

**For discussion
on 26 March 2013**

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

**Role of the Hong Kong Legal Profession in
the Development of Qianhai Area in Shenzhen**

This paper outlines the Department of Justice (“DoJ”)’s major areas of work in respect of promoting the development of legal and dispute resolution services in the Qianhai Area.

I. Background

2. The Government of the HKSAR and the Shenzhen Municipal Government signed the Letter of Intent in Taking Forward Co-operation on Modern Service Industries between Hong Kong and Shenzhen in Qianhai in August 2009, and the Joint Task Force on Qianhai Shenzhen/Hong Kong Modern Service Industries Co-operation Zone has been set up to jointly develop modern service industries in the Qianhai Area. According to both sides’ consensus, the Shenzhen Municipal Government takes a leading role and is responsible for the development and management of Qianhai while the SAR Government advises on development planning as well as the study and formulation of related policies.

3. In April 2010, the Government of the Hong Kong SAR and the Guangdong Provincial Government signed the Framework Agreement on Hong Kong/Guangdong Co-operation (“Framework Agreement”), highlighting Shenzhen/Hong Kong co-operation on the development of Qianhai. The Framework Agreement states that Qianhai will focus on the development of modern service industries, the innovation of management systems and regulations of the industries, and the joint development of markets for these industries by Hong Kong and Shenzhen.

4. The State Council announced the Overall Development Plan on Hong Kong/Shenzhen Co-operation on Modern Service Industries in Qianhai Area (the “Qianhai Development Plan”) in August 2010, designating Qianhai as a Hong Kong/Guangdong modern service industry innovation and co-operation exemplary zone and providing that the Shenzhen Special Economic Zone may fully utilize the legislative power conferred by the Standing Committee of the National People’s Congress to implement pilot measures and innovative regimes, with a view to creating a favourable legal environment for opening up and developing the service industries.

5. The Outline of the Twelfth Five-Year Plan for the National Economic and Social Development of the People’s Republic of China promulgated in March 2011

affirms the positioning of the development of Qianhai, designating her as one of the seven major co-operation projects among Guangdong, Hong Kong and Macao.

6. The Regulations on Qianhai Shenzhen/Hong Kong Modern Service Industries Co-operation Zone of the Shenzhen Special Economic Zone (“the Regulations”), as adopted by the Standing Committee of the People’s Congress of Shenzhen Municipality, were promulgated for implementation on 6 July 2011. The Regulations provide that a special tribunal would be set up to deal with commercial disputes in Qianhai. It is further stated in the Regulations that steps would be taken to encourage the establishment of a mechanism for the verification of the law of other jurisdictions, to introduce the system of international commercial arbitration and to encourage Hong Kong arbitration bodies to provide arbitration services for enterprises in Qianhai.

7. In August 2011, Mr Li Keqiang, Vice-Premier of the State Council (as he then was), announced the proposal to explore ways of improving the mode of association of law firms between Hong Kong and the Mainland and the proposal to allow Hong Kong arbitration bodies to provide services directly in Qianhai Shenzhen.

8. In June 2012, the State Council released its “Official Reply on Policies Concerning the Development and Opening-up of Qianhai Shenzhen-Hong Kong Modern Services Industries Co-operation Area”. The Reply sets out the policy initiatives of exploring ways for Hong Kong arbitration institutions to establish branches in Qianhai; improving the mode of association between law firms of both places, and furthering the implementation of various liberalization measures for Hong Kong under the framework of CEPA and its Supplements.

II. Promoting the development of Hong Kong’s legal and dispute resolution services in Qianhai

9. On the whole, properly handled, the development of Qianhai can enable Hong Kong and Qianhai (if not also the Guangdong Province and other places in the Mainland) can complement each other’s strengths. On the one hand, the Hong Kong professional services (including legal and dispute resolution services) can assist in the development of enterprises in Qianhai. On the other hand, the development in Qianhai presents opportunities for service industries in Hong Kong to further develop their businesses in the Mainland. The legal, arbitration, mediation and relevant sectors in Hong Kong have expressed concern and support for promoting the development of the Qianhai Modern Services Industries Innovation and Co-operation Area. Following the announcement of the Qianhai Development Plan, the DoJ has been engaging in exchanges and discussions with the relevant sectors and the Mainland ministries and organizations on ways to take forward the introduction of the Hong Kong legal and dispute resolution services in Qianhai and capitalise on the strengths of our legal and dispute resolution services, with a view to enhancing the investment environment in Qianhai and attracting investors from inside and outside the Mainland.

10. The Secretary for Justice (“SJ”) visited Shenzhen and conducted a site visit of the Qianhai Area in August 2012, during which he met and exchanged views with representatives of the relevant authorities of Shenzhen Municipality on the development of legal and arbitration services in Qianhai. Both sides agreed to continue to explore and strive to implement pilot measures on the opening up of the Qianhai Area. The key measures proposed by the DoJ include: (1) allowing enterprises operating business in Qianhai to choose Hong Kong laws as the applicable law for their commercial contracts and to conduct arbitration in Hong Kong should disputes arise, or to allow Hong Kong arbitration bodies to provide services directly in Qianhai Area (see Parts III and IV below); (2) exploring the establishment of the law verification mechanism of Hong Kong laws (see Part V below); and (3) allowing the establishment of association in the form of partnership between Hong Kong and Mainland law firms (see Part VI below).

