

For discussion on
26 March 2018

**Legislative Council Panel on
Administration of Justice and Legal Services**

**Future development of the legal profession under the trend of globalization,
its impacts on the legal profession and legal services
to the public in Hong Kong**

Purpose

“Globalization is a term with multiple, contested meanings. Generically, it describes the ways in which nations, businesses and people are becoming more connected and interdependent across national borders through increased economic integration, communication, cultural diffusion and travel.”¹ To facilitate the Panel Members’ deliberation of the captioned subject, this paper seeks to outline briefly the current regulatory framework of the legal profession in Hong Kong with special focus on the following two aspects:-

- (i) the neutral requirements for entry of lawyers from other jurisdictions to the legal profession in Hong Kong; and
- (ii) liberalisation measures for Hong Kong legal professionals to explore the Mainland market under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”) and other ongoing initiatives.

Entry of lawyers from other jurisdictions to the Hong Kong legal profession

2. The legal profession in Hong Kong, which comprises solicitors and barristers, may undertake a wide range of legal practice in various areas of law and in different forms of dispute resolution including litigation, arbitration and mediation. As at March 2018, there are 9,367 solicitors holding current practising certificates, and 1,420 practising barristers.²

¹ Ronald Labonté & Ted Schrecker (on behalf of the Globalization Knowledge Network), *Globalization and social determinants of health: Analytic and strategic review paper*, (August 2005) (revised March 11 2006), http://www.who.int/social_determinants/resources/globalization.pdf?ua=1 (last accessed on 7 March 2018).

² Figures from The Law Society of Hong Kong’s website, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_withcert.asp (last accessed on 7 March 2018) and the Hong Kong Bar Association’s website, <http://www.hkba.org/Bar-List/junior-counsel>, <http://www.hkba.org/Bar-List/senior-counsel> (last accessed on 7 March 2018).

3. The current regulatory framework for the entry into Hong Kong’s legal profession is open and non-discriminatory, allowing lawyers from other jurisdictions (including those from non-common law jurisdictions) to gain admission or to practise the law of their home jurisdiction in Hong Kong upon satisfying a set of transparent, objective and reasonable statutory requirements.

Registered foreign lawyers

4. A lawyer from a jurisdiction outside Hong Kong who wishes to provide services to the public as a practitioner of foreign law must register with The Law Society of Hong Kong (“**the Law Society**”) as a registered foreign lawyer³⁴ and provide such services from within a Hong Kong firm or a foreign firm.⁵ A registered foreign lawyer may give advice on or handle any matter which: (a) is expected to be subject to the law of a jurisdiction other than Hong Kong; or (b) involves private or public international law or conflict of laws; but is prohibited to practise Hong Kong law.⁶ As at March 2018, there are 1,479 registered foreign lawyers and 85 registered foreign law firms in Hong Kong.⁷

Admission of overseas lawyers as solicitors in Hong Kong

5. The Court of First Instance in Hong Kong (“**the Court**”) may admit, as a solicitor, a person who the Court considers is a fit and proper person to be so admitted and who, in the case of a person who seeks admission on the basis of qualifications acquired outside Hong Kong, qualifies for admission under requirements prescribed by the Council of the Law Society.⁸

6. A person who seeks admission on the basis of qualifications acquired outside Hong Kong is qualified for admission as a solicitor if he is (a) an overseas lawyer; (b) a person of good standing in each jurisdiction in which he has been admitted; and (c) satisfies the requirements specified in section 4 or 5 of the *Overseas Lawyers (Qualification for Admission) Rules* (Cap. 159Q) (“**OL(QA)R**”) which includes the passing of the required Heads of the

³ See section 50B(1) of the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”). The registration requirement, however, does not apply to the situation referred to in paragraph 12 of this Paper.

⁴ In order to qualify for registration, an applicant must show that he or she: (1) is a person of good standing in the foreign jurisdiction in which he or she is qualified to practise law; (2) has satisfied the Law Society that he or she is a fit and proper person to be registered; and (3) is covered by professional indemnity insurance (see generally sections 3 to 5 of the *Foreign Lawyers Registration Rules* (Cap. 159S) (“**FLRR**”).

⁵ Sections 39A and 50B(3) of the *LPO*.

⁶ Section 12 of the *FLRR*.

⁷ Figures from the Law Society’s website, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreign_firm.asp (last accessed on 7 March 2018).

⁸ Section 4(1) of the *LPO*.

*Overseas Lawyers Qualification Examination.*⁹

7. A person who applies for admission as a solicitor would also need to satisfy residency requirements¹⁰ and general admission requirements.¹¹

Admission of overseas lawyers as barristers in Hong Kong

8. Under the existing regulatory framework, the Court may admit as a barrister a person whom it considers a fit and proper person to be a barrister, provided such person has (a) complied with the requirements; (b) passed the examinations; and (c) paid the fees, prescribed by the Bar Council.¹²

9. For the purpose of admission as a barrister, an overseas lawyer is qualified for admission if he (a) holds a certificate of admission as a legal practitioner from the appropriate authority in his jurisdiction of admission and such certificate is currently valid and in force; (b) has practised for at least 3 years in his jurisdiction of admission; (c) is a person of good standing in his jurisdiction of admission; and (d) has passed the required Papers under the *Barristers Qualification Examination*.¹³

10. A person who applies for admission as a barrister would need to satisfy residency requirements,¹⁴ pupillage requirements,¹⁵ and general admission requirements.¹⁶

11. Through a competency based scheme under the *Legal Practitioners Ordinance* (Cap. 159) and its subsidiary legislation, lawyers coming from both common law and non-common law jurisdictions may gain admission as a solicitor or barrister, as the case may be, in Hong Kong.

