Legal Services

I. Employment by Mainland law firms

1. What are the procedural requirements for Hong Kong legal practitioners to be employed by Mainland law firms?

Under the *Measures for the Management of Hong Kong Legal Practitioners and Macao Practising Lawyers Employed by Mainland Law Firms as Legal Consultants*, which has been in force since 1 January 2004 when CEPA I came into operation, a Hong Kong legal practitioner who intends to be employed by a Mainland law firm as legal consultant must obtain a Hong Kong legal consultant permit in accordance with the provisions of the Measures. The further liberalization measures concerning trade in services under CEPA II announced by the Central People's Government at end August 2004 has removed this procedural requirement, in that Hong Kong legal practitioners providing professional assistance on an individual case basis at the request of Mainland law firms will not be required to apply for the Hong Kong legal consultant permit.

2. What are the criteria for Hong Kong legal practitioners to be employed by Mainland law firms?

Before being employed by a Mainland law firm, a Hong Kong legal practitioner must have practised for two years in Hong Kong. He should not have been punished for any criminal offence, professional misconduct or any violation of the code of practice.

II. Association of law firms

3. Whether association of law firms in Hong Kong is permitted under Hong Kong law?

The answer is Yes. Under section 39C of the Legal Practitioners Ordinance, a Hong Kong law firm and one or more foreign law firms may be registered as an association at the Law Society if the firms intend to have, within two months after the registration, an

agreement under which fees, profits, premises, management or employees are shared between them.

4. What are the requirements to be met by Mainland law firms in order to apply for association with Hong Kong law firms?

Under the *Measures for the Management of the Associations Formed by Law Firms of the Hong Kong Special Administrative Region and Macao Special Administrative Region with Mainland Law Firms* issued by the Ministry of Justice, a Hong Kong law firm which has set up a representative office in the Mainland may apply to form association with a Mainland law firm which (i) has been established for 3 full years and (ii) has not less than 20 full-time lawyers.

No branch office of any Mainland law firm may apply for association as a party to the association.

5. Whether Hong Kong law firms which have set up representative offices in the Mainland are only allowed to form association with Mainland law firms in the place where their representative offices are located?

This restriction has been relaxed under CEPA III. According to the revised liberalization measures, Hong Kong law firms which have set up representative offices in the Mainland are allowed to form association with one Mainland law firms in the Province, Autonomous Region or Municipality directly under the Central Government where their representative offices are located. The amendment took effect on 1 January 2006.

6. What are the implications of the further liberalization measures under CEPA in 2006 on the forming of association between Hong Kong law firms and Mainland law firms?

Under the Supplement and Amendment Document III on commitments regarding liberalization of trade in services under the second Supplementary Agreement to CEPA promulgated by the Central People's Government on 29 June 2006, the

requirement on the number of full-time lawyers employed by Mainland law firms that operate in association with Hong Kong law firms has been waived. The measure takes effective from 1 January 2007.

7. What are the benefits of the new stipulation to Hong Kong legal practitioners?

By virtue of the further liberalization measures under CEPA in 2006, effective from 1 January 2007, Hong Kong law firms could choose to associate with Mainland law firms with less than 20 full-time lawyers. This measure will provide Hong Kong law firms with greater flexibility in selecting their Mainland partners according to their needs, irrespective of the operation of the Mainland firms. This should enable Hong Kong law firms to have more choices in pairing up with suitable Mainland law firms for better development of their practice.

8. What are the main advantages of forming an association between a Hong Kong law firm's representative office in the Mainland and a Mainland law firm?

There are obvious advantages in terms of costs savings and sharing of resources. Such an association will be able to provide one-stop legal services for clients engaging in cross-boundary business operations that may require legal knowledge of both jurisdictions. This should increase the competitive edge of the law firms concerned, since the co-operation of two firms from two jurisdictions would allow them to offer better and more effective services to the clients. With the benefit of sharing better business connections of its associated firm in the Mainland, the Hong Kong law firm is likely to enhance its business opportunities there. The management of such association will be subject to the *Measures for the Management of Associations formed by Law Firms of the Hong Kong Special Administrative Region or the Macao Special Administrative Region with Mainland Law Firms* promulgated by the Ministry of Justice.

9. What are the major differences between the operation of a partnership and an association?

Solicitors operating under a partnership will share the profits and expenses of the law firm in accordance with the terms of the partnership agreement. Pursuant to a partnership agreement, each partner will be liable not only for any professional liability incurred by himself or herself, but also for the liabilities of the other partners and the employees.

In an association, the professional liability incurred by an individual partner of one firm will not affect the liability of the partners of the other law firm in the association. Put simply, the professional liability of the partners of the one law firm in an association is severed from the liabilities of the partners of the other firm.

