawyers' fees and charges

In Mainland, the *Interim Measures for the Administration of Lawyers' Service Charge* promulgated in 1997 specify two forms of fee-charging, namely "piece work" and "proportion of an involved amount". At the same time, the *PRC Lawyers Law* provides that, when they undertake business, partnership law firm shall uniformly sign written retainer contracts with clients and uniformly collect service fees and handling fees; and that no partner or lawyer shall privately receive service fees or handling fees. Detailed standards of fee-charging have been published and implemented by provincial judicial authorities. Furthermore, contingency fee arrangements are very common in the Mainland. Under such an arrangement, instead of paying the lawyer's service fees in advance, the client will, if the case succeeds, utilise an agreed portion of the property or benefit obtained to pay the lawyer's fees; and the client does not have to pay such fees if the case fails. In the Mainland, contingency fee arrangements have become one of the forms of fee-charging adopted by lawyers, and there are no express provisions which prohibit or restrict such arrangements. Disputes over lawyers' fees are dealt with by lodging a complaint to the relevant lawyers associations or by commencing litigation.

In Hong Kong, lawyers usually charge clients on the basis of an hourly rate, with fees to be negotiated between the lawyer and the client. There are specialised "taxing masters" who conduct taxations of bills of costs in order to

resolve disputes over lawyers' fees. Contingency fee arrangements are not permitted in Hong Kong.

(vi) Professional training for lawyers

In the Mainland, the *PRC Lawyers Law* provides that "partnership law firms shall establish systems for professional learning and training, professional ethics education, service quality supervision, studies of major cases, annual evaluation and assessment, and accountability for wrongdoings in the course of practice", and that "lawyers associations shall perform the following duties: … (3) organising professional training for lawyers; …". Local lawyers associations require every registered lawyer to attend training courses for no less than a specified number of hours within one year, failing which the lawyer will not be registered for the following year. Lawyers associations also set up professional committees in respect of various areas of practice, each committee being responsible for looking into major aspects of an area of practice including legal education and lawyers' practice, and also for organising learning and discussion sessions, professional seminars, forums and salons for lawyers. The activities organised by the professional committees form part of the annual professional training programme organised by a lawyers association, and participation in those activities is included in counting the number of hours of professional training received by the participating lawyer for the relevant year.

In Hong Kong, rule 5 of the *Continuing Professional Development Rules* (Cap.159W) provides that: "(1) Subject to subsection (2), a trainee solicitor and a solicitor to whom these Rules apply must accumulate 15 CPD accreditation points each practice year: Provided that a trainee solicitor to whom these Rules apply must accumulate 30 CPD accreditation points by the end of his period of employment as a trainee solicitor." Continuing professional education takes many forms, and in relation to a law firm which satisfies the relevant requirements, attendance by a trainee solicitor or solicitor of that firm in training courses organised by that firm (i.e. in-house training) is included in calculating the accreditation points.

Apart from the above-mentioned general requirements regarding continuing professional development, every solicitor, trainee solicitor and foreign lawyer who practises in a Hong Kong law firm must satisfy the requirements as to risk management training as laid down in the *Legal Practitioners (Risk Management Education) Rules*[6], by attending compulsory courses in risk management education ("RME"). A pioneering scheme devised by The Law Society in the management of lawyers globally, the RME programme is hugely

[6] Enacted by The Law Society of Hong Kong pursuant to section 73 of the Legal Practitioners Ordinance (Cap.159) and with the prior approval of the Chief Justice of the Hong Kong Court of Final Appeal; took effect from 14 March 2003 (except rule 11), rule 11 took effect from 1 November 2006.

beneficial in raising lawyers' awareness of practice risks and strengthening lawyers' ability to control and manage such risks. The above-mentioned *Rules* provide that The Law Society must implement an RME programme which consists of general core courses, principal's core courses and elective courses; that a lawyer must within a practice year complete all general core courses; and that a lawyer must within a practice year complete at least 3 hours of elective courses or, within that practice year and the first succeeding practice year, complete at least 6 hours of elective courses. According to the guidelines on continuing practice development, RME courses are accredited with CPD points. Every year, in applying for a renewal of his/her practising certificate, a lawyer has to complete a Training Record and a statement of compliance as required by the RME programme. Supplying incorrect or false information will affect the said application for renewal, and non-compliance with the course requirements may, depending on individual circumstances, be regarded by the Council of The Law Society as professional misconduct. Cases involving serious professional misconduct will be referred to the Solicitors Disciplinary Tribunal, and lawyers found guilty of such misconduct will receive such penalty/penalties as is/are considered appropriate in the circumstances, including fine, disapproval, suspension from practice, striking-off, cancellation or termination of trainee solicitor contracts, etc.

(2) Similarities between regulatory systems in Mainland and Hong Kong

While there are, as discussed above, considerable differences between the systems for the regulation of lawyers in Mainland and in Hong Kong, the two systems also share a number of similarities. For example, they both have restrictions on the eligibility to become law firm partners as well as provisions governing the periods over which business files are to be kept. Furthermore, both systems contain stringent provisions in respect of violations of laws and disciplinary rules by lawyers. In the Mainland, the *PRC Lawyers Law* provides that, if a lawyer commits any of the following acts, the judicial administration department of the people's government at or above the level of province, autonomous region or municipality directly under the Central Government shall revoke his practising certificate; where the case constitutes a crime, criminal responsibility shall be pursued according to law: (1) divulging State secrets; (2) bribing a judge, prosecutor, arbitrator or other relevant working personnel or instigating or inducing a party to do so; (3) providing false evidence, concealing important facts or intimidating or inducing another to provide false evidence or conceal important facts. Where a lawyer is subjected to criminal punishment for an intentional crime, his lawyer's practising certificate shall be revoked. The *PRC Lawyers Law* also provides that lawyers and law firms may not be relieved of or limited in the civil liability that they shall bear for the losses caused to a party due to illegal practice of law or fault. Provisions similar to these can be found in Hong Kong law. These similarities

provide a direct basis of cooperation in the regulation of lawyers in the Mainland and Hong Kong.

3.2.2 Regulatory body for and mode of regulation of lawyers associations

In recent years, with the rapid development of the lawyer profession, the Mainland has continuously carried out reforms and tried to refine the systems for the regulation of lawyers, employment of personnel and distribution of profits. However, given the differences in terms of historical development, legal system and social characteristics, there are still considerable disparities between the system for the regulation of lawyers in the Mainland and that in Hong Kong. Therefore, as they enter the Mainland legal service market, particularly in the course of first and pilot implementation of Guangdong-Hong Kong lawyers cooperation in Qianhai, Hong Kong lawyers have to be sufficiently familiar with the differences between the two regulatory systems and, guided by the principle of "seeking common grounds while reserving the differences", try their best to strengthen coordination and cooperation and avoid being arbitrary and rigid, so that the regulation of lawyers in Qianhai can be smoothly implemented, thereby facilitating the refinement and integration of the regulatory systems of the Mainland and Hong Kong and the enhancement of regulatory standards.

(1) Regulatory body for associations: "Qianhai Lawyers Association" established jointly by both sides

As stated above, Mainland lawyers are currently still managed by the joint efforts of judicial administration authorities and lawyers associations. This being the case, it is not completely clear what powers are delegated by judicial administration authorities to lawyers associations, nor is it clear how lawyers associations should perform their functions. By contrast, the lawyer profession in Hong Kong is completely self-regulated, with a management system which adopts a sophisticated international model and is therefore more refined. It is therefore not practicable to try to incorporate the new models of lawyers' cooperation in Qianhai into the Mainland lawyers management system; indeed, such an attempt is at variance with the spirit behind the State policy of first and pilot implementation in Qianhai.

For the above reasons, the Working Party recommends the establishment of a "Qianhai Lawyers Association", a body corporate comprising representatives from the two existing regulatory bodies, namely Shenzhen Lawyers Association and The Law Society of Hong Kong. The Qianhai Lawyers Association is intended to be a self-regulatory organisation responsible for managing law firms and lawyers in Qianhai.

