

For discussion
on 23 April 2012

LegCo Panel on Administration of Justice and Legal Services

Further Information on the Framework Agreement on Hong Kong/Guangdong Co-operation

Introduction

On 23 May 2011, the Administration briefed the Panel on the implementation of measures concerning the cooperation on legal matters under the Framework Agreement on Hong Kong/Guangdong Co-operation (“Framework Agreement”). The deputations of the two legal professional bodies attended the meeting to express their views on the development of legal services both under the Framework Agreement and the Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”). This paper sets out the response of the Administration on the views expressed by the legal professional bodies and other initiatives undertaken by the Administration to facilitate the provision of legal and arbitration services in Qianhai, Shenzhen by Hong Kong service providers.

Development of Legal Services under the Framework Agreement and CEPA

2. At the meeting of 23 May 2011, the Deputation of the Law Society briefed Members the Law Society’s proposals on further liberalization measures under CEPA based on the study commissioned by the Law Society which was released in April 2011. The proposals included: (a) to develop the mode of association of Hong Kong and Mainland law firms towards the form of partnership in the Mainland; (b) to facilitate the provision and development by Hong Kong lawyers of legal services in the Mainland market; and (c) to permit the employment of Mainland lawyers by representative offices of Hong Kong law firms in the Mainland.

3. The Law Society's views and suggestions on further liberalization of the Mainland legal services market, including the proposals mentioned above, have been related to and discussed with the Mainland authorities in the context of CEPA discussions, the development of legal and arbitration services in Qianhai, as well as in other mutual exchanges with the Mainland.

4. During the visit to Hong Kong in August 2011, Vice-Premier of the State Council, Li Keqiang, announced on 17 August 2011 a series of measures from the Central Government to support social and economic development in Hong Kong. The measures concerning legal services included the proposal to explore the ways of improving the mode of association of law firms of Hong Kong and the Mainland under Guangdong-Hong Kong and Qianhai Shenzhen-Hong Kong co-operation framework. In addition, the Central Government also indicated support to allowing Hong Kong arbitration bodies to provide services in Qianhai as a measure to develop Hong Kong as a leading international arbitration centre.

5. After discussion, Supplement VIII to CEPA was signed in Hong Kong on 13 December 2011 providing, *inter alia*, liberalisation measures in legal services. The new measures introduced include: (a) to further develop closer cooperation between the legal professions of the Mainland and Hong Kong, and to explore ways of improving the mode of association of law firms of the two places; and (b) to consider broadening the scope of business of Hong Kong residents with Mainland legal professional qualification and holding a Mainland lawyer's practice certificate in acting as agents in civil litigation cases relating to Hong Kong residents and juridical persons.

6. The new measures relating to trade in services (including legal services) took effect from 1 April 2012. The measures newly introduced in relation to legal services have, to an extent, positively responded to the proposals made by the legal professional bodies. For the purpose of effective implementation of such measures, the Administration continues to liaise with the local legal professional bodies and relevant Mainland organs for their views and suggestions as regards

the ways to improve the mode of association of law firms as well as to expand the areas of legal practice in which Hong Kong residents with Mainland legal qualification may be engaged as Mainland lawyers.

7. The Administration also maintains close working relationship with the stakeholders to monitor the implementation of the liberalization measures in respect of legal services under CEPA and its Supplements. Any problems or issues identified by the profession will be duly discussed with relevant Mainland authorities in order to explore ways to resolve the problems early.

Development of Legal and Arbitration Services in Qianhai, Shenzhen

8. In the paper submitted to the Panel in May 2011 (LC Paper No. CB(2)1781/10-11(03)), the Administration has also briefed Members on the background and main features of the Overall Development Plan on Hong Kong / Shenzhen Co-operation on Modern Service Industries in Qianhai Area (“Qianhai Development Plan”). In June 2011, the People’s Congress of Shenzhen Municipality promulgated the “Regulations on Qianhai Shenzhen-Hong Kong Modern Services Industries Co-operation Area” (“the Regulations”).

9. The Regulations provide that a special tribunal will be set up to deal with commercial disputes in Qianhai. It is further specified in the Regulation that steps will be taken to encourage (a) the establishment of a mechanism to verify Hong Kong law (where it is relevant to the matter in question) and (b) Hong Kong arbitration bodies to provide arbitration services in Qianhai.

10. In October 2011, the Secretary for Justice led a delegation comprising the representatives of the Law Society, the Hong Kong Bar Association and the Hong Kong International Arbitration Centre (“the HKIAC”) to visit Shenzhen and Qianhai. The representatives of the legal and arbitration bodies of both sides exchanged views on the ways and manner of developing Hong Kong’s legal and arbitration services in Qianhai in the light of the Regulations.

11. After the meeting in October, the Department of Justice and the Shenzhen Municipal Government signed the “Co-operative Arrangement on Legal Matters” on 25 November 2011. The parties agreed to enhance communication and exchange on legal matters, and to explore and discuss the ways to strengthen co-operation in building the legal environment to promote greater use of legal and arbitration services in Qianhai. The parties further agreed to explore possible pilot measures under the framework of CEPA for implementation in Qianhai.

12. On 23 March 2012, the representatives of the Administration, the Law Society, the Bar and the HKIAC met with the representatives of various organs in Shenzhen to further exchange views on issues concerning the provision of Hong Kong arbitration and legal services in Qianhai. The matters discussed included exploring the mode of association of law firms of the two places, the provision of Hong Kong arbitration services in Qianhai and the establishment of a mechanism to verify Hong Kong law. The representatives of the two places considered such meetings helpful for them to better understand the regulatory regime and other issues concerning both the operation and practice of the other side and further exchanges in this direction should continue.

13. Other than the above meetings and visits, the Department of Justice has provided the Shenzhen authorities with information on Hong Kong law which would facilitate better understanding of the legal system in Hong Kong such as the Legal Practitioners Ordinance (Cap. 159).

14. At the Panel meeting of 23 May 2011, Deputation of the Hong Kong Bar Association has indicated the Bar’s willingness to offer assistance to the Shenzhen authorities in establishing a mechanism to verify Hong Kong law. The Bar has subsequently provided an information note on “Amicus Curiae (Friends of the Court) and its Role” to the Department of Justice and the Chinese translation of the note has been passed to the Shenzhen side for their information.

Conclusion

15. Both CEPA and the Qianhai Development Plan have afforded the legal profession and to some extent, the arbitration profession in Hong Kong the opportunity to gain easier access to and develop in the Mainland market. However, given that some of the proposals such as the provision of Hong Kong arbitration services in Qianhai are new initiatives, and the differences between the legal systems and regulatory regimes of the two jurisdictions, it is expected that further discussions will continue in order to carefully consider the proposals and to address the relevant issues raised by both sides.

16. The Administration will continue to work closely with the Hong Kong legal and arbitration professions to consider the issues involved and explore the ways of resolving them. The Administration will also discuss with the Mainland and Shenzhen authorities the views and suggestions of the Hong Kong legal and arbitration professions. We aim to encourage and facilitate the development and adoption of pilot measures for implementation in Qianhai and/or Guangdong which will be conducive to the further promotion of Hong Kong legal and arbitration services in the Mainland market.

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