

Mainland and Hong Kong Closer Economic Partnership Arrangement
(CEPA)
Frequently Asked Questions

Sector-specific: Legal Services Sector

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Legal Services (18)

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I. Employment by Mainland law firms as legal consultants

1. What are the stipulated requirements in relation to the employment of Hong Kong legal practitioners as legal consultants 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* (the “**Legal Consultant Measures**”) implemented on 1 January 2004, Hong Kong legal practitioners means solicitors and barristers who are Hong Kong permanent residents and who shall meet the following requirements:

- (1) Have practised law in Hong Kong for two full years;
- (2) Have not been subject to any criminal punishment and other punishment in relation to breach of lawyers’ professional ethics or professional discipline;
- (3) A Mainland law firm has agreed to employ the legal practitioner.

2. What are the legal services that may be provided by Hong Kong legal practitioners as legal consultants?

The Legal Consultant Measures provide that Hong Kong legal practitioners can only handle legal matters which the legal practitioners have been approved to practise in Hong Kong and in other countries and regions other than the Mainland of China. They are not allowed to handle Mainland legal matters.

3. How many Mainland law firms can Hong Kong legal practitioners be employed at the same time?

Pursuant to the *Agreement Concerning Amendment to the CEPA Agreement on Trade in Services* (the “**Amendment Agreement**”) to be implemented on 1 June 2020, Hong Kong legal practitioners are allowed to be employed as legal consultants by not more than 3 Mainland law firms simultaneously, relaxing from the current restriction of being employed by 1 law firm.

4. Do Hong Kong legal practitioners employed by Mainland law firms need to apply for Hong Kong legal consultant permits?

The Legal Consultant Measures provide that a Hong Kong legal practitioner who wishes to take up employment in a Mainland law firm as legal consultant must obtain a Hong Kong legal consultant permit in accordance with the provisions of the *Legal Consultant Measures*. Such permit should be registered with the provincial judicial administrative organ annually, or else it will become invalid.

According to the *Amendment Agreement*, the current approval requirements for Hong Kong legal practitioners as legal consultants will be streamlined to filing procedures. Annual registration is no longer required.

Under CEPA Supplement I implemented on 1 January 2005, Hong Kong solicitors providing professional assistance on an individual case basis at the request of Mainland law firms are not required to apply for the Hong Kong legal consultant permit.

5. What are the differences between the legal consultants employed by Mainland law firms and the lawyers seconded by Hong Kong law firms to work in Mainland law firms as consultants on Hong Kong law?

The former scheme covers Hong Kong legal practitioners, namely, solicitors and barristers, and they are employed by Mainland law firms as legal consultants in their personal capacities. On the other hand, the latter is about solicitors being seconded by Hong Kong law firms to Mainland law firms as consultants on Hong Kong law or cross-border laws. Please refer to questions 23 and 24 for details.

II. Representative offices of Hong Kong law firms

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

According to 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 “**Management Measures**”), a Hong Kong law firm must satisfy the following specific conditions before they may apply to establish 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; and

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

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

The *Management Measures* provide that a 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 clients legal advice regarding Hong Kong law or laws of the countries (except for the laws of the Mainland) where the law firm has been approved to practise as well as advice on international conventions and international practices;
- (2) accepting instructions to handle legal affairs involving laws of the regions (except for the laws of the Mainland) where the law firm has been approved to practise;
- (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.

A representative office and its representatives are not allowed to engage in any other legal services or profit-making activities apart from those set out under items (1), (2) and (3) above.

8. Is a representative office in the Mainland allowed to employ practising Mainland lawyers?

Under the *Management Measures*, the 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.

III. Minimum stay requirements

9. What is the “minimum stay requirement in the Mainland for representatives of HK law firms” and is it still applicable?

After the implementation of CEPA Supplement III on 1 January 2007, the residence requirement for all Hong Kong representatives stationed in the Mainland no longer applies.

10. What benefits may likely be brought to Hong Kong legal practitioners by waiving the residence requirements?

With the introduction of the relaxed measures, representatives of Hong Kong law firms in the Mainland will no longer be required to station in the Mainland for a prescribed period of time. They will therefore have greater flexibility in attending to their practices in both jurisdictions.

IV. Association of law firms

(1) Non-partnership association

11. What are the requirements relevant to Mainland law firms intending to apply for non-partnership association with Hong Kong law firms?