(2) Mode of regulation of associations: principally industry regulation, supplemented by administrative regulation

Given the similarities and differences between the lawyers management systems in the Mainland and in Hong Kong, and in order to seek common ground while preserving differences, the Working Party recommends that the mode of regulation be "principally in the form of industry regulation, supplemented by administrative regulation"; in other words, the industry should principally be regulated by the "Qianhai Lawyers Association" to be established jointly by both sides, and articles of associations appropriate to the circumstances of Qianhai are to be drawn up for the Qianhai Lawyers Association to define the rights and obligations of law firms and lawyers in Qianhai, in accordance with article 46 in Chapter 5 (headed "Lawyers Associations") of the *PRC Lawyers Law*, which requires lawyers associations to "perform the following duties: (1) ensuring that lawyers practise according to law and protecting lawyers' lawful rights and interests; (2) summarising and exchanging lawyers' work experience; (3) enacting standards and disciplinary rules for the profession; (4) organising professional training and education in professional ethics and practice discipline for lawyers, and conducting examinations and assessments of lawyers' practice activities; (5) organising and managing training activities for those who apply to practise as lawyers, and conducting examinations and assessments of trainees; (6) giving awards to or taking disciplinary measures against lawyers and law firms; (7) receiving complaints or reports against lawyers, mediating disputes arising in lawyers' practice activities, and receiving complaints from lawyers; (8) other duties prescribed by law, administrative rules, regulations and articles of associations of lawyers associations." Detailed professional standards and disciplinary rules are to be enacted by lawyers associations but "shall not be contrary to the relevant law, administrative rules and regulations".

Cases involving conduct by Qianhai law firms and lawyers in breach of professional standards should be dealt with by the Qianhai Lawyers Association in accordance with its disciplinary rules. As regards acts done by lawyers in violation of laws or regulations (as set out in articles 47 to 50 of the *PRC Lawyers Law*[7]), the relevant judicial administration authority may

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[7] The *PRC Lawyers Law* **Article 47.** If a lawyer commits any of the following acts, the judicial administration department of the people's government of a municipality directly under the Central Government or a city divided into districts shall issue a warning and may impose a fine of no more than RMB 5,000; where there is any illegal income, the said department shall confiscate such income; where the case is serious, the said department shall impose a penalty of cessation of practice for a period for no more than 3 months:

(1) simultaneously practising in two or more law firms;

(2) soliciting business by improper means;

(3) representing both parties involved in the same case, or handling legal matters involving a conflict of interest with himself or his close relative(s);

(4) acting as agent *ad litem* or defending clients within two years after leaving his post in the People's Court or the People's Procuratorate;

(5) refusing to perform his obligations in respect of legal aid.

Article 48. If a lawyer commits any of the following acts, the judicial administration department of the people's government of a municipality directly under the Central Government or a city divided into districts shall issue a warning and may impose a fine of no more than RMB 10,000; where there is any illegal income, the said department shall confiscate such income; where the case is serious, the said department shall impose a penalty of cessation of practice for no less than 3 months and no more than 6 months:

(1) accepting engagement or authorisation privately, charging fees to the client privately, or accepting money, property or things of value from the client;

(2) having accepted engagement or authorisation and without good reason, refusing to defend or represent a client or failing to appear in court on schedule to participate in litigation or an arbitration;

(3) seeking the disputed rights and interests of a party by taking advantage of providing legal services;

(4) divulging commercial secrets or private affairs of the parties concerned.

Article 49. If a lawyer commits any of the following acts, the judicial administration department of the people's government of a municipality directly under the Central Government or a city divided into districts shall impose a penalty of cessation of practice for no less than 6 months and no more than one year and may impose a fine of no more than RMB 50,000; where there is any illegal income, the said department shall confiscate such income; where the case is serious, the judicial administration department of the people's government of a province, autonomous region or municipality directly under the Central Government shall revoke the lawyer's practising certificate; where the case constitutes a crime, criminal responsibility shall be pursued according to law:

(1) meeting with a judge, prosecutor or arbitrator or other relevant working personnel in violation of regulations, or influencing the lawful conduct of a case by other improper means;

(2) bribing a judge, prosecutor or arbitrator or other relevant working personnel, or presenting such bribe, or instigating or inducing a party to do so;

(3) providing false materials to the judicial administration department or performing other fraudulent acts;

(4) intentionally providing false evidence, or intimidating or inducing another to provide false evidence, or obstructing the opposite party's lawful obtaining of evidence;

(5) accepting money, property or things of value from the opposite party, or maliciously conspiring with the opposite party or a third party to injure or violate the client's rights and interests;

(6) disrupting the order of a court or an arbitration tribunal, or interfering with the normal conduct of litigation or arbitration activities;

(7) inciting or abetting the client to resolve disputes by illegal means such as disturbing the public order or endangering public safety;

(8) publishing any remark, comment or statement which endangers the safety of the State, maliciously defames others or seriously disrupts the order of a court;

authorise the Qianhai Lawyers Association to exercise the power to impose penalties including the issue of warnings, fines, confiscation of illegal gains and cessation of practice. The relevant administrative expenses are of course to be borne by the judicial administration authority, and all fines received and illegal gains confiscated are to be submitted to that authority. Where an act constitutes a crime, the case should be referred to the relevant judicial authority which will then pursue criminal responsibility in accordance with the law.

The judicial administration authority in Qianhai will support and assist the Qianhai Lawyers Association in managing Qianhai law firms and lawyers.

If the judicial administration authority could also delegate to the Qianhai Lawyers Association the powers relating to the registration of Qianhai law firms and lawyers and the revocation of the practising certificates of Qianhai lawyers, this would serve to further promote the formation in Qianhai of a

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(9) divulging State secrets.

Where a lawyer is subjected to criminal punishment for an intentional crime, his lawyer's practising certificate shall be revoked.

Article 50. If a law firm commits any of the following acts, the judicial administration department of the people's government of a municipality directly under the Central Government or a city divided into districts shall, having regard to the circumstances, issue a warning and impose a penalty of suspension of business for rectification for no less than one month and no more than 6 months and may impose a fine of no more than RMB 100,000; where there is any illegal income, the said department shall confiscate such income; where the case is serious, the judicial administration department of the people's government of a province, autonomous region or municipality directly under the Central Government shall revoke the law firm's practising certificate:

(1) accepting engagement or authorisation or charging fees to the client in violation of regulations;

(2) seeking to vary important matters such as the law firm's name, person-in-charge, articles of association, partnership agreement, domicile and partners in violation of legal procedures;

(3) engaging in business activities other than legal services;

(4) soliciting business by improper means such as slandering other law firms or lawyers or paying middleman's fees;

(5) accepting cases involving a conflict of interests in violation of regulations;

(6) refusing to perform obligations in respect of legal aid;

(7) providing false materials to the judicial administration department or performing other fraudulent acts;

(8) failing to manage its lawyers properly or at all, thereby causing serious consequences.

Where a law firm is penalised by reason of the above illegal acts, its person-in-charge shall, depending on the seriousness of the circumstances, be given a warning or subjected to a fine of no more than RMB 20,000.

lawyer profession that stays ahead of the lawyer professions in other regions in the Mainland, and would also be in line with the international trend of minimising administrative interference with the management of lawyers.

Following the recommendation of the Working Party on the first and pilot implementation in Qianhai of LDPs which provide "one-stop" services, it will be necessary to establish a corresponding regulatory mechanism – the Qianhai Lawyers Association should act as the regulatory body for lawyers; other professionals such as accountants and valuers should be managed by representatives from the professional institutes or bodies to which they belong; and the Qianhai Lawyers Association and other professional representatives will join hands in enacting relevant rules, including rules of professional conduct, to regulate the provision of "one-stop" services.

(3) Coordinating body for associations: "Joint Conferences of Lawyers Associations" organised by All-China Lawyers Association and Law Society of Hong Kong

As the first and pilot implementation of the mode of associations is confined to Qianhai, issues requiring coordination will inevitably arise. The All-China Lawyers Association and The Law Society of Hong Kong should organise "Joint Conferences of Lawyers Associations" which will actively perform coordination functions. Furthermore, the close associations of lawyers, which are beneficial both to the State and to its people, represent the direction in which the lawyer profession in the PRC will develop, and the establishment of "Joint Conferences of Lawyers Associations" will properly prepare the groundwork for the national promotion of the mode of associations in future.

3.3 Cooperation in applicability of law

3.3.1 Scope of application of Hong Kong law: at present, covers mainly non-Mainland civil and commercial cases involving Hong Kong and Macau

Communications and dealings between Mainland China and the Hong Kong Special Administrative Region are conducted on the basis of one country, two systems and two jurisdictions. Given the vast differences between the Mainland legal system and the Hong Kong legal system, being parts of two distinct social systems within one country, regional conflicts between the two systems are bound to arise. In the context of Qianhai, the most prominent type of conflict is conflict of commercial laws. When legal and natural persons from the Mainland and from Hong Kong engage in commercial activities in Qianhai, they will inevitably meet with practical problems such as "Based on the law of which territory should commercial transactions be conducted?" and "In

accordance with the law of which territory should commercial disputes be resolved?" Accordingly, one of the critical issues that have to be considered in implementing cooperation between Mainland lawyers and Hong Kong lawyers in Qianhai is the need for a thorough understanding of the conflicts in respect of the application of the commercial laws of both sides, and the need for practicable ways to deal with those conflicts.

