

(Translation)

**Speech by the Secretary for Justice, Ms Elsie Leung,
at the Experience Sharing Focus Group Discussion with Hong Kong Law Firms
that have set up Representative Offices in the Mainland cum
the Launching of a Reference Book entitled
Opportunities for Hong Kong Lawyers under CEPA
on 10 September 2004**

Ladies and Gentlemen,

I would like to welcome you all to the focus group discussion today. This gives me and my colleagues an opportunity for experience sharing with Hong Kong law firms that have already set up representative offices in the Mainland. Apart from sharing their experiences in expanding their legal services in the Mainland, we can also exchange useful tips and discuss the way forward. I will conduct a similar discussion with representatives of the Hong Kong Bar Association tomorrow morning.

2. Since the Reunification of Hong Kong with our motherland in 1997, the legal sector of Hong Kong has endeavoured to expand the legal services market in the Mainland. My department has held regular discussions and joined hands with the Law Society of Hong Kong, the Hong Kong Bar Association and members of the legal profession to introduce to Mainland officials, the Mainland legal sector and potential Mainland clients the legal services of Hong Kong. We have also discussed the opportunities and specific initiatives for gaining access to the Mainland market. In the summer of 2001 when China was about to join the WTO, the legal services sector, like other service sectors, was hit hard by the bursting of economic bubbles, the plunging of the real estate market and the economic restructuring. Both the

Government and the legal service sector felt the need to revitalize its business. On the one hand, we did promotion in other countries to let people know the strengths of our legal services so as to establish Hong Kong as a regional legal services and dispute resolution centre. On the other hand, we spared no efforts to develop the Mainland market, lobbying support from the trade and commerce departments under the Central Authorities, the Ministry of Justice and the Courts. We also persuaded Mainland enterprises to make use of Hong Kong in their negotiation and signing of contracts with foreign parties, to adopt Hong Kong laws as laws applicable to their contracts and to choose Hong Kong courts and arbitration bodies to resolve their disputes. Some public misconceptions were clarified. On 11 December 2001, after China's accession to the WTO, we even explored the possibility of making a closer economic partnership arrangement with the Mainland by way of a free trade agreement before the Mainland opens its market fully to other WTO members. At the beginning, some people questioned if such arrangement would breach the most-favoured-nation principle. We were able to find a legal basis for this. On its accession to the WTO, China had not made any commitments to open up its legal services market. We took this opportunity to discuss with the Mainland on how to strengthen our cooperation in legal services between the two sides. After discussion for one and a half years, legal services have become the first professional services covered in the liberalization of trade in services under CEPA. *The Mainland and Hong Kong Closer Economic Partnership Arrangement* ('CEPA'), which was signed on 29 September 2003 and came into effect on 1 January 2004, is one of our achievements. Under CEPA, it is easier for Hong Kong lawyers to gain access to the Mainland market. Hong Kong law firms are permitted not only to set up representative offices in the Mainland but, if they have a representative office in the Mainland, also to form associations with Mainland law firms. The residency

requirement for representatives of Hong Kong law firms stationed in the Mainland has been relaxed to a period of two months, while the relevant requirement for representatives stationed in Guangzhou and Shenzhen has even been waived due to their proximity to Hong Kong.

3. With regard to the provision of professional legal services by individuals, after the implementation of CEPA, Hong Kong permanent residents who are Chinese nationals are allowed to sit the National Judicial Examination and, upon passing the examination, to engage in non-litigation legal matters as a Mainland lawyer. Hong Kong lawyers can also be employed as legal consultants in Mainland law firms. Under CEPA II, which was promulgated on 27 August 2004 for implementation on 1 January 2005, the Mainland has agreed to further liberalize the legal services sector and clarified that Hong Kong lawyers can provide professional assistance at the request of Mainland law firms on the basis of individual cases without the need to apply for a Hong Kong legal consultant permit.

4. The scope of CEPA will be further broadened in the light of the actual experience through its implementation. In the early stage of the implementation of CEPA, the Department of Justice has asked the Ministry of Justice to clarify some doubts raised by the legal sector. In order to fully implement CEPA and to enable us to submit effective specific proposals to the Central Authorities, the Department of Justice, the Law Society of Hong Kong and the Hong Kong Bar Association have signed agreements on legal services co-operation with various Mainland provinces and cities. On behalf of the Department of Justice, I have signed agreements on legal services co-operation with seven provinces and cities, namely Beijing, Qingdao, Chongqing, Nanjing, Shanghai, Zhejiang and Shenzhen, in order to formulate specific plans for the implementation of CEPA. Under such agreements, the exchange of

legal information, as well as legal instruments, between the Mainland and Hong Kong will be enhanced. In addition, the training of the legal profession of both places will be strengthened, especially through exchanging legal personnel to obtain practical training. One of the co-operation items is to set up a mechanism as soon as possible to thoroughly study and follow up the implementation of CEPA in the relevant provinces or cities, to resolve through consultation any problems arising from the interpretation or implementation of CEPA, and to report specific proposals to the Central Authorities. This is in line with Article 19 of CEPA which allows the setting up of a Joint Steering Committee (on the level of the Central Authorities) to review, reinforce and further implement the arrangements under CEPA.