10. Why should only Hong Kong firms with representative offices in the Mainland be allowed to form association with Mainland firms?

This is a requirement of the Mainland side. It is believed that law firms with representative offices in the Mainland would have acquired the experience of practising Hong Kong law in the Mainland and are more committed to the Mainland market. They should also have the requisite experience and established working relationships with their Mainland counterparts. Their expertise should be relevant to the implementation of CEPA.

11. Whether the arrangement of forming association with Mainland firms should be open to all Hong Kong law firms?

The arrangement is subject to the existing terms of CEPA and the *Measures for the Management of Associations formed by Law Firms of the Hong Kong Special Administrative Region or the Macao Special Administrative Region with Mainland Law Firms* promulgated by the Ministry of Justice. Association with Mainland law firms is not open to all Hong Kong law firms. With further experience acquired in association and subject to the

views of the legal profession, we could propose to the Mainland side to widen the scope. The HKSARG is receptive to the views of the profession and will continue to discuss with the profession and the Mainland authorities on further liberalisation measures on legal services.

III. Hong Kong lawyers practising in both jurisdictions

12. Whether a Hong Kong resident who is allowed to practise in the Mainland may be employed by a law firm of a place other than the Mainland?

Under the *Measures for the Management of Residents of the Hong Kong Special Administrative Region and the Macao Special Administrative Region Having Acquired the Mainland Legal Professional Qualification to Work as Lawyers in the Mainland* ("the said *Measures*"), which also came into effect on 1 January 2004 as CEPA I, a Hong Kong resident who is allowed to practise in the Mainland shall practise in one Mainland law firm only, and shall not simultaneously be employed by a law firm of Hong Kong, Macao, Taiwan Region or a foreign country.

The said restriction has been relaxed pursuant to the amended version of the said *Measures.* Under the amended provision, a Hong Kong resident who is allowed to practise in the Mainland shall practise in one Mainland law firm only, and shall not simultaneously be employed by a resident representative office set up by a foreign law firm, a law firm of Hong Kong and Macao. The amendment took effect on 1 January 2006.

IV. Representative offices of Hong Kong law firms

13. Is the representative office of a Hong Kong law firm in the Mainland allowed to employ practising Mainland lawyers?

Under the *Measures for the Management of Representative Offices set up by Law Firms of the Hong Kong and Macao Special Administrative Regions in the Mainland,* the resident

representative office of a Hong Kong law firm cannot employ practising Mainland lawyers. The office may employ paralegals, but they are not allowed to provide legal services to their clients.

14. Why should representative offices of Hong Kong law firms in the Mainland be restricted from employing Mainland lawyers?

This is a requirement of the Ministry of Justice. This measure seems to echo the restriction that representative offices of Hong Kong law firms in the Mainland should not practise Mainland law. However, the fact that Mainland law firms are allowed to employ HK lawyers as legal consultant should open new frontiers for Hong Kong lawyers seeking to expand their professional practice and expose to new markets.

15. What are the requirements stipulated by the Mainland authorities in relation to the establishment of representative offices by Hong Kong law firms in the Mainland?

According to the *Measures for the Administration of Representative Offices set up by Law Firms of the Hong Kong and Macao Special Administrative Regions in the Mainland (“Administration Measures”)* promulgated by the Ministry of Justice on 13 March 2002, a Hong Kong law firm must satisfy specific conditions and obtain the approval of the Ministry of Justice in order to establish a representative office in the Mainland.

The following conditions must be satisfied for application by a Hong Kong law firm for the establishment of a representative office in the Mainland --

(1) The law firm is in lawful practice in Hong Kong and has not been punished for any professional misconduct or any violation of the code of practice;

(2) The representative of the representative office shall be a practising lawyer and a member of a lawyers’ association of Hong Kong and has been in practice for not less than two

years outside the Mainland and has never been punished for any criminal offence or any professional misconduct or any violation of the code of practice;

(3) The chief representative of the representative office shall be in practice for not less than three years outside the Mainland and is a partner in the law firm;

(4) The law firm has the genuine need to establish a representative office in the Mainland.

16. What are the legal services that can be provided by a resident representative office of a Hong Kong law firm in the Mainland?

The *Administration Measures* provide that the resident representative office of a Hong Kong law firm cannot engage in providing any Mainland legal services. The business that can be conducted by a representative office includes -

(1) providing to its client legal advice regarding Hong Kong law or foreign laws as well as advice on international conventions and international practices;

(2) accepting instructions to handle legal affairs involving Hong Kong law;

(3) engaging, on behalf of its Hong Kong clients, a Mainland law firm to handle affairs involving Mainland law;

(4) providing any legal services through a long term entrustment agreement with a Mainland law firm; and

(5) providing information relating to the impact on Mainland legal environment.