On the question of how to reconcile the regional conflict of laws between the Mainland and Hong Kong, a commonly held idea is that such conflict can be addressed a few ways which, from short-term to long-term, are: at present, each territory applies its own law on conflict by analogy; and then a regional agreement on the application of law is entered into; and in future, when conditions are ripe, a set of regional law and substantive law governing conflict of laws will be enacted which will be consistently applied in the jurisdictions concerned.

At present, the most practicable and effective way to reconcile regional conflict of commercial laws in Qianhai is to apply the relevant law on conflict and, by means of a process of indirect reconciliation, to enable Hong Kong law to be applied in some of the cases in Qianhai.

On 28 October 2010, the Standing Committee of the National People's Congress approved and promulgated the *PRC Law on the Application of Laws to Foreign-related Civil Relations* ("*Law on Application of Laws*"), which took effect from 1 April 2011. Article 1 thereof provides: "This Law is formulated with a view to specifying the application of laws to foreign-related civil relations, resolving foreign-related civil disputes in a reasonable manner, and safeguarding the legitimate rights and interests of the parties concerned." The term "foreign-related civil relations" is not defined in the *Law on Application of Laws*, and its implications can be gleaned from judicial interpretations issued by the Supreme People's Court: article 178 of the *Opinion of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of Civil Law of the People's Republic of China (Trial Implementation)*, which took effect from 2 April 1988, provides that: "Where either party or both parties in a civil relationship are aliens, stateless persons or foreign legal persons, the object of the civil legal relationship is within the territory of a foreign country, and the legal circumstances relating to the formation, alteration or annihilation of the civil relations of rights and obligations occur in a foreign country, such relationships shall all be called foreign-related civil relations. When hearing a foreign civil relationship case, the people's court shall apply the substantive law in accordance with the provisions of Chapter VIII of the *General Principles of Civil Law*." Article 304 of the *Opinion of the Supreme People's Court on Some Issues Concerning the Application of the Civil Procedure Law of the People's Republic of China*, which took effect from 14 July 1992, provides that: "Where either party or both

parties are aliens, stateless persons, foreign entities or foreign organisations, or the legal facts relating to the formation, modification or termination of the civil legal relationship between the parties occur in a foreign country, or the subject matter of the case is located in a foreign country, such cases shall be called foreign-related civil case." It follows that, strictly speaking, cases involving Hong Kong, Macau or Taiwan are not foreign-related cases. Although Hong Kong law may be called "law of a foreign jurisdiction" vis-à-vis Mainland law, Hong Kong law is by nature PRC law and a component of PRC law, and is therefore different from foreign law in terms of the scope of application. This is a reality on the legislative level. If one hopes to expand the application of Hong Kong law on this level, one may stress that Hong Kong law is a component of PRC law, and if PRC law is expressly confirmed to be the governing law (*lex causae*) in the standards or guidelines on conflict of laws, parties should be allowed to choose between Mainland law and Hong Kong law instead of being invariably bound by PRC law. This can be implemented on a first and pilot basis in Qianhai.

At present, on the judicial level, a broader approach is taken in respect of the scope of application of Hong Kong law. On the question of the application of law to cases involving the two special jurisdictions of Hong Kong and Macau, the People's Courts in Mainland China take the approach of referring to the relevant laws applicable to foreign-related civil relationships. This approach is also reflected in judicial interpretations issued by the Supreme People's Court. For example, article 11 of the *Rules of the Supreme People's Court on Some Issues Concerning the Application of Laws in Hearing Foreign-related Contractual Dispute Cases Related to Civil and Commercial Matters*, which took effect from 8 August 2007, provides that: "The present Rules shall apply to the law applicable to contracts related to civil and commercial matters involving the Hong Kong Special Administrative Region or the Macau Special Administrative Region." This provision in effect treats Hong Kong law and Macau law as "laws of foreign jurisdictions"; in a civil or commercial contract involving Hong Kong or Macau, the parties may choose Hong Kong law or Macau law as the applicable law, or where no choice is made by the parties, Hong Kong law or Macau law can be applied as the law of the place having "the closest connection" with the contract.

Accordingly, as far as Qianhai is concerned, as it has been positioned as a "Shenzhen/Hong Kong Modern Service Industry Cooperation Zone", a large number of civil or commercial contracts involving Hong Kong or Macau will be entered into there. Hong Kong law (mainly substantive law) may apply to these contractual relationships as long as they are not purely Mainland-related. In other words, the main area in which Hong Kong law applies will be non-

Mainland civil or commercial contract cases involving Hong Kong and Macau.[8]

3.3.2 Mode of application of Hong Kong law: *lex voluntatis* as governing principle, supplemented by the doctrine of "closest connection" principle

(1) Similarities and differences between Mainland and Hong Kong in respect of rules governing application of laws to major commercial relationships

In the Mainland, the *Law on Application of Laws* establishes, in its Chapter 1 "General Provisions", the following principles regarding application of laws: "Parties concerned may, in accordance with the law, expressly choose laws applicable to foreign-related civil relations."; and "In the absence of provisions on the application of laws to foreign-related civil relations as prescribed by this Law or other laws, laws having the closest connection with the foreign-related civil relations in question shall apply." Chapter 6, headed "Creditor's Rights", contains the following provisions: "Parties concerned may choose the laws applicable to a contract by agreement. Where the parties have made no such choice, the laws of the habitual residence of the party whose performance of the obligations best reflects the characteristics of the contract or other laws having the closest connection with the contract shall apply."; "A consumer contract shall be governed by the laws of the habitual residence of the consumer. Where the consumer chooses to apply laws of the place where the goods or services are provided, or the business operator concerned does not engage in relevant business activities at the habitual residence of the consumer, laws of the place where the goods or services are provided shall apply."; "Tort liabilities shall be governed by *lex loci delicti*, provided that where the parties concerned have a common habitual residence, laws of the common habitual residence shall apply. Agreements on the application of laws reached by the parties concerned after the occurrence of tort shall prevail."; "Product liabilities shall be governed by laws of the habitual residence of the infringed party. Where the infringed party chooses to apply the laws of the place of the principal office of the infringer or *lex loci delicti*, or the infringer does not engage in relevant business activities at the habitual residence of the infringed party, laws of the place of the principal office of the infringer or *lex loci delicti* shall apply."

8 "Commercial cases involving Hong Kong or Macau" refer to commercial cases in which either party or both parties are natural persons, enterprises or organisations in the Hong Kong SAR or the Macau SAR, or in which either party is habitually resident in the Hong Kong SAR or the Macau SAR, or in which the legal facts relating to the formation, modification or termination of the parties' commercial legal relationship take place in the Hong Kong SAR or the Macau SAR, or in which the subject matter of the litigation is located in the Hong Kong SAR or the Macau SAR.

In Hong Kong, having regard to the law on conflict of laws, lawyers who draft foreign-related contracts will advise their clients to include in the contracts clauses in respect of both the agreed "governing law" and the agreed "court of competent jurisdiction", so as to facilitate the resolution of any dispute over the contracts which may arise in future. Where a conflict of laws occurs, the general principles for determining the applicable laws are: (1) *Contracts*: in determining the law applicable to a contract, the court takes the following three steps: (a) give effect to the express choice of law clause in the contract; (b) ascertain and give effect to the parties' implied choice of law; (c) if neither (a) nor (b) applies, the court will, in light of all relevant factors and background to the contract, determine and apply the law of the place having the closest and most real connection with the contract. (2) *Civil torts*: the principles adopted are (a) the rule of double actionability, which means that a tortious act committed in a foreign jurisdiction which constitutes a tort under domestic law is actionable in domestic courts, provided that the tortious act also constitutes an actionable tort under the laws of the foreign jurisdiction; and (b) an exception to the above general rule is that, in individual cases, where the interest of justice so requires, the court may, in respect of part of a dispute, apply the law of the country or territory having the most obvious connection with the facts of that part of the dispute and the parties thereto.

Upon comparison, it is not difficult to notice that the principles being applied in the Mainland in relation to the application of law to contractual relationships are very similar to those in Hong Kong. Both sides adopt the parties' intention as the governing principle and supplement it with the "closest connection" principle. It is just that under Mainland law those principles receive more meticulous judicial implementation, with the continental law principle of "characteristic performance" being engaged. As regards the application of law to tortious relationships, the rules of *lex voluntatis* and *lex loci delicti* are applied in the Mainland, whereas Hong Kong is still following the English rule of "double actionability" which is unfavourable to the infringed party.