5. I am delighted to see the remarkable progress made by the Hong Kong legal profession in developing the legal services in the Mainland. When we began to consider gaining access to the Mainland market in 2001, there were only 25 Hong Kong law firms which had established branch offices in the Mainland. At present, there are already 47 Hong Kong law firms which have established 56 representative offices in 11 Mainland cities and two of them have been permitted to form associations with Mainland law firms. I would also like to mention that in the speech I gave on 26 February this year, I said that there were 35 Hong Kong law firms which had established 39 representative offices in 10 Mainland cities. There are discrepancies between these two sets of figures as international law firms which are registered in Hong Kong as Hong Kong law firms are not counted in by the Mainland and some of them have not completed their registration. As a result, the figure increased by nearly 50% in three years' time. In contrast, the pace of Hong Kong law firms establishing offices outside Hong Kong was much slower before China's accession to the WTO and the implementation of CEPA. CEPA is covered in the

agenda item on exchange and cooperation of professionals at the Hong Kong-Shanghai Economic and Trade Cooperation Conference, jointly led by the Chief Executive and the Mayor of Shanghai, and at the Hong Kong-Beijing Economic and Trade Cooperation Conference jointly led by the Chief Executive and leading officials of Beijing. At the First Plenary of Hong Kong-Shanghai Economic and Trade Cooperation Conference held in Hong Kong on 27 October last year and the First Plenary of Hong Kong-Beijing Economic and Trade Cooperation Conference recently held on 2 September this year, both parties also agreed that professionals of Hong Kong may participate in major projects such as the World Expo 2010 and Olympic Games 2008 to be held in Shanghai and Beijing respectively, by providing professional services. Therefore, at a media interview after attending the Symposium on Cooperation between Beijing and Hong Kong Lawyers on 3 September, I pointed out that the Hong Kong legal profession may seek to participate in the provision of legal services for relevant projects of the Olympic Games 2008. Hong Kong may also seek to become an arbitration centre in respect of relevant legal agreements so that its position as a regional centre for legal services and arbitration will be reinforced.

6. Under CEPA, both the Mainland and the HKSAR agree to increase the transparency of relevant regulations and rules and to enhance the exchange of information. The Mainland has taken action to implement the commitments set out in CEPA. To this end, the Ministry of Justice promulgated five sets of Regulations and Measures in November 2003. These Regulations and Measures serve to provide a mechanism for Hong Kong residents to sit the National Judicial Examination and undergo practical training, and to regulate the practice of Hong Kong lawyers and law firms in the Mainland, the employment of Hong Kong legal consultants by Mainland

law firms, and the formation of associations by Mainland and Hong Kong law firms. These Regulations and Measures, the contents of CEPA, specific commitments in respect of liberalization of market access in trade in services (including the legal services sector) under CEPA, and other documents such as *Regulations on Administration of Foreign Law Firms' Representative Offices in China* and *Interim Provisions on the Establishment of Offices within the Territory of China by Foreign Law Firms* have been included in *Opportunities for Hong Kong Lawyers under CEPA*, a reference book just published by the Department of Justice. Some of the copies of this book will be for sale. Moreover, the Department of Justice will provide the Law Society of Hong Kong, the Hong Kong Bar Association and other related organizations with complimentary copies of this book.

7. I wish to acknowledge the kind assistance of the Ministry of Justice, which authorized the reproduction in this book of relevant Regulations, and of many colleagues in my department who helped to put this book together. I hope that this reference book will provide some practical and useful guidance for members of the Hong Kong legal profession who are already engaged in providing legal services in the Mainland or are interested in expanding their scope of legal services in the Mainland. The Department of Justice will continue to monitor closely the latest developments in this respect and hopes to provide updated information in due course so as to assist the profession to grasp the opportunities brought about by CEPA and have a share in the Mainland legal services market.

8. As economic globalization continues to gather speed, CEPA is a window through which Hong Kong people can expand their businesses and seek further development in the Mainland. The implementation of CEPA accords with the needs of the Hong Kong economy, which is undergoing restructuring, and fits in with

China's "reaching out" policy. The realization of CEPA needs the full support of the Central Government and the endeavours of the HKSAR Government, but whether it can be implemented successfully depends on how the profession makes good use of the opportunity. This focus group discussion is held today to facilitate practical and candid exchanges on specific problems and measures which are our common concern with those of you in the profession who have set up representative offices in the Mainland. The discussion should have substantial benefits and effects on the way forward, such as for CEPA III, and as to how the Hong Kong legal profession could promote its legal services in the Mainland. My colleagues and I look forward to an in-depth experience sharing with you in this regard and wish to hear your suggestions.

9. Thank you.