11. In addition to the visit to Shenzhen, the DoJ had discussions and exchanges with representatives of the Hong Kong legal sector and other stakeholders during the period between August and November 2012 on proposals to promote the development of Hong Kong’s legal and dispute resolution services in Qianhai. In November 2012, SJ visited Beijing to discuss related matters with the relevant central ministries.

III. Allowing Mainland enterprises to adopt Hong Kong laws as applicable law in contracts

12. It cannot be gainsaid that the robust legal system and the rule of law in Hong Kong are well recognized internationally. Our laws in areas such as international trade, financial investment and fund raising, intellectual property, international arbitration and mediation are on a par with international standards. The DoJ strives to push initiatives to the effect that (except in obviously inappropriate situations, such as sale and purchase of real estate in the Mainland) enterprises operating business in Qianhai (including Mainland enterprises, Sino-foreign joint ventures and foreign enterprises) shall be allowed as much room as possible to choose Hong Kong laws as the applicable law for their commercial contracts. We believe that this measure will boost investors’ confidence, help the Qianhai Area attract foreign investments and better complement the national policy on facilitating the internationalisation of Mainland enterprises. The DoJ has raised these proposals with the relevant ministries. Since the proposal touches on relatively complicated legal and policy considerations, it is expected that the two sides will need more time to discuss the matter.

IV. Allowing Hong Kong arbitration bodies to set up offices and provide arbitration services in Qianhai

13. As mentioned in paragraph 6 above, the Regulations contain provisions which encourage the introduction of modern international commercial arbitration regime and also encourage Hong Kong arbitration bodies to provide commercial arbitration services to enterprises in Qianhai Area. It is noted that the Hong Kong arbitration sector responded positively to the proposal of exploring ways for Hong Kong

arbitration bodies to set up offices in Qianhai, but is concerned about the scope of business and mode of operation of these offices.

14. The DoJ has been encouraging the arbitration bodies in both places to enhance co-operation on various levels so as to complement each other's strengths and enhance their international competitiveness. We will continue to discuss the proposals with the relevant sectors and Mainland authorities so that enterprises conducting business in Qianhai would have as much room as possible to choose Hong Kong as the arbitration venue, or allowing Qianhai branch offices set up by Hong Kong arbitration bodies to provide arbitration services directly in Qianhai for Hong Kong, Mainland and overseas enterprises, and that the arbitral awards shall be treated as Hong Kong arbitral awards and can be enforced pursuant to the relevant laws in Hong Kong or the Mainland.

V. The establishment of a comprehensive verification mechanism of Hong Kong laws

15. Mechanism for verification of Hong Kong laws is to facilitate experts of Hong Kong laws to be engaged by courts in Shenzhen or Qianhai to provide information and advice on Hong Kong laws when handling cases involving Hong Kong elements. The Regulations encourage the cooperation of Shenzhen and Hong Kong to establish a law verification mechanism in order to provide such service for the verification of the law of other jurisdictions to the businesses operating in Qianhai. The DoJ understands that the legal profession has expressed support for the proposal. We will continue further discussions with the legal profession and the Mainland authorities on the details for implementing the proposal.

VI. Association in the form of partnership

16. According to the legal sector, the existing operation mode of "association by agreement" between Hong Kong and Mainland law firms is less than satisfactory. The number of associations formed by the representative offices of Hong Kong law firms and Mainland law firms has consistently been on the low side¹. As law firms of Hong Kong and the Mainland are currently not allowed to form partnership, both parties in an association can only operate in a relatively independent manner. Moreover, the formation of an association by a representative office of a Hong Kong law firm and a Mainland law firm will result in an exclusion phenomenon, leading to a decline of business referred by other Mainland law firms.

17. The Administration has been striving to assist the legal profession for the early implementation of measures to improve the mode of association of law firms of the two places under Supplement VIII to the Mainland and Hong Kong Closer Economic

¹ According to information provided by the Law Society of Hong Kong, as at late Jan 2013, Hong Kong law firms have established 73 representative offices in the Mainland, with 39 of them established after the implementation of CEPA and six Hong Kong law firms have formed associations in the Mainland with Mainland law firms.

Partnership Arrangement ("CEPA"). We propose to allow law firms in the two places to jointly establish and operate an association in the form of partnership in the Guangdong Province (including Qianhai Area) as a pilot measure. Within such a mode of association, lawyers from both places will have the flexibility to provide legal services of different jurisdictions so as to better meet customers' needs for cross-border legal services.

18. We understand that the Mainland authorities are studying and in the process of drawing up detailed proposals on the implementation of association in the form of partnership. We will continue to maintain close liaison with the Mainland authorities and the legal profession in Hong Kong with a view to securing the early introduction of the measure to allow law firms of the two places to establish association in the form of partnership.

VII. Conclusion

19. The development in Qianhai has afforded the legal profession the opportunity to gain easier access to and develop in the Mainland market and this will also benefit the arbitration and mediation professions in Hong Kong. As some of the proposals, such as the setting up of branch offices by Hong Kong arbitration bodies and the provision of Hong Kong arbitration services in Qianhai, are brand new initiatives, and there are differences between the legal systems and regulatory regimes of the two places, it is expected that further discussions will still be necessary in order to address the relevant issues raised by both sides so as to fully put forward and properly implement the relevant proposals.

20. The Administration will continue to work closely with the Hong Kong legal, arbitration and mediation professions to consider the issues involved and explore ways to resolve them. The Administration will also continue to reflect the views and suggestions of the sectors to the relevant Mainland authorities and seek implementation of the pilot measures as far as possible so as to facilitate the Hong Kong legal and dispute resolution services providers in further promoting their services in the Mainland market.

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