(2) Mode of application of Hong Kong law in Qianhai

Having made the above comparison, the Working Party takes the view that it is desirable for Qianhai to refer to and apply the provisions set out in the *Law on Application of Laws* in relation to the application of laws, in particular the provisions on commercial relationships such as creditors' rights, and at the same time, by means of a process of indirect reconciliation, to enable Hong Kong law to be applied in foreign-related commercial cases in Qianhai.

A convenient example in this connection relates to the application of law to contractual relationships, as such relationships will occupy an important place in commercial relationships to be entered into in Qianhai which has been positioned as a "Shenzhen/Hong Kong Modern Service Industry Cooperation

Zone". Article 41 of the *Law on Application of Laws* provides that: "Parties concerned may choose the laws applicable to a contract by agreement. Where the parties have made no such choice, the laws of the habitual residence of the party whose performance of the obligations best reflects the characteristics of the contract or other laws having the closest connection with the contract shall apply." In Qianhai, parties who enter into a contract may include therein a clause stating that the parties agree to apply Hong Kong law, which means the substantive Hong Kong law pertaining to the parties' commercial relationship. As to whether the parties can choose to apply the procedural law of Hong Kong, the *Law on Application of Laws* has not provided a clear answer. What is clear, however, is that the law chosen by the parties does not include the law of that foreign jurisdiction on the application of law.[9] This will help simplify and clarify the choice of law.

As the experience of the Dubai DIFC (see the discussion above) shows, the application of the common law will assist the development of DIFC into an international financial centre. Hong Kong is globally recognised as one of the places in the world with the best business environment, and compared to the Mainland, the Hong Kong substantive commercial law is more sophisticated with a higher degree of internationalization and, as such, will be more readily preferred – and hence more possibly chosen – by parties to foreign-related commercial relationships.

Where the parties have not made a choice of law, the *Law on Application of Laws* requires the court or arbitration tribunal to apply "the laws of the habitual residence of the party whose performance of the obligations best reflects the characteristics of the contract or other laws having the closest connection with the contract". In practice, it is usual for Hong Kong to be the place of performance of commercial contracts or the place of habitual residence of either party to commercial relationships, and these "points of connection" will enable Hong Kong law to be applied. As regards the determination of "other laws having the closest connection with the contract", the Supreme People's Court points out in its *Summary of the Second National Working Conference on Foreign-related Commercial and Maritime Trials* that: "When the people's court determines the law applicable to the contract as per the principle of 'closest connection', it shall, in light of factors including the specific nature of the contract and the performance by a party of the obligations which best reflects the characteristics of the contract, choose the law of the state having the most proximate connection with the contract as the governing law." The Supreme People's Court then proceeds to set out, following the principle of "characteristic performance", the places of characteristic performance of 18 types of contracts such as "contracts for international sale and purchase of goods". If Hong Kong is the place of performance, then Hong Kong law will

[9] The *Law on Application of Laws* **Article 9.** Foreign laws applicable to foreign-related civil relations shall not include laws on the application of laws of the foreign countries.

apply. Even where Hong Kong is not the place of performance, the said *Summary* of the Supreme People's Court states that: "In the event that the aforesaid contract is apparently in closer connection with another country or territory, the law of such country or territory shall be applicable." In other words, provided that it can be shown that the contract in question has an apparently closer connection with Hong Kong, Hong Kong law should apply to that contract.

The *Law on Application of Laws* does not contain specific provisions addressing the question of the application of laws to all types of civil and commercial relationships. In particular, there are as yet no detailed rules which govern the application of laws to newly emerging types of commercial relationships such as commercial relationships involving the Internet. In this respect, the principles of *lex voluntatis* and "closest connection" established by the *Law on Application of Laws* can be applied in practice[10] : first, the parties will negotiate and choose the law (including Hong Kong law) which they both wish to apply. In the absence of an agreement on the choice of *lex causae*, where a dispute arises between the parties, the court or arbitration tribunal will determine the applicable *lex causae* by applying the "closest connection" test.

Of course, parties do not have absolute freedom in choosing the applicable laws; instead, they are subject to certain restrictions. Article 4 of the *Law on Application of Laws* provides that: "Mandatory provisions on foreign-related civil relations prescribed in laws of the People's Republic of China shall directly apply." Article 5 provides that: "Laws of the People's Republic of China shall apply where the application of foreign laws will undermine social and public interests of the People's Republic of China." These restrictions are not unique to the PRC but are derived from the "directly applicable law" doctrine of private international law and the internationally recognised principle of *ordre public*.

The core industries to be developed in Qianhai include international finance, modern logistics, information service, science and technology service, and other professional services. The Cooperation Zone is intended to become an important base for international trade in service, by attracting investments and pooling together enterprises in modern service industries which are highly influential in the world. Hong Kong law has been implemented and evolving for more than a century and taken shape in a trade port which is globally

[10] The *Law on Application of Laws* **Article 2.** Laws applicable to foreign-related civil relations shall be determined in accordance with this Law. Provisions on the application of laws to foreign-related civil relations otherwise prescribed in other laws shall prevail. In the absence of provisions on the application of laws to foreign-related civil relations as prescribed in this Law and other laws, laws having the closest connection with the foreign-related civil relation in question shall apply.

Article 3. Parties concerned may, in accordance with the law, expressly choose laws applicable to foreign-related civil relations.

accessible and widely recognised as the freest in the world. Hong Kong law is therefore recognised and accepted by investors around the world. If investors are allowed to choose Hong Kong law as the applicable law in Qianhai, it will help attract investors to actively invest in Qianhai.

In a nutshell, there is considerable room for the application of Hong Kong law in Qianhai, and this gives a natural competitive advantage to Hong Kong lawyers who are conversant with Hong Kong law. If this advantage is given full play, it will not only effectively assist parties to foreign-related commercial relationships, but will also promote understanding of Hong Kong law by judicial authorities, arbitration institutions and the government.

As stated above, for the purpose of further widening the application of Hong Kong law in Qianhai, the Working Party suggests that the Shenzhen Municipal People's Congress can consider making full use of the legislative powers conferred upon it by the National People's Congress and, pursuant to authority conferred by Article 81 of the *PRC Law on Legislation* and in accordance with the constitutional provisions and the basic principles underlying laws and administrative regulations, enacting modified rules and regulations to expand the scope of application of Hong Kong law in Qianhai. This suggestion is in line with the fundamental principles of PRC law and, to the greatest possible extent, fits into the mode and objectives of development of Qianhai.

4 Cooperation in law investigation

4.1 Scope of law investigation: Hong Kong law, foreign law (especially English and American laws)

Investigation of law of foreign jurisdictions is a basic issue of conflict of laws and will directly affect the application of the substantive law on foreign-related civil and commercial matters.

As stated above, there is much room for the application of Hong Kong law in Qianhai. Besides, the laws of those countries which have frequent and close business dealings with the PRC (such as the USA, England, Singapore and Japan) may become the governing laws either by choice of the parties or through the application of the "closest connection" principle. Accordingly, the scope of investigation of law will encompass both Hong Kong law and foreign laws.

Besides being conversant with Hong Kong law, Hong Kong lawyers have accumulated a wealth of experience in handling international commercial matters and are very familiar with foreign laws, particularly English and American laws. Therefore, Hong Kong lawyers can play a pivotal role in Mainland-Hong Kong cooperation in investigation of law.

4.2 Mode of investigation of law

Broadly speaking, the following three types of systems of investigation of law are in use around the world: (1) The Anglo-American legal system usually adopts the approach of "investigation of law by evidence adduced by a party". In countries such as England and the USA, foreign laws are regarded as "facts" which have to be proved by evidence. Those facts can be proved either by averring the contents of the foreign law in question in pleadings or by expert evidence. Where the contents of foreign law adduced by the parties are inconsistent, the court will determine which party's proposition is correct. (2) The continental legal system usually adopts the approach of "investigation by the judge in exercise of his function and power". In countries which are governed by this system, foreign laws are regarded as "laws" which judges are expected to know and the contents of which judges are required to prove, and the parties to the case are not required to adduce evidence to prove those laws. This approach was originally adopted by the courts in Mainland China. (3) Countries such as Germany and Switzerland adopt the approach of "investigation by the judge in exercise of his function and power, with parties under a duty to render assistance". These countries assert that the investigation of contents of foreign laws should principally be regarded as a question of "law" and that judges are required to investigate such laws in exercise of their function and power; but at the same time, the courts are entitled to request both parties to the case to adduce evidence of the contents of foreign laws. This "combined" approach places even more emphasis on investigation by the judge, who is entitled to accept or reject evidence adduced by the parties. This approach is currently adopted by the courts in Mainland China.