V. Minimum stay requirements

17. What is the "minimum stay requirement in the Mainland for representatives of HK law firms"?

This is a residence requirement for the representatives of Hong Kong law firms' representative offices stationed in the Mainland.

Before the implementation of CEPA I, all the representatives who work in such offices were required to remain in the Mainland for at least 6 months in a year. Following the implementation of CEPA I on 1 January 2004, this requirement is generally reduced from 6 months to 2 months. For law firms which set up representative offices in Shenzhen and Guangzhou, the residence requirement is completely waived. Under this new arrangement, representatives of Hong Kong law firm who station in Mainland are able to spend more time in attending their Hong Kong practice.

18. Would the residence requirement for Hong Kong representatives stationed in representative offices of Hong Kong law firms elsewhere in the Mainland be waived?

In the Supplement and Amendment Document III on commitments regarding liberalization of trade in services under the Second **Supplementary Agreement to CEPA promulgated by the Central People's Government on 29 June 2006, it is provided that the** residence requirement in the Mainland for all Hong Kong representatives stationed in the representative offices of Hong Kong law firms **will be** lifted. **This measure takes effect from 1 January 2007.**

19. What are the benefits to be brought to Hong Kong legal practitioners by the waiver of the residence requirement?

By virtue of the newly announced liberalization measures under CEPA in 2006, representatives of Hong Kong law firms in the Mainland are no longer required to station in the Mainland for a prescribed period of time wherever their representatives offices are located. In this way, these representatives will be able to allocate their times more freely to attend to their practices in both jurisdictions according to their professional needs.

VI. Hong Kong residents practising in the Mainland

20. Hong Kong residents who have acquired Mainland legal professional qualification are allowed to engage in non-litigation work. What would be regarded as "non-litigation work"?

We understand that these are legal work other than appearing for clients in the Mainland courts.

21. What requirements should be fulfilled in order to practise law in the Mainland?

The *Law of the People's Republic of China on Lawyers* (the "*Lawyers Law*") provides that in order to practise law, a person shall acquire the qualification as a lawyer and obtain a practice certificate.

22. What are the legal practices that Hong Kong residents who have acquired Mainland legal professional qualification may be engaged in the Mainland?

Under Article 4 of the *Measures for the Management of Residents of the Hong Kong Special Administrative Region and the Macao Special Administrative Region Having Acquired the Mainland Legal Professional Qualification to Work as Lawyers in the Mainland*, Hong Kong residents who have acquired Mainland legal professional qualification shall only handle "non-litigation legal matters".

However, the Supplement and Amendment Document III on commitments regarding liberalization of trade in services under the second Supplementary Agreement to CEPA promulgated by the Central People's Government on 29 June 2006 has relaxed the above measure. Effective from 1 January 2007, Hong Kong residents who have acquired Mainland lawyer qualifications or legal professional qualification and hold a Mainland lawyer's practice certificate are allowed to carry out activities as agents in matrimonial or succession cases involving Hong Kong parties in the capacity of Mainland lawyers. This should enhance the

opportunities for Hong Kong residents to develop their professional practice in the Mainland.

23. What is the meaning of "matrimonial or succession cases involving Hong Kong parties"?

According to the *Answer by the Supreme People's Court relating to several questions concerning the adjudication of the cases of economic disputes involving Hong Kong or Macao*, a case involves Hong Kong if:

(a) a party is or both parties are compatriots of Hong Kong;

(b) the subject matter of the economic disputes is in Hong Kong; or

(c) the economic relationship arises, changes or terminates in Hong Kong.

However, it is necessary to clarify with the Mainland authorities as regards the extent of the practice that Hong Kong residents may be involved as Mainland lawyers and discussions with the Mainland side are continuing.

24. What are the response expected from Hong Kong residents who have acquired Mainland lawyer qualification to **this new liberalization measure?**

It is expected that Hong Kong residents who have acquired Mainland lawyer qualification will welcome this liberalization measure. Under the new measure, Hong Kong residents are allowed to assist Hong Kong parties in handling certain civil litigation matters in the Mainland. Such a measure should be benefitial to both Hong Kong residents who practise as Mainland lawyers in the Mainland and Hong Kong residents who wish to engage Mainland lawyers to assist them in certain areas of civil litigation.

25. What requirements should be fulfilled in order to practise law in the Mainland?

The *Law of the People's Republic of China on Lawyers* (the "*Lawyers Law*") provides that in order to practise law, a person shall acquire the qualification as a lawyer and obtain a practice certificate.