⁹ Section 2 of the *OL(QA)R*. Please refer to sections 4 and 5 of the *OL(QA)R* for detailed requirements to be complied with by applicants coming from common law and non-common law jurisdictions respectively.

¹⁰ Section 4(1A) of the *LPO*.

¹¹ See generally the *Admission and Registration Rules* (Cap.159B). These general admission requirements include obtaining the required certificates from the Law Society, submitting the prescribed forms and motion papers, and paying the prescribed fees.

¹² Section 27(1) of the *LPO*.

¹³ Section 4(2) of the *Barristers (Qualification for Admission and Pupillage) Rules* (Cap. 159AC) (“**B(QAP)R**”). Where the Bar Council is satisfied that, by reason of his substantial experience as a practising lawyer in one or more of the areas of law covered by the Examination, a person should be exempted from sitting one or more examination papers of the Examination, it may exempt such person from sitting such examination paper or papers (section 4(4) of the *B(QAP)R*).

¹⁴ Section 27(2)(b) of the *LPO*.

¹⁵ Section 4(3) of the *B(QAP)R*.

¹⁶ See generally the *B(QAP)R*. These general admission requirements include obtaining the required certificates from the Bar Council, submitting the prescribed forms and motion papers, and paying the prescribed fees.

Ad hoc practice in Hong Kong by lawyers from other jurisdictions

12. A person who is qualified to practise foreign law but who is not a registered foreign lawyer in Hong Kong is permitted to offer his services to the public in Hong Kong as a practitioner of foreign law provided that:-

- (a) The person does so
 - (i) from within a foreign firm but not as a foreign lawyer; or
 - (ii) from within a Hong Kong firm but not as a solicitor or foreign lawyer; and
- (b) The person does not so offer his services in any 12 month period for more than 3 continuous months or more than 90 days.¹⁷

13. *Ad hoc* admission as a barrister is permissible in Hong Kong. The Court may admit such person, on an *ad hoc* basis, as a barrister for the purpose of any particular case or cases, if the Court considers that the person is a fit and proper person to be a barrister and is satisfied that he has (a) the qualification acquired outside Hong Kong to engage in work that would, if undertaken in Hong Kong, be similar to that undertaken by a barrister in the course of ordinary practice as a barrister in the High Court or Court of Final Appeal; and (b) substantial experience in advocacy in a court.¹⁸

Entry of Hong Kong lawyers to the Mainland legal services market

CEPA

14. Hong Kong legal professionals have been enjoying various liberalisation measures to explore the Mainland market under the CEPA framework.

Partnership associations

15. Guangdong has always been in the forefront in terms of market access commitments in favour of Hong Kong legal professionals under CEPA. Under the *Agreement between the Mainland and Hong Kong on Achieving Basic Liberalization of Trade in Services in Guangdong* (《關於內地在廣東與香港基本實現服務貿易自由化的協議》),¹⁹ since March 2015, Hong Kong law

¹⁷ Section 50B(2) of the *LPO*.

¹⁸ See section 27(4) of the *LPO*.

¹⁹ Signed on 18 December 2014 and came into effect on 1 March 2015.

firms are allowed, as a pilot measure, to operate in association with Mainland law firms in the form of partnership in Qianhai, Nansha and Hengqin in Guangdong Province. The *Agreement on Trade in Services* (《服務貿易協議》)²⁰ extended the setting up of partnership associations between Hong Kong and Mainland law firms to Shenzhen, Guangzhou and Zhuhai with effect from June 2016.

16. As at 1 March 2018, eleven associations in the form of partnership between the Hong Kong and Mainland law firms have been approved to be set up, with seven in Shenzhen (Qianhai), two in Guangzhou (Nansha) and two in Zhuhai (Hengqin).

17. The Hong Kong Special Administrative Region (“**HKSAR**”) Government has made proposals to the Mainland to enhance CEPA liberalisation measures on partnership associations. These proposals include the extension of the pilot areas to the whole of Guangdong Province including the Guangdong – Hong Kong – Macao Bay Area (“**Bay Area**”).²¹

18. In January 2018, the People’s Government of the Guangdong Province announced its decision to extend the pilot areas for setting up partnership associations to the whole of the Guangdong Province.²² The HKSAR Government will closely monitor the inclusion of this measure under the CEPA framework together with its implementation.

19. The HKSAR Government is also exploring with the relevant Mainland authorities on the possibility of allowing Mainland law firms to set up partnership associations with Hong Kong law firms in other cities in the Mainland, including Shanghai and Beijing.