As regards the method of investigating foreign laws, the *General Principles of the Civil Law of the People's Republic of China* do not contain express provisions thereon, but article 193 of the *Opinion of the Supreme People's Court on Several Issues Concerning the Implementation of the General Principles of Civil Law of the People's Republic of China (Trial Implementation)* provides that: "The applicable foreign law may be proved by the following means: (1) provided by the parties; (2) provided by the central organ of the opposite party who has concluded a judicial assistance agreement with the State; (3) provided by the embassy or consulate of the State in the foreign country; (4) provided by the embassy or consulate of the foreign country in the State; (5) provided by Chinese and foreign legal experts. If, having used the abovementioned means, the applicable foreign law still cannot be proved, then the law of the People's Republic of China shall apply."

Article 10 of the *Law on Application of Laws* provides that: "Foreign laws applicable to foreign-related civil relations shall be proved by the people's courts, arbitration tribunals or administrative organs. Parties concerned shall prove laws of the relevant foreign country if they choose to be governed by

foreign laws. In the event that foreign laws cannot be proved or contain no provisions, laws of the People's Republic of China shall apply." This is the outcome of the combined application of the "doctrine of function and power" and "doctrine of parties" in litigation law. The approach taken by the vast majority of countries worldwide is that, where it is not possible to prove the substantive law of the relevant foreign country and the parties are unable to adduce evidence of that law, the domestic law will be made directly applicable.

Furthermore, the approach as expressly stated by the Supreme People's Court in its *Summary of the Second National Working Conference on Foreign-related Commercial and Maritime Trials* is that: Where the foreign law serves as the applicable law to a case of foreign-related commercial dispute, the parties concerned shall provide or prove the relevant contents of such foreign law. The parties concerned may provide the statute law or case law of such foreign law by such means as legal experts, legal service institutions, self-regulatory organisations of industries, international organisations and the Internet, and at the same time may also provide the relevant legal writings, materials on the introduction of the relevant law, written opinions of experts and other materials. If it is indeed difficult for a party concerned to provide materials on foreign law, the party may apply to the people's court for investigation of law in exercise of the function and power of the people's court. If no objection is raised on the foreign law as provided by a party after cross-examination, the people's court shall accept the foreign law. The people's court shall examine and determine any part of foreign law with which the parties disagree or on which the expert opinions provided by the parties differ. When the contents of the foreign law cannot be proved, the people's court may apply the law of the People's Republic of China to the case. In the event that the application of foreign law violates basic principles of the law of the People's Republic of China and public interest of the State, such foreign law shall not be applied and the law of the People's Republic of China shall be applicable.

To sum up, as the PRC has been implementing the "reform and opening-up" strategy for only a short period, the parties, judicial authorities, arbitration tribunals and other individuals and entities in the PRC are not familiar with Hong Kong law and foreign law. If parties are unable to provide materials on the relevant laws and the courts, arbitration tribunals or administrative organs are unable to investigate those laws, the valuable opportunity to apply those laws will be lost. In this respect, Hong Kong lawyers, who are completely conversant with Hong Kong law and relatively conversant with foreign law (particularly English and American laws), or other legal experts will be needed to play a role in investigation of law.

Specifically, there are two ways through which Hong Kong lawyers may assist parties, courts or arbitration tribunals in Qianhai in investigation of law:

4.2.1 Hong Kong lawyers as agents engaged by clients or "officers possessing specialist knowledge"

In the Mainland, article 61 of *Some Provisions of the Supreme People's Court on Evidence in Civil Procedure*, which took effect from 1 April 2002, provides as follows: "Any party to the case may apply to the people's court to have one or two officers possessing specialist knowledge appear in court to give accounts of specialised questions relating to the case. If the people's court allows the application, the relevant expenses shall be borne by the party who makes the application. The judges and parties concerned may interrogate any officer possessing specialist knowledge who appears in court. With the permission of the people's court, the officer(s) possessing specialist knowledge as applied for by each party may cross-examine one another on questions relating to the case. Officers possessing specialist knowledge may interrogate authenticators."

In fact, in a number of court cases in the Mainland, parties have started to engage authoritative persons (such as well-known academics and lawyers) to prepare written "expert legal opinions" for submission to the courts or arbitration tribunals. The results of this exercise have been encouraging.

Therefore, in Qianhai, parties should be completely free to engage Hong Kong lawyers who are well-versed in Hong Kong law or specific foreign law to handle court cases directly as the parties' agents; or to apply to the people's court to have one or two Hong Kong lawyers appear in court as "officers possessing specialist knowledge" for the purpose of explaining the specialised question regarding the application of Hong Kong law or specific foreign law, so as to assist the courts or arbitration tribunals in investigating the relevant law.

4.2.2 Establishment of independent organisation for investigation of law; Hong Kong lawyers as specialists engaged by courts or arbitration tribunals

In Hong Kong, where a Hong Kong court takes the view that Mainland law is the "proper law" governing a case, the parties to the case will seek the opinion of Mainland legal experts on the interpretation of the relevant Mainland law and adduce such opinion as "evidence". The court will then apply such evidence as it accepts in interpreting the applicable Mainland law. The proper foreign law governing a case is a question of fact. In dealing with the relevant foreign law, the judge will refer to judgments and decisions made in other previous cases regarding the relevant foreign law issues.

In Mainland China, in some cases involving difficulty or doubt, judges also take the initiative to request authoritative persons such as well-known

academics to prepare “expert legal opinion”, which serve as important materials on which judges will rely in adjudicating the case at hand.

It follows that the courts and arbitration tribunals in Qianhai may engage Hong Kong lawyers conversant with the relevant foreign law as specialists and request them to prepare “expert legal opinion” or appear in court to explain the application of foreign law.

The Working Party recommends that an independent organisation for investigation of law be established in Qianhai and that an assessment and accreditation system be put in place for experts in investigation of law.

On the judicial level, it is recommended that the courts and arbitration tribunals may, if so required, take the initiative to instruct experts at the said organisation to provide services in investigation of law; alternatively, after the parties to the case or their agents provide opinion on investigation of law, the courts and arbitration tribunals may request experts at the said organisation to provide opinion.

5. Cooperation in international legal services

The internationalisation of legal services is an irreversible trend. Indeed, the further internationalisation of the legal service market is one of the undertakings given by the PRC in joining the WTO. Since 2002 when the PRC joined the WTO, foreign law firms have stepped up efforts in entering the PRC legal service market. It is therefore necessary for the lawyer professions in Hong Kong and the Mainland to strengthen cooperation and join hands in responding to external challenges.

5.1 Competitive edge of Hong Kong lawyers in provision of international legal services

As foreign law firms are vying hard for a share of the PRC legal service market, high-level versatile talents with the ability to handle multi-national legal matters are urgently needed to facilitate internationalisation of PRC legal services. Surveys have revealed that at present less than 10% of PRC lawyers are well-versed in the operation of international legal rules and also proficient in foreign languages.

In sharp contrast, the lawyer profession in Hong Kong has accumulated as much as 100 years’ worth of experience, and Hong Kong lawyers are greatly experienced and highly skillful in providing specialised and international legal services. The Hong Kong Trade Development Council and The Law Society of Hong Kong conducted a case study in 2005 which aimed to make an

objective assessment of the uniquely advantageous position of the lawyer profession in Hong Kong. According to the study report, the number of overseas enterprises entering the Mainland and the number of Mainland enterprises "reaching out" are both on the rise, leading to a corresponding increase in market demand for cross-border legal services by professional law firms. Hong Kong law firms are able to provide legal services of an international standard and play an important role in facilitating Mainland-related investments and handling the relevant legal matters. In Asia, Hong Kong is the place with the largest pool of international legal talents – of all the lawyers in the region who specialise in international legal affairs, approximately 40% work in Hong Kong. Mainland China is the largest merger and acquisition market in Asia, and six of the 10 major legal consultant firms which handle mergers and acquisitions in Asia are located in Hong Kong. The survey results indicated that 83% of the sampled law firms had handled cross-border commercial transactions. Furthermore, almost 80% of the sampled law firms were positive about the outlook in the next three to five years for the legal service market relating to cross-border commercial transactions.

Former President of The Law Society of Hong Kong Mr. Peter Lo has pointed out that history has fortuitously presented Hong Kong with an invaluable opportunity to occupy the uniquely advantageous position that the city is enjoying today, and the lawyer profession in Hong Kong is one of the beneficiaries of this historical factor. Compared to foreign lawyers, Hong Kong lawyers are in a better position to keep themselves abreast of the national circumstances and are also enjoying the advantage of being bilingual. Hong Kong lawyers will therefore become a major driving force behind the PRC's efforts in internationalisation.