26. What sort of training will be provided during the practical training for persons seeking to practise as a Mainland lawyer?

Under the *Lawyers Law*, *Measures for the Administration of the Lawyer's Practice Certificate and the Measures for the Management of Residents of the Hong Kong Special Administrative Region and the Macao Special Administrative Region Having Acquired the Mainland Legal Professional Qualification to Work as Lawyers in the Mainland*, in order to apply for a lawyer's practice certificate, a person has to undergo internship at a law firm for a full year. The law firm that provides the training should file the training details at the judicial bureau of its place of domicile. We understand that during the practical training, the person may have to assist qualified lawyers in conducting his business but he shall not engage in any sole practice.

27. Whether Hong Kong residents who have acquired Mainland legal professional qualification could undertake internship in a branch office of a Mainland law firm set up in Hong Kong?

Under the Supplement and Amendment Document III on commitments regarding liberalization of trade in services under the second Supplementary Agreement to CEPA promulgated by the Central People's Government on 29 June 2006, Hong Kong residents who have acquired Mainland lawyer qualifications are allowed 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* required in the Mainland. Therefore, they will not have to give

up their practice or work in Hong Kong completely in order to go through the requisite training in the Mainland.

28. What are the procedures for applying for a lawyer's practice certificate?

Under the *Lawyers Law* and the *Measures for the Administration of the Lawyer's Practice Certificate*, upon completion of practical training, a person could apply for the certificate by submitting the following documents to the judicial bureau of his place of domicile: *Application for Registration of Lawyer's Certificate* to be completed by the law firm he is being engaged by or he intends to join, his lawyer's qualification certificate and copy of his certificate of identity.

Upon receipt of the application documents, the judicial bureau concerned will make an initial examination and verification of the documents and report the application to the relevant judicial department (bureau) of the province, autonomous region or municipality directly under the Central Government before deciding whether or not to issue a lawyer's practice certificate to the applicant.

29. What are the conditions for setting up law firms in partnership in the Mainland? And what are the conditions for becoming a partner of a law firm?

Under the *Measures for the Management of Partnership Law Firms*, the following conditions have to be met in order to be eligible for setting up a law firm in partnership. The firm must have:

(1) its own name, premises and its articles of association;

(2) an asset of RMB 100,000 or more;

(3) three or more partners; and

(4) a partnership agreement in writing.

In order to be eligible for becoming a partner of a law firm in the Mainland, a person must possess lawyer qualification and have

been in practice for five years and be of good character and conduct.

VII. Lawyer's qualification and the National Judicial Examination

30. What are the conditions for acquiring a lawyer's qualification in the Mainland?

The *Lawyers Law* stipulates that a person who has completed undergraduate education or above in an institution of higher learning in the Mainland and on passing the National Judicial Examination shall be granted the qualification as a lawyer. The *Lawyers Law* further stipulates that a person who has completed an undergraduate legal education or above in an institution of higher learning, and who is engaged in professional work such as legal research and teaching, and has a senior professional title or has attained a professional level equivalent to that could also be granted the qualification as a lawyer upon approval by the Ministry of Justice after evaluation and verification. According to the *Rules on Entering for the National Judicial Examination for Residents of the Hong Kong and Macao Special Administrative Regions*, Hong Kong permanent residents who are Chinese nationals upon passing the national judicial examination may apply for a certificate of legal profession qualification.

31. How could a Hong Kong resident apply for a lawyer's practice certificate in the Mainland?

Under the *Lawyers Law*, a person possessing the qualification as a lawyer, having completed practical training at a Mainland law firm for a full year and being a person of good character and conduct may apply for a lawyer's practice certificate. According to the *Measures for the Management of Residents of the Hong Kong Special Administrative Region and the Macao Special Administrative Region Having Acquired the Mainland Legal Professional Qualification to Work as Lawyers in the Mainland*, Hong Kong residents who have obtained a certificate of legal profession qualification and completed internship of one

year may apply to practise as lawyers in the Mainland.

32. What are the conditions for applying to enter the National Judicial Examination and the procedures for acquiring the lawyer's qualification?

According to the provisions of the *Interim Implementation Measures for National Judicial Examination* jointly promulgated by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Justice, the national judicial examination for the qualification of legal profession shall be arranged and held by the Ministry of Justice under the State Council. Persons to be appointed as judges, procurators for the first time and persons who wish to acquire a lawyer's qualification must first pass the examination. Any person who meets the following requirements may apply to sit for the examination, in that he or she:

(1) is of the nationality of the People's Republic of China;

(2) upholds the *Constitution of the People's Republic of China* and has the right to vote and stand for election;

(3) has the full capacity for civil conduct;

(4) meets the qualification and professional requirements as stipulated in the Judges Law, the Public Procurators Law and the Lawyers Law; and

(5) is a person of good character and conduct.