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 took effect on 1 January 2004, allowing a Hong Kong law firm that has set up a representative office in the Mainland to form an association with a Mainland law firm in the Mainland to provide legal services on Hong Kong law and Mainland law to clients respectively according with the rights and obligations stipulated in an agreement. The association however shall not operate in the form of a partnership or as a legal person.

The earlier requirement that the Mainland law firm in the association shall have no less than 20 full-time lawyers has been removed under CEPA Supplement III which took effect on 1 January 2007. Since 1 January 2007, a Hong Kong law firm which has set up a representative office in the Mainland may apply to form a non-partnership association with a Mainland law firm which (i) has been established for three full years; and (ii) has not been subject to any administrative penalty or disciplinary measure for professional misconduct in the two years before the application.

Upon the implementation of CEPA Supplement IV on 1 January 2008 and CEPA Supplement IX on 1 January 2013, a Hong Kong law firm that has set up a representative office in the Mainland may operate in the form of a non-partnership association with one to three Mainland law firms anywhere in the Mainland. Hence, Hong Kong law firms are no longer limited to forming

association with a Mainland law firm situated in a place where the representative office of the Hong Kong law firm is located.

12. What pilot measure regarding the formation of non-partnership association has been introduced in Guangdong Province under CEPA Supplement VI?

Under CEPA Supplement VI which took effect on 1 October 2009, Hong Kong law firms which have set up representative offices in the Mainland may form non-partnership associations with law firms in Guangdong Province but such Mainland law firm must have been established for at least a year and one of the lawyers who established the firm has at least five years of professional experience. The requirement that the Mainland law firm has been established for three years has been relaxed in respect of Mainland law firms in Guangdong Province.

(2) Association in the form of partnership

13. In which cities may a Hong Kong law firm and a Mainland law firm apply to form an association in the form of partnership?

According to the *Trial Measures on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Guangdong Province* promulgated on 4 August 2014 and took effect since 1 September 2014, a Hong Kong law firm and a Mainland law firm may operate an association in the form of partnership in Qianhai in Shenzhen, Nansha in Guangzhou, and Hengqin in Zhuhai, the three pilot areas in Guangdong Province. Such an association shall be established in the form of a specialized general partnership.

The *Agreement on Trade in Services*, which was signed in November 2015 and came into effect on 1 June 2016, extends the geographical scope of the measure on partnership association to Guangzhou city, Shenzhen city and Zhuhai city. Hong Kong and Mainland law firms may operate in association in the form of partnership in these three cities.

The Ministry of Justice issued the *Notice of the Ministry of Justice on Extension of Geographical Scope for the Partnership Association formed by Hong Kong Law Firms and Macao Law Firms with Mainland Law Firms* on 27 December 2017, extending the geographical scope of the measures on partnership association from Guangzhou city, Shenzhen city and Zhuhai city of Guangdong Province to the whole Guangdong Province.

The State Council issued the *Notice of the State Council on Effectively Replicating and Promoting the Experience Gained from the Fourth Batch of Pilot Reforms in Pilot Free Trade Zones (Guo Fa [2018] No. 12)* on 23 May

2018, extending the geographical scope of the measures on partnership association to the entire Mainland.

Measures on the Trial Implementation on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Shanghai (Trial Measures)(Hu Si Gui [2018] No. 18) promulgated by the Shanghai Justice Bureau came into effect on 1 December 2018¹ (the “**2018 Shanghai Measures**”).

After the amendment of *The Agreement on Trade in Services* under CEPA on 11 December 2018, starting from 1 March 2019, the geographical scope of setting up of Hong Kong and Mainland law firms in the form of partnership association has been expanded to the entire Mainland.

14. What are the relevant measures applicable to the setting up of an association in the form of partnership in the Mainland?

According to the Notice of the Ministry of Justice on Extension of Geographical Scope for the Partnership Association formed by Hong Kong Law Firms and Macao Law Firms with Mainland Law Firms issued in January 2019, the Ministry of Justice has requested the justice departments (bureaux) of each province or municipality to formulate their own implementation measures on the setting up of an association in the form of partnership, with reference to the ones implemented in Guangdong Province and Shanghai Municipality. Approval should be obtained from the Ministry of Justice before implementation².