Legal consultants

20. Apart from law firms, both Hong Kong barristers and solicitors can similarly make use of CEPA measures to explore the Mainland market. Since November 2015, law firms in the Mainland have started to retain Hong Kong legal practitioners as legal consultants to advise on Hong Kong law or foreign law.

21. As at 1 March 2018, over 30 HKSAR barristers are retained as legal consultants by Mainland law firms in Shanghai, Nanjing, Hangzhou,

²⁰ Signed on 27 November 2015 and came into effect on 1 June 2016.

²¹ The Bay Area Development Plan covers the Guangdong Province (the nine cities of Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing), Hong Kong and Macao.

²² Notice 粵府〔2018〕5號.

Guangzhou and Shenzhen. In addition, we understand that 2 solicitors are retained as legal consultants by Mainland law firms in the Guangdong Province.

22. The HKSAR Government is exploring with the Mainland authorities the possibility to relax the CEPA measure on legal consultants so that a Hong Kong legal practitioner may be retained as a legal consultant by more than one Mainland law firm at the same time.

National Judicial Examination (“NJE”)

23. Since 1 January 2004, Hong Kong permanent residents who are of Chinese nationality have been allowed to sit the NJE²³ and, having passed the NJE, may choose to undergo internship in the branch offices of Mainland law firms in Hong Kong.²⁴

24. Hong Kong legal practitioners with five years or more practising experience and who have passed the NJE are allowed to be exempt from the requirement of one-year internship, except that they are required to undergo one month intensive training organised by the local lawyers association in the Mainland. Upon completion of the training and passing the assessment, they can apply to practise as lawyers in the Mainland.²⁵

25. The number of Hong Kong residents sitting the NJE as well as the passing rate is on the rising trend.²⁶ Insofar as the Guangdong Province is concerned, as at 31 December 2017, there are 117 Hong Kong residents who were approved to practise as Mainland lawyers in the Guangdong Province.²⁷

Opportunities under the Belt and Road Initiative and the Bay Area Development

26. On 1 July 2017, the National Development and Reform Commission (“**NDRC**”), the HKSAR Government, the People’s Government of Guangdong Province and the Macao SAR Government signed the Framework Agreement on Deepening Guangdong – Hong Kong – Macao Cooperation in the Development of the Bay Area (《深化粵港澳合作 推進大灣區建設框架協議》)

²³ CEPA (signed in 2003).

²⁴ Supplement III to CEPA (signed on 27 June 2006).

²⁵ Supplement VI to CEPA (signed on 9 May 2009).

²⁶ The total number of Hong Kong candidates who sat and passed the NJE in the past 5 years are:

Year	No. of candidates who sat the NJE	No. of candidates who passed the NJE
2013	318	20
2014	328	30
2015	351	41
2016	381	37
2017	572	58

²⁷ <http://www.gdsf.gov.cn/info.do?infoId=9632351>.

(“**Framework Agreement**”). It is a goal of cooperation under the Framework Agreement for Hong Kong to establish a centre for international legal and dispute resolution services in the Asia-Pacific region.

27. In the Arrangement between NDRC and HKSAR Government for Advancing Hong Kong's Full Participation in and Contribution to the Belt and Road Initiative signed on 14 December 2017 (《國家發展和改革委員會與香港特別行政區政府關於支持香港全面參與和助力「一帶一路」建設的安排》), there is express support for Hong Kong to provide legal and dispute resolution services for the Belt and Road Initiative.

28. As pointed out by the Financial Secretary in his speech on the 2018/19 Budget, despite anti-globalisation sentiments, “the Belt and Road Initiative and the Bay Area development serve to enlarge the hinterland for business development of Hong Kong’s enterprises and expand our market coverage”.²⁸

29. Hong Kong has a pivotal role to play in providing the requisite international legal and dispute resolution services in various specialised areas when Mainland enterprises “go global” and pursue the Belt and Road Initiative. We encourage Mainland enterprises seeking to “go global” to choose Hong Kong as the dispute resolution venue in the relevant commercial and investment agreements.

30. The Department of Justice has been actively promoting Hong Kong’s legal and dispute resolution services in the Mainland in the context of the Belt and Road Initiative. We have been working in collaboration with the relevant economic and trade offices of the HKSAR Government in the Mainland as well as the legal and dispute resolution services sectors of Hong Kong in organising or participating in promotional events including seminars in Chongqing, Chengdu, Beijing, Shanghai, Guiyang, Xi’an and Wuhan. The next seminar in this series is tentatively scheduled for May 2018 in Nanning.

31. Looking ahead, the Department of Justice is making plans to co-organise other promotional activities of similar nature in the relevant cities in Mainland China and in jurisdictions along the Belt and Road. This includes the 5th Hong Kong Legal Services Forum, one of the flagship events of the Department, which is tentatively scheduled to be held in September 2018 in Guangzhou.

Department of Justice
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²⁸ <http://www.info.gov.hk/gia/general/201802/28/P2018022800188.htm>, paragraph 17.