5.2 Establishment of WTO and International Legal Services Centre

The *Cross Strait Four Regions Lawyers Summit 2009* organised by The Law Society of Hong Kong was held on 28 November 2009. The *Summit* bore the theme of "Global Economic Force – Strategic Synergy of Cross Strait Four Regions Legal Profession", and the then Chief Executive of the Hong Kong SAR Mr. Donald Tsang, who officiated at the *Summit*, made a speech in which he said, "It is believed that the frequent economic and social interactions among the Cross Strait Four Regions can present the legal service industry with new opportunities and, at the same time, can propel the Four Regions into close cooperation in optimising services. The enhancement, through such cooperation, of the standard of legal services in the Four Regions will, simultaneously with the rapid economic development of the Greater China Region, help increase the competitiveness of our legal services in the international market." Mr. Tsang encouraged the legal professions in the Four Regions to coordinate with one another, learn from the strengths of other legal systems, and complement one another. He also expected the delegates who

attended the *Summit* to put forward more innovative ideas on "first and pilot implementations", with a view to expanding the scope of development of and cooperation among lawyers in the Four Regions.

The legal framework and arbitration system of Hong Kong are now completely in line with international standards. The Department of Justice has all along been making great efforts in developing Hong Kong into a regional centre for legal services and dispute resolution. The Paris-based ICC International Court of Arbitration has set up its first Secretariat branch in Hong Kong, amply demonstrating the full confidence that the long-esteemed international arbitration organisation has in Hong Kong as a dispute resolution centre. Accordingly, the Working Party considers it necessary to establish a "WTO and International Legal Services Centre" in Qianhai. The Centre will serve to pool together legal talents from Shenzhen and Hong Kong to provide comprehensive and professional legal services – including advisory, agency and research services – in respect of PRC-related WTO legal issues and other international commercial legal matters. Such services will cater for the ordinary commercial needs of natural and legal persons and also provide the State and relevant organisations with the necessary assistance.

6. Cooperation in training of lawyers: Shenzhen-Hong Kong Lawyers Institute

Although Hong Kong lawyers enjoy an obvious competitive edge in the provision of international legal services, Mainland lawyers enjoy unique advantages in a number of aspects, mainly: (1) being familiar with Mainland laws and regulations, Mainland lawyers can make use of their firm grasp of the laws and policies of the region in which they practise to design the best legal structure for foreign businesses; (2) Mainland lawyers are able to carry out due diligence efficiently and speedily and minimise the cost involved; (3) making use of their good working relationship with the local government and other professions of the region in which they practise, Mainland lawyers can coordinate the relationship between the participating government departments and professionals in such areas as accounting and taxation, so that work efficiency can be greatly enhanced.

Accordingly, lawyers on both sides should further develop their strengths and remedy their weaknesses, learn from each other, share their work experiences and work together to enhance the standard and quality of services. For this purpose, the Working Party considers it necessary to establish a "Shenzhen-Hong Kong Lawyers Institute" in Qianhai as a base for cooperation in training lawyers. By inviting renowned experts, academics and senior judges, arbitrators and lawyers to give lectures and seminars, and by organising moots in litigation and arbitration, lawyers' forums, contests and other activities, the

standard and quality of services provided by Mainland and Hong Kong lawyers will further improve, mutual understanding and friendship among lawyers from both sides will be strengthened, and smoothness of cooperation among them will be enhanced.

Conclusion

The Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone represents a significant historic opportunity granted by the State for the joint development of Shenzhen and Hong Kong! With a view to taking timely hold of this opportunity, The Law Society of Hong Kong set up a specialist Working Party which has carried out thorough analyses and studies of the background, basis, prospects and strategies of the development of the legal profession in Qianhai. It is hoped that this *Study Report* can provide strong theoretical and practical support for the relevant policy-making departments, so as to facilitate further legal cooperation between Guangdong and Hong Kong and promote greater harmony between the Mainland and Hong Kong legal systems!

Annex

1. Ms. Elsie Leung, "Exploring the Forms of Association Between Guangdong Law Firms and Hong Kong Law Firms"

2. Photocopy of letter written by Shanghai lawyer Mr. Li Wen Jie, using the letterhead of "Li Xin Accounting Firm"

3. Photocopy of listings of "Jiu Xin Accounting and Law Firm" and "Min Xin Law and Accounting Firm", contained in the *Shanghai Street Directory* published by The Free Trading Co. Ltd. in 1947

Special thanks to Ms. Elsie Leung and Mr. Huen Wong for supplying the above documents for inclusion to this *Study Report*.

Annex 1

Guangdong-Hong Kong Lawyers Networking Event 2012

"Working Hand-in-hand Towards Prosperity"

Nansha, Guangzhou – 25 August 2012

Exploring the Forms of Association Between Guangdong Law Firms and Hong Kong Law Firms

Elsie Leung

The Honourable Mr. Liang Zhen, Deputy Director of the Department of Justice, Guangdong; Heads of the provincial Department of Justice and the Guangzhou Municipal Bureau of Justice; Mr. Ou Yong Liang, President of the Guangdong Lawyers Association; Mr. Ambrose Lam, Vice-President of The Law Society of Hong Kong; my distinguished colleagues; and ladies and gentlemen:

I am grateful to the Guangdong Lawyers Association for their efforts in organising this Networking Event in Nansha for lawyers from Guangdong and Hong Kong. The Event provides us with a great opportunity not only to extend our networks and foster our friendships, but also to discuss how lawyers from Guangdong and Hong Kong can work hand-in-hand to create prosperity. The exchanges between lawyers from the two regions started in the 1980s: in 1981, the Ministry of Justice sent the first group of delegates (led by Mr. Wang Ru Qi, the then Consultant to the Ministry) to visit Hong Kong; and in 1984, the Hong Kong Federation of Women Lawyers visited Beijing. From then on, the law associations in Guangdong and Hong Kong communicated and worked together frequently, organising training programmes, forums, seminars and networking activities as well as sending delegations to attend the annual meetings of each other. However, it is the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) entered into by the Central People's Government and the Hong Kong SAR Government on 29 June 2003, together with the several Supplements to CEPA entered into subsequently, that established the formal platform for cooperation in services.

As a region which joined the World Trade Organisation (WTO) in 1985, Hong Kong has long been opening its legal service market to other countries and territories. Law firms from many countries have set up branch firms in Hong Kong which practise the laws of their respective countries. Many of these firms have also converted into local firms by arranging for their foreign lawyers to take the relevant examinations. The PRC joined the WTO on 11 December 2011, and only then did the PRC formally open up its legal service market. But even so, such opening-up has been subject to conditions, for example, foreign firms are neither allowed to form associations with Mainland law firms nor allowed to practise PRC law.

As the integration of regional economies can contribute to the expansion of world trade, the WTO allows regional members to open up trade in goods and services among themselves, provided that no trade barrier is increased between this regional body and non-member countries. Therefore, the signing of CEPA, which paved the way for mutually beneficial arrangements in trade in services between the Mainland and Hong Kong, did not violate the rules of the WTO. However, as Hong Kong has all along been opening its market to Mainland lawyers, what seem to be benefits enjoyed only by Hong Kong lawyers are in fact rights which Mainland lawyers have been enjoying for a long time.

Take associations as an example. Prior to the signing of CEPA, lawyers from Hong Kong and Macau were, just like foreign lawyers, not allowed to form associations with Mainland lawyers. This situation changed with Supplement II to CEPA, signed on 18 October 2005, which allows Hong Kong law firms to form associations with Mainland law firms. A law firm association is both "joint" and "several": "several" in the sense that each party to the association handles its own affairs, takes up its own profits and losses and assumes its own legal liability; "joint" in the sense that both parties join hands in providing services to particular clients on particular matters. At the same time, each party to the association is able to attract new clients and expand its business in the territory in which the other party is located, management skills are transferred between the two parties, and the professional standards of both parties are enhanced. Supplements III and IV to CEPA, signed in 2006 and 2007 respectively, see the waiver of certain requirements and restrictions, including the requirement on the number

of full-time lawyers employed by Mainland law firms that operate in association with Hong Kong law firms, the residency requirement on the Mainland for representatives stationed in representative offices of Hong Kong law firms on the Mainland, and the restrictions on the number and geographical location of Mainland law firms with which Hong Kong law firms can form associations. Currently, the association between lawyers from both sides is still subject to some restrictions, and I hope that lawyers from both sides will continue to assist in the removal and relaxation of the restrictions against association, so that lawyers from both regions can make full use of the arrangement for associations under CEPA. Although CEPA has been in force for some time, to date there are only six Hong Kong-Mainland law firm associations registered on the Mainland and only five Mainland-Hong Kong law firm associations registered in Hong Kong. What are the reasons for this rather tardy development of associations? This question is worthy of our attention and discussion.