Apart from the 2018 Shanghai Measures implemented by the Shanghai Justice Bureau on 1 December 2018 as set out in question 13, some provinces are working on the relevant measures while some have already done so pending promulgation. Measures that have been promulgated include the following:

- *The Trial Measures of the Department of Justice of Guangdong Province on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Guangdong Province (revised in 2019)*(Yue Si Gui [2019] No.1)³ (the “**2019 Guangdong Measures**”) took effect on 1 August 2019.

¹ http://sfj.sh.gov.cn/xxgk_zcjd/20180925/3d6e1e91e0ec470fa8fc4bb660b5afe1.html (available in simplified Chinese only).

² http://www.moj.gov.cn/government_public/content/2019-01/25/tzwj_227509.html (available in simplified Chinese only).

³ http://sft.gd.gov.cn/sfw/gov_gk/law/content/post_2533515.html (available in simplified Chinese only).

- *The Trial Measures on Hong Kong Special Administration Region and Macao Special Administration Region Law Firms Operating in the Form of Partnership Association with Law Firms in Hainan (Qiong Si Gui [2019] No.1)* promulgated by the Department of Justice of Hainan Province came into effect on 1 November 2019⁴ (the “*Hainan Measures*”).
- *Measures on the Trial Implementation on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Fujian Province (Trial Measures)(Min Si [2019] No. 238)*⁵ promulgated by the Department of Justice of Fujian Province on 23 December 2019 (the “*Fujian Measures*”).
- *Measures on the Trial Implementation on Hong Kong Law Firms and Macao Law Firms Operating in the Form of Partnership Association with Mainland Law Firms in Shandong Province (Trial Measures)(Lu Si [2019] No. 92)* promulgated by the Department of Justice of Shandong Province took effect on 1 February 2020⁶ (the “*Shandong Measures*”).

15. What are the requirements relevant to a Hong Kong law firm intending to apply for the setting up of an association in the form of partnership with a Mainland law firm in the Mainland?

Please refer to the relevant measures applicable to the setting up of partnership associations promulgated by the respective provinces and municipalities.

Take Guangdong Province as an example, under the 2019 Guangdong Measures, any law firm in Hong Kong may file an application for association if it meets the following conditions:

(1) It has been registered and established in accordance with Hong Kong law; with its headquarter in Hong Kong; (2) It has been engaged in the operation of legal services for five full years; (3) It has more than 3 practising lawyers and the partners or responsible persons are practising lawyers registered in Hong Kong; (4) It is capable of handling legal affairs in Hong Kong and legal affairs as approved in other countries and regions other than the Mainland China; (5) Neither the head office itself nor the representative office in the Mainland have been subject to any penalty by Hong Kong’s regulatory bodies for lawyers or Mainland’s regulatory departments, respectively, in the three years immediately preceding the application.

⁴ http://justice.hainan.gov.cn/sfxz/lsgz/201912/t20191205_2716725.html (available in simplified Chinese only).

⁵ http://sft.fujian.gov.cn/zwgk/zfxxgkzl/zfxxgkml/qtyzdgkdzfx/202001/t20200103_5174722.htm (available in simplified Chinese only).

⁶ <http://sft.shandong.gov.cn/articles/ch05638/201912/30499658-f244-463f-8468-d0e4e5386720.shtml> (available in simplified Chinese only).

Any Mainland law firm may file an application for association if it meets the following conditions:

(1) It has been established as a partnership for five years or more; (2) It has more than 20 practising lawyers; (3) Its head office is set up in Guangdong Province, or in another province, autonomous region or municipality directly under the Central Government with a branch office in Guangdong Province; (4) Neither the head office itself nor the branch office in Guangdong Province have been subject to any administrative penalty or professional disciplinary action in the three years immediately preceding the application.

16. Is there any restriction on the capital injection ratio of the law firms in partnership association?

To further encourage small and medium-sized Hong Kong law firms to set up partnership associations with Mainland law firms, starting from 1 June 2020, the capital injection ratio requirement of not less than 30% by Hong Kong partner firms in the partnership associations set up in the whole Mainland will be removed.

Currently, the *2019 Guangdong Measures* has removed the capital injection ratio requirement of not less than 30% by Hong Kong partner firms in the partnership associations set up in Guangdong Province. The total capital injection by the all partners shall not be less than RMB 5 million, while the form of capital injection shall be agreed among parties. If there is only one Hong Kong partner firm, its capital injection ratio shall not be higher than 49%; if there are a few partner firms, the capital injection ratio of each partner firm shall be less than the capital injection ratio of the Mainland partner firm.