The National Judicial Examination will be held once every year, and detailed arrangements will be announced three months prior to the annual examination by the Ministry of Justice. The examination will be in the form of written examination (closed book) and the candidates are required to pass all 4 papers. The number of candidates passing the examination and the passing threshold will be announced by the Ministry of Justice, in consultation with the Supreme People's Court and the Supreme People's Procuratorate. Candidates who passed the examination will be awarded a Certificate of Legal Professional Qualification by the Ministry of Justice.

According to the *Rules on Entering for the National Judicial*

Examination for Residents of the Hong Kong and Macao Special Administrative Regions, Hong Kong permanent residents who are Chinese nationals are allowed to enter the National Judicial examination. The provisions of the *Interim Implementation Measures for National Judicial Examination* concerning conditions for application and subjects of examination will similarly apply to Hong Kong residents.

33. Would an expatriate with a "HK Permanent Resident" status be allowed to enter the Examination as in the case of a "Chinese National"?

Yes, if the expatriate concerned has acquired Chinese nationality under the *Nationality Law* of the PRC.

34. What arrangements have been made to facilitate Hong Kong residents entering the National Judicial Examination?

To facilitate candidates of Hong Kong to enter the National Judicial Examination, the Department of Justice and the Ministry of Justice signed the *Memorandum of Discussion on matters regarding the organization of Hong Kong residents sitting the National Judicial Examination* on 13 May 2005. Under the Memorandum, the Department of Justice was entrusted by the Ministry of Justice to assist in organizing the arrangements for Hong Kong residents to sit for the examination to be held in Hong Kong, whereas the actual arrangements relating to the conduct of the Examination would be undertaken by the Hong Kong Examination and Assessment Authority (HKEAA). The National Judicial Examination was first held in Hong Kong in September 2005. On 2 June 2006, the Ministry of Justice issued a notice to announce the arrangements for the National Judicial Examination held in 2006. A further announcement was made on the same day specifying the application details for Hong Kong residents seeking to enter the Examination in 2006. The Examination was held in Hong Kong on 16 & 17 September 2006.

VIII. Appointment as agents in the Mainland

35. Apart from practising in the Mainland in the capacity as Mainland lawyers, whether Hong Kong lawyers are allowed to engage in any other legal work in the Mainland?

Under the Supplement and Amendment Document III on commitments regarding liberalization of trade in services under the second Supplementary Agreement to CEPA promulgated by the Central People's Government on 29 June 2006, Hong Kong barristers are allowed to act as agents in civil litigation cases in the Mainland in the capacity of citizens effective from 1 January 2007.

36. What is "agents in civil litigation cases in the capacity of citizens" under Mainland laws?

According to Section 2 of Chapter V of the *Civil Procedure Law*, a lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the People's Court may be appointed as the party's "agent ad litem". The person appointing the agent must submit a written appointment to the People's Court specifying the matter entrusted and the powers conferred. The *Civil Procedure Law* also provides that "agent ad litem" shall have the right to investigate and collect evidence and may have access to materials pertaining to the case. It should be noted that the *Lawyers Law* however provides that if a person has not obtained a lawyer's practice certificate but engages in the business of acting as agent in litigation or defending clients for the purpose of seeking economic benefit, he shall be ordered to cease the illegal practice of law.

According to our understanding, as the new measure only permits the appointment of an agent in the capacity of citizen, therefore, only those Hong Kong barristers who are Chinese citizens may be appointed to act as such.

37. What are the appointment criteria and procedures for the appointment of Hong Kong barristers as "agents" in civil

appointment of Hong Kong barristers as "agents" in civil litigation cases in the capacity of citizens in the Mainland?

The details of the appointment criteria and procedures regarding the appointment of Hong Kong barristers to act as "agents" in civil litigation cases in the capacity of citizens will have to be further clarified with the Ministry of Justice and will be referred to the practitioners for their information.

38. Why are only Hong Kong barristers be allowed to act as "agents in civil litigation cases in the capacity of citizens"?

The stipulation is a new measure allowing Hong Kong lawyers to engage in legal work in the Mainland other than in the capacity of Mainland lawyers. The Department of Justice will closely follow-up the implementation of this new measure and discuss with the Ministry of Justice for further liberalization including extending this measure to other Hong Kong legal practitioners so that the Mainland clients may have a wider choice in the appointment of agents in the capacity of citizens to represent their interests.