At present, associations between Mainland law firms and Hong Kong law firms are by and large loose and on a case-by-case basis. When an appropriate case arises, the external party will seek cooperation with the local party, drawing on the assistance of its office and personnel. Each party is only concerned with its own developmental goals, and no strategies and measures are formulated between the two parties for the joint expansion of business. The main issue is that CEPA does not allow law firm associations in the form of partnerships. In 2010, the People's Government of Guangdong Province and the Hong Kong SAR entered into the *Framework Agreement on Hong Kong/Guangdong Cooperation*, which expressly sets out the objectives of promoting joint socio-economic development in the two regions and "deepening cooperation, taking the lead in creating in the PRC and in Asia a new, world-class economic zone which assumes a more influential role and which displays more vitality, potential for development and international competitiveness"; and "capitalising on the competitiveness of the service industries in Hong Kong and manufacturing industries in Guangdong, expediting the formation of international first-class systems of modern service industries and technological innovation, and building an advanced global manufacturing and modern services base". As it now stands, the mode of association between Guangdong law firms and Hong Kong law firms can hardly achieve the above objectives.

To achieve the objectives set out in the *12th Five-Year Plan* and *The Framework on Development and Reform Planning for the Pearl River Delta Region*, it is necessary for associations to take the form of close collaboration, with both parties sharing weal and woe and having the same interest, in order to provide the incentive for them to carry out unified management, enhance standards, jointly explore markets and expand clientele, and build a modern services base. Given that neither the *PRC Lawyers Law* nor CEPA allows partnerships to be established between Guangdong law firms and Hong Kong law firms, it is worth looking into how a close form of law firm association can lawfully be conducted so as to achieve the objectives expressed in the *Framework Agreement on Hong Kong/ Guangdong Cooperation*.

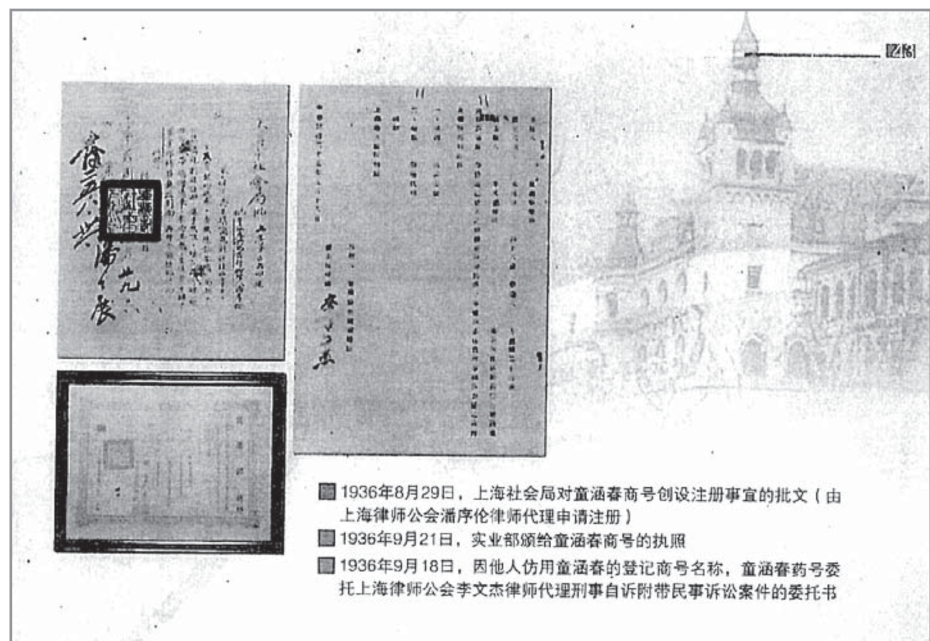
Take WTO disputes as an example. In the past, when challenges were mounted against PRC enterprises, many of them simply avoided litigation and liability by closing down or attempted to resolve disputes by diplomatic means. We now know how to meet challenges by applying the law. In Hong Kong, where no subsidies are ever given to businesses and the capital of running businesses is relatively high, businessmen are seldom involved in this sort of disputes. Hong Kong lawyers are relatively less experienced in handling WTO disputes, but they are more familiar with the common law litigation system, and WTO cases can proceed without the assistance of local lawyers. Mainland lawyers are not conversant with the common law litigation system, but they have the clientele, and it is easier for them to collect data and evidence. Therefore, if Mainland lawyers and Hong Kong lawyers handle WTO cases together, they will both be able to make full use of their strengths. If we establish a centre devoted to collecting and studying WTO cases, we will naturally do a better job than foreign lawyers do. Take another example: Dubai is an Islamic country and foreign businessmen are not familiar with Islamic laws. The government has established in Dubai an international financial centre, in which foreign businessmen can resolve legal disputes with the help of foreign judges and lawyers and are allowed to choose to apply the common law instead of Islamic laws in resolving disputes. We can follow this example and establish an international legal centre in Qianhai where foreign businessmen can have disputes resolved in accordance with Hong Kong law. All this is making full use of the strengths of the two systems to create more opportunities for cooperation between and joint development of lawyers from both regions.

Another topic worth addressing is the model of integrated professional services. A theme which runs through the *12th Five-Year Plan, The Framework on Development and Reform Planning for the Pearl River Delta Region* and the *Framework Agreement on Hong Kong/Guangdong Cooperation* is the stated objective of developing such industries as finance, real property, logistics and science and technology in both Guangdong and Hong Kong, and the development of professional services provides essential support for these industries. For example, in the finance industry, enterprises which carry out cross-border financing and capital-raising projects will need professional services from both Mainland and Hong Kong in areas such as law, accounting, finance and surveying. Many other countries have in place organisations which provide international integrated professional services. By contrast, neither Mainland law nor Hong Kong law allows this operational model, with the result that clients are unable to obtain comprehensive services from one single organisation for one single fee. Currently, neither Mainland law nor Hong Kong law allows multi-profession partnerships. The question is: should Mainland law firms and Hong Kong law firms develop in this direction in order to enhance the international competitiveness of both regions? There are a number of variants of the "integrated professional services" model, including multi-disciplinary practices (MDP), incorporated legal practice (ILP), legal disciplinary practices (LDP) which allow non-lawyers to participate in operation and management, and alternative business structure (ABS) which is a form of joint venture. Each of these variants has its special features, and they are all evolving day by day. It is therefore worth looking into how the relevant legal restrictions can be removed and which model or variant will be most conducive to the development of the lawyer professions in Guangdong and Hong Kong.

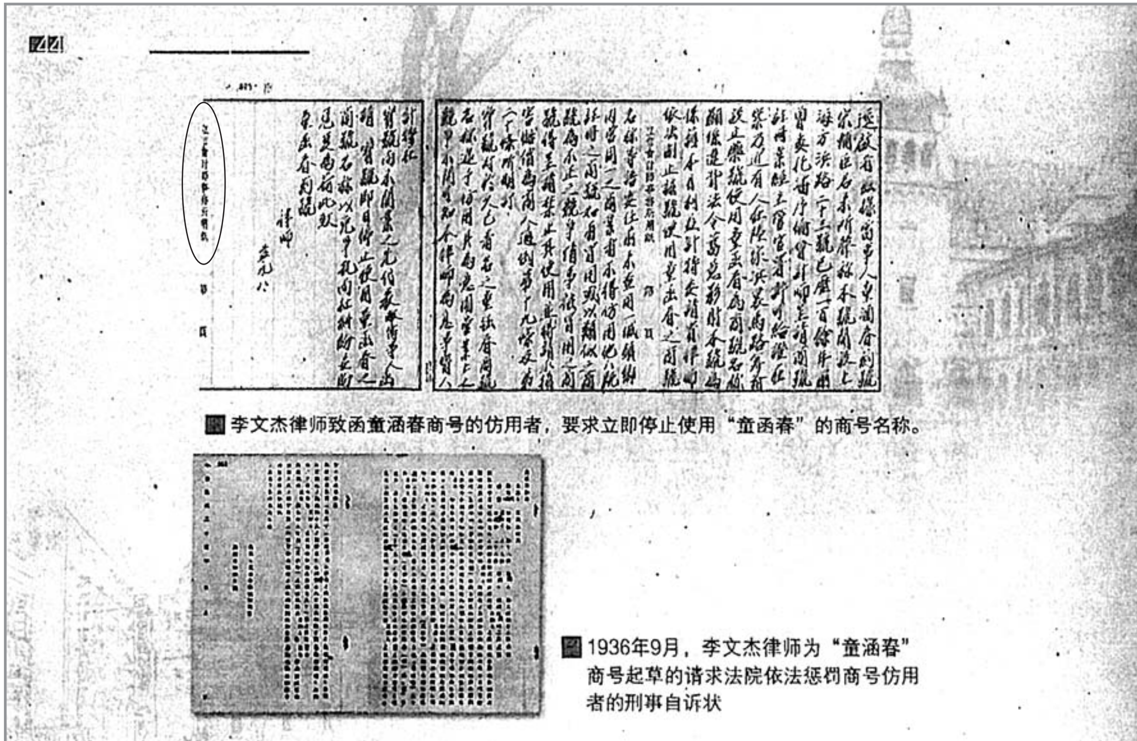
Given the tight schedule of this Event, my speech is necessarily short. That said, I hope that the views I have expressed will help stimulate discussions and generate valuable feedback from all of you. Thank you!

Annex 2

- Former address of Tonghanchun in 1927 (No.3 Fangbin Middle Road)



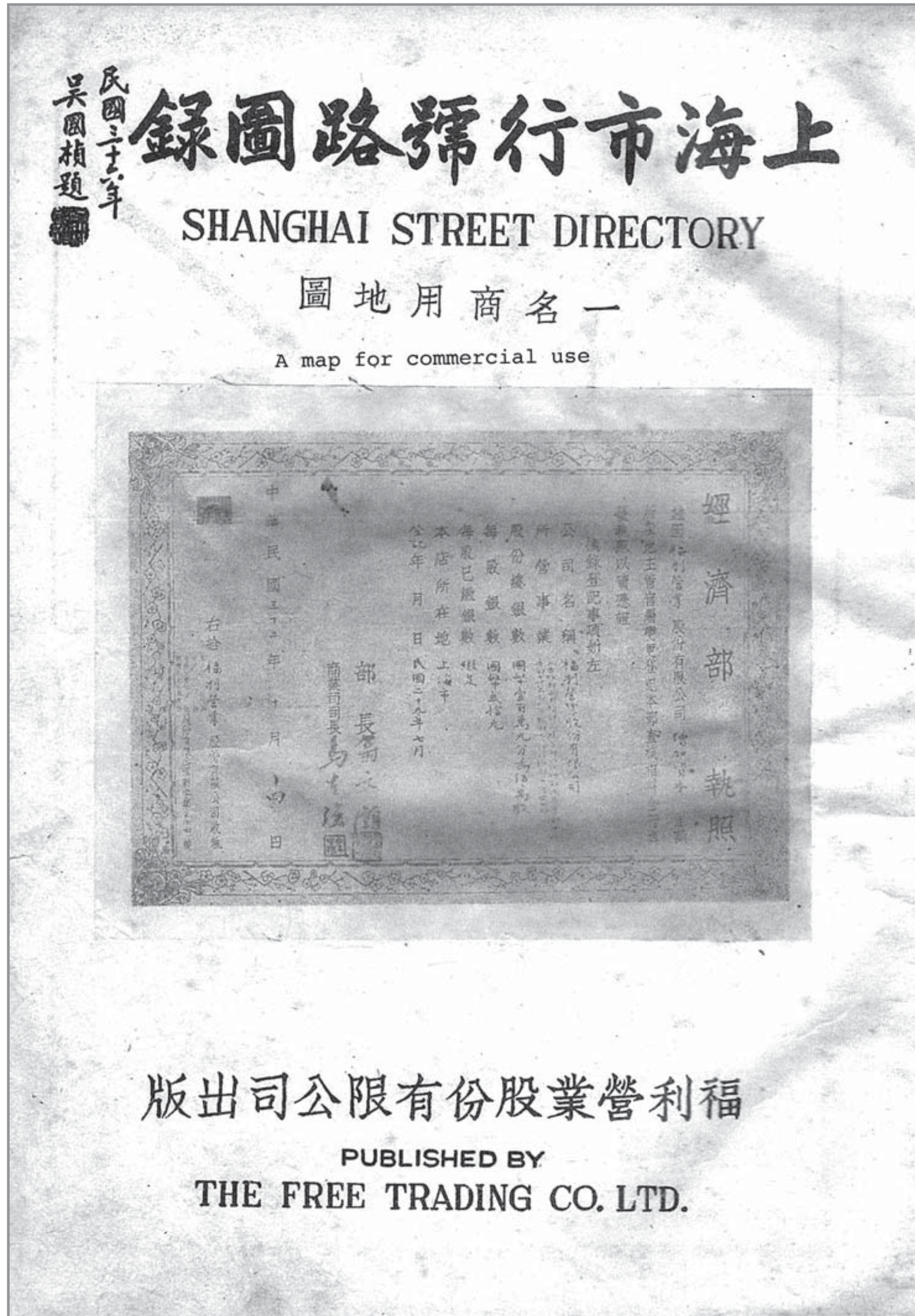
- Approval document issued by the Shanghai Municipal Bureau of Social Affairs to Tonghanchun on 29 August 1936 in respect of the first registration of Tonghanchun's business name (the application for registration was lodged by Mr. Pan Xu Lun of the Shanghai Lawyers Association on behalf of Tonghanchun)
- Licence issued by the Ministry of Industry to Tonghanchun on 21 September 1936
- Document executed by Tonghanchun on 18 September 1936 instructing Mr. Li Wen Jie of the Shanghai Lawyers Association to commence private criminal prosecution and civil proceedings against those who had unlawfully used Tonghanchun's registered business name



- Letter issued by Mr. Li Wen Jie to the wrongdoers demanding them to immediately stop using Tonghanchun's business name
- Form of private criminal prosecution drafted by Mr. Li Wen Jie on behalf of Tonghanchun in September 1936 requesting the court to penalise those who unlawfully used Tonghanchun's business name

Letterhead of Li Xin Accounting Firm

Annex 3



上海市行號路圖錄

民國三十六年 吳國楨題

SHANGHAI STREET DIRECTORY

一名商用地圖

A map for commercial use

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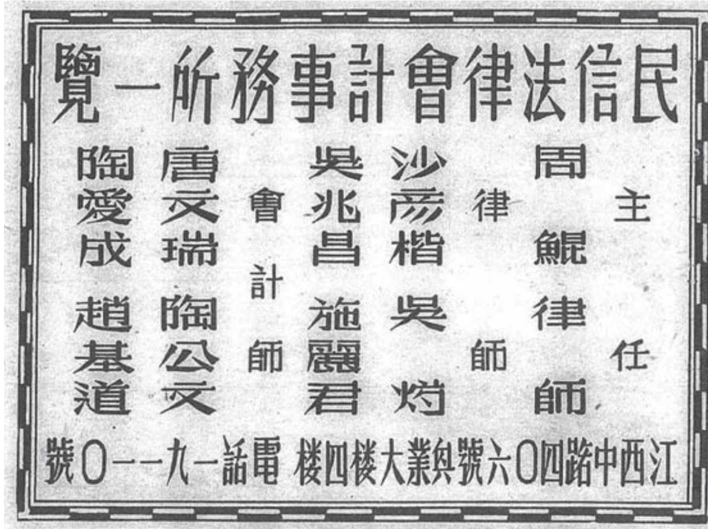

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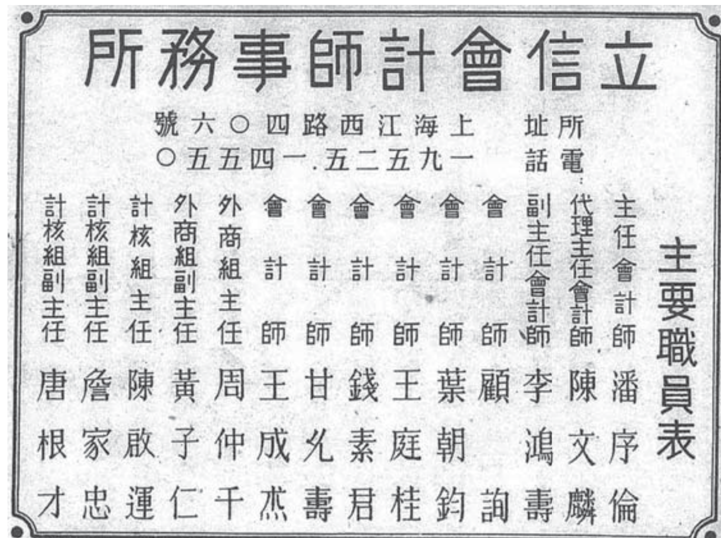

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