The requirements under the *Hainan Measures* are in general the same as the *2019 Guangdong Measures*, but Article 8 of the *Hainan Measures* provides that it shall not be agreed in a partnership association agreement that a party to the partnership association has the right to decide on major matters which exceeds its capital injection ratio. s

The *Shandong Measures* and *Fujian Measures* stipulate that the total capital injection by the all partners shall not be less than RMB 5 million and the form of capital injection shall be agreed among parties. The capital injection ratio of Hong Kong and Macao partner firms shall not be higher than 49%, whether taken individually or in the aggregate.

For partnership associations set up in Shanghai, currently the *2018 Shanghai Measures* stipulates that the capital injection ratio requirement of Hong Kong or Macao partner firm(s) (either individually or in the aggregate) shall not be lower than 30% or higher than 49%.

The *2018 Shanghai Measures* and the *Fujian Measures* also provide that it shall not be agreed in a partnership association agreement that a party to the partnership association has the right to decide on major matters which exceeds its capital injection ratio.

17. What types of business may be handled and undertaken by law firms in partnership association?

Under the *2019 Guangdong Measures* and the *Hainan Measures*, law firms in partnership association may handle and undertake litigation and non-litigation legal matters in civil and commercial matters, as well as administrative procedure legal work. They shall not handle or undertake criminal litigation to which the Mainland laws apply.

According to the *2018 Shanghai Measures*, the *Shandong Measures* and the *Fujian Measures*, law firms in partnership association may handle and undertake litigation and non-litigation legal matters in civil and commercial matters. They shall not handle or undertake administrative procedure legal work and criminal litigation to which the Mainland laws apply.

18. Can law firms in partnership association hire lawyers in their own name?

Under the *2019 Guangdong Measures* and the *Hainan Measures*, Mainland lawyers can be hired in the name of the Mainland partner law firm as their seconded lawyers or alternatively in the name of the law firm in partnership association. For Hong Kong or foreign lawyers, they can be hired in the name of the Hong Kong partner law firm as their seconded lawyers. Hong Kong lawyers can alternatively be hired in the name of the law firm in partnership association.

According to the *2018 Shanghai Measures*, the *Shandong Measures* and the *Fujian Measures*, Mainland lawyers should be hired in the name of the Mainland partner law firm as their seconded lawyers while Hong Kong lawyers should be hired in the name of the Hong Kong partner law firm as their seconded lawyers.

19. How can the qualification of the Mainland business of partnership associations be determined?

Under the *2018 Shanghai Measures*, the *2019 Guangdong Measures*, the *Hainan Measures*, the *Shandong Measures* and the *Fujian Measures*, years of establishment, work performance and other qualifications of both the Hong Kong and Mainland partner law firms can be counted towards the qualification of the Mainland business of the partnership associations set up in the relevant provinces and municipalities.

V. *Secondment of lawyers*

(1) *Secondment of Mainland lawyers*

20. Are Mainland law firms allowed to second Mainland lawyers to work as consultants on Mainland law in a representative offices set up by a Hong Kong law firm in the Mainland?

CEPA Supplement X, which took effect on 1 January 2014, allows a pilot measure to be implemented in Guangdong Province, whereby Guangdong law firms may second Mainland lawyers to work as consultants on Mainland law in representative offices of Hong Kong law firms in Guangdong Province.

According to the *Measures on the Trial Implementation of Mainland Law Firms Seconding Mainland Lawyers to Work as Mainland Law Consultants in Representative Offices Set Up by Hong Kong Law Firms in Guangdong Province* which was promulgated on 4 August 2014 and implemented on 1 September 2014, a Mainland law firm may enter into agreement with a Hong Kong law firm for seconding its lawyers to work as consultants on Mainland law in the latter's representative offices in Guangdong Province if it meets the following conditions:

- (1) It has been established for three full years with a relatively strong ability in legal service provision and a well-established internal management system;
- (2) It has no less than 20 practising lawyers;
- (3) Neither its head office nor branch offices in Guangdong Province have been subject to any administrative penalty or professional disciplinary action for the past three years.

A Mainland law firm satisfying the conditions (1) and (3) with more than 100 practising lawyers may enter into agreement with one to three Hong Kong law firms for seconding its lawyers to work as consultants on Mainland law in the latter's representative offices in Guangdong Province.

Under the *Agreement on Trade in Services* which was signed in November 2015 and came into effect on 1 June 2016, Mainland law firms may second Mainland lawyers to representative offices of Hong Kong law firms in any part of the Mainland to work as consultants on Mainland law. This measure no longer has any geographical restrictions.

21. What are the requirements for Mainland lawyers to work as consultants on Mainland law in representative offices of Hong Kong law firms in the Mainland?

According to the *Measures on the Trial Implementation of Mainland Law Firms Seconding Mainland Lawyers to Work as Mainland Law Consultants in Representative Offices Set Up by Hong Kong Law Firms in Guangdong Province*, Mainland lawyers who work as consultants on Mainland law in representative offices of Hong Kong law firms in Guangdong Province should:

- (1) have no less than five years of professional experience;
- (2) have a relatively strong ability in handling Mainland and foreign legal affairs and be good at communication and cooperation;
- (3) have not been subject to any administrative penalty or professional disciplinary action for the past three years.

A Mainland lawyer may only be seconded to work in one representative office of a Hong Kong law firm in Guangdong Province.

We understand that the relevant regulations are pending amendment by the relevant Mainland authority so as to implement the liberalisation measures under the *Agreement on Trade in Services*. It is expected that Mainland lawyers seconded to work as consultants on Mainland law in representative offices of Hong Kong law firms in other provinces and municipalities of the Mainland should be required to meet the requirements set out above.

22. What are the legal services that may be provided by a Mainland lawyer seconded to work as a consultant on Mainland law in a representative office of a Hong Kong law firm in the Mainland?

According to the *Measures on the Trial Implementation of Mainland Law Firms Seconding Mainland Lawyers to Work as Mainland Law Consultants in Representative Offices Set Up by Hong Kong Law Firms in Guangdong Province*, in addition to providing consultancy service on aspects such as information on Mainland law and legal environment to the Hong Kong law firm and its representative office, a Mainland lawyer seconded to work as a consultant on

Mainland law in the representative office of the Hong Kong law firm in Guangdong Province may, during the secondment and in the capacity of a Mainland lawyer, provide to clients consultancy service on Mainland law and act as agents in civil and commercial litigation and non-litigation legal matters to which the Mainland law apply. The lawyer may also co-operate with the representative office of the Hong Kong law firm in handling cross-boundary or international legal affairs and may refer difficult and complicated legal affairs to the Mainland law firm for handling in cooperation with the Hong Kong law firm.

We understand that the relevant regulations are pending amendment by the relevant Mainland authority so as to implement the liberalisation measures under the *Agreement on Trade in Services*. It is expected that Mainland lawyers seconded to work as consultants on Mainland law in representative offices of Hong Kong law firms in other provinces and municipalities of the Mainland should be able to provide the legal services as set out above.

(2) *Secondment of Hong Kong lawyers*

23. Are Hong Kong law firms allowed to second Hong Kong lawyer to work in Mainland law firms as consultants on Hong Kong law?

The *Agreement between the Mainland and Hong Kong on Achieving Basic Liberalisation of Trade in Services in Guangdong* signed in December 2014 introduces a new measure in the Guangdong Province under which Hong Kong law firms may second Hong Kong lawyers to work in Mainland law firms as consultants on Hong Kong law or cross-border laws.

The *Agreement on Trade in Services* which was signed in November 2015 and came into effect on 1 June 2016 abolishes the geographical restriction of this measure. Hong Kong law firms may second Hong Kong lawyers to Mainland law firms in any part of the Mainland to work as consultants on Hong Kong law or cross-border laws.

24. What legal services may be provided by Hong Kong lawyers seconded to work in Mainland law firms?

Details of the conditions to be fulfilled by a Hong Kong lawyer seeking to be seconded to work in a Mainland law firm, the scope of legal services to be provided by that Hong Kong lawyer and other relevant details are pending announcement by the relevant Mainland authorities.

VI. *Lawyer's qualification and the National Unified Legal Professional Qualification Examination (National Legal Qualification Examination)*

25. What are the requirements applicable to a person who pursues the practice of a Mainland lawyer?

The *Lawyers Law of the PRC* stipulates that a person who intends to apply for the legal practice of a lawyer shall meet the following conditions:

- (1) upholding the Constitution of the People's Republic of China;
- (2) having passed the National Legal Qualification Examination and obtained legal professional qualification;
- (3) having completed a full year's internship at a law firm; and
- (4) being a person of good character and conduct.

The certificates obtained for passing the unified national judicial examination and the lawyer qualification certificates obtained before the implementation of the National Legal Qualification Examination shall have the same effect as the national unified legal professional qualification certificates.

According to the *Implementation Measures for the National Unified Legal Professional Qualification Examination* (“*Implementation Measures*”), those who passed the National Legal Qualification Examination can apply for legal professional qualification in accordance with the specified procedures and a certificate of legal professional qualification will be issued by the Ministry of Justice.

26. What are the relevant conditions for Hong Kong residents who apply for entering the National Legal Qualification Examination?

In accordance with the *Implementation Measures*, Hong Kong permanent residents who are Chinese nationals are allowed to enter the National Legal Qualification Examination. The provisions concerning conditions for application and subjects of examination will similarly apply to Hong Kong residents.

The National Legal Qualification Examination shall be implemented by the Ministry of Justice. A person who meets the following requirements may apply to sit the examination:

- (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) is a person of good political, professional quality and ethical behaviour;
- (4) has the full capacity for civil conduct; and
- (5) has an undergraduate degree from a full-time law faculty of a regular institution of higher education with a bachelor degree or above; has an undergraduate degree or above from a full time non-law faculty of a regular institution of higher education with a master's degree in law, a juris doctor degree or above, or has an undergraduate degree or above from a full time non-law faculty of a regular institution of higher education who has worked in the legal industry for three full years.

For those who have obtained student status (including right to examination) or having graduated from a law specialty of an institution of higher education who have obtained an undergraduate degree or above, or having graduated from a non-law specialty of such institution with an undergraduate degree or above who possess the professional knowledge of law before the implementation of the *Implementation Measures* (ie, 28 April 2018), are eligible to take the National Legal Qualification Examination.

27. What are the differences between the National Judicial Examination and the National Legal Qualification Examination in terms of the examination content?

The National Legal Qualification Examination consists of two parts, namely, the objective questions examination and the subjective questions examination. Candidates can only attend the subjective questions examination after passing the objective questions examination. The result of the objective questions examination will be valid for the current and the following examination year.

The National Legal Qualification Examination will be held in paper-based mode or computer-based mode. The objective questions examination will be held in computer-based mode, and candidates can choose between computer-based mode or paper-based mode when signing up for the subjective questions examination.

28. What are the details for holding the National Legal Qualification Examination in Hong Kong?

Pursuant to the liberalisation measure of CEPA, the first batch of Hong Kong residents took the NJE (predecessor of the National Legal Qualification Examination) in Shenzhen in September 2004. The Ministry of Justice subsequently agreed that since September 2005, the Hong Kong Examinations

and Assessment Authority (“HKEAA”) would arrange the holding of the examination each year in Hong Kong so as to facilitate Hong Kong residents to take the exam. Details for applying to enter the National Legal Qualification Examination will be announced in June each year⁷.

29. Are there any special arrangements for Hong Kong legal practitioners to practise in the Guangdong-Hong Kong-Macao Greater Bay Area?

Under the *Amendment Agreement*, Hong Kong legal practitioners can obtain practice qualification in the nine Pearl River Delta municipalities of the Guangdong-Hong Kong-Macao Greater Bay Area by passing a special examination and engage in matters on specific areas of Mainland law. Further details are pending from the Mainland.

VII. Hong Kong residents practising as Mainland lawyers

30. What are the requirements to be fulfilled by a Hong Kong resident intending to practise as a lawyer in the Mainland?

The *Lawyers Law* provides that a person who intends to apply for the practice of a lawyer shall uphold the *Constitution of the People’s Republic of China*; have passed the National Legal Qualification Examination and obtained the legal professional qualification, and completed a full year’s internship at a law firm; and being a person of good character and conduct. (See Q&A 25 above)

In respect of the undertaking of internship by Hong Kong residents who have passed the NJE (predecessor of the National Legal Qualification Examination), various liberalisation measures have been adopted. Under CEPA Supplement III which came into effect on 1 January 2007, Hong Kong residents who have acquired Mainland lawyer qualifications are allowed to undertake 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*.

Subsequently, CEPA Supplement VI which came into effect on 1 October 2009 provides that Hong Kong legal practitioners with five years or more professional experience and who have passed the NJE (predecessor of the National Legal Qualification Examination) will be exempted from the requirement of internship except for at least one month’s intensive training organized by the local lawyers association in the Mainland.

⁷ <http://www.hkeaa.edu.hk/tc/ipe/nje/#1> (available in Chinese only).

31. Whether exempting Hong Kong legal practitioners from attending a full year’s internship would adversely affect their standard of practice as Mainland lawyers?

The exemption should not affect the Hong Kong legal practitioners’ standard of practice as Mainland lawyers. Under the liberalised measure, only practitioners who have acquired professional experience for five years or more may benefit from the exempted measure, and they must attend at least one month’s intensive training. It is also provided in 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* promulgated in November 2003 (the “*Management Measures for HK Residents as Mainland Lawyers*”) that practitioners must have been accredited for having passed the assessment before they may apply to practise as a Mainland lawyer. These provisions should ensure that they have attained the required standard to practise as Mainland lawyers.

32. Could a Hong Kong resident who practises as a lawyer in the Mainland be simultaneously employed by a Hong Kong law firm?

Under the *Management Measures for HK Residents as Mainland Lawyers*, 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.

This restriction has been relaxed pursuant to the amendments to the above-mentioned *Measures* after the introduction of further liberalisation measures under CEPA Supplement II which took effect on 1 January 2006. Under the amended provision, a Hong Kong resident who is allowed to practise in the Mainland could practise in one Mainland law firm only, and shall not simultaneously be employed by a representative office set up by a foreign law firm in the Mainland, a law firm of Hong Kong and Macao. The above-mentioned *Measures* do not prohibit the resident from working in a law firm in Hong Kong.

33. Under CEPA and relevant Supplements, what is the scope of legal practice that Hong Kong residents are be allowed to engage in as Mainland lawyers?

Under the *Management Measures for HK Residents as Mainland Lawyers*, Hong Kong residents who are allowed to practise as lawyers in the Mainland shall only handle “non-litigation legal matters”.

Such restriction has been relaxed pursuant to CEPA Supplement III which took effect from 1 January 2007. Hong Kong residents who have acquired Mainland 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.

CEPA Supplement VIII, which took effect from 1 April 2012, introduces the consideration of broadening the scope of business of Hong Kong residents who have acquired Mainland legal professional qualification and hold a Mainland lawyer's practice certificate in acting as agents in civil litigation cases in the Mainland relating to Hong Kong residents and juridical persons.

Since 1 October 2013, pursuant to the *Decision of the Ministry of Justice on Revising 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*, a Hong Kong resident holding a lawyer's practice certificate who works at a Mainland law firm may handle Mainland non-litigation matters as well as acting as agent in civil litigation cases related to Hong Kong and the scope of business will be determined by the Ministry of Justice by way of notice (see below *Notice No.136*) . A Hong Kong resident who is allowed to practise in the Mainland may handle non-litigation matters as a legal consultant, attorney, advisor or scrivener or handle litigation matters relating to Hong Kong in the capacity of an agent ad litem; he or she shall enjoy the rights of a practicing Mainland lawyer and fulfil the relevant obligations.

Under *Notice No. 136* issued by the Ministry of Justice, the scope of business of Hong Kong residents who have acquired Mainland legal professional qualification and hold a Mainland lawyer's practice certificate in acting as agents in civil litigation cases relating to Hong Kong in people's courts of the Mainland has been expanded to cover 237 types of civil cases under five major categories, including matrimonial and family issues, succession disputes, disputes on contracts and intellectual property rights, civil disputes such as those relating to companies, securities, insurance and notes as well as cases relating to the above to which special procedures apply, including the applications for recognition and enforcement of civil judgments and arbitral awards of the courts of the Hong Kong Special Administrative Region.

34. How should “civil litigation cases relating to Hong Kong/Macao” be understood?

Under the *Interpretation on Certain Issues Concerning the Application of the “Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations” (I)* promulgated by the Supreme People's

Court in 2012, a people's court may recognize civil relations in any of the following situations as foreign-related civil relations:

- (1) a party or both of the parties concerned is/are a foreign citizen(s), a legal person(s) or other organization(s) in a foreign country or a person(s) without nationality;
- (2) the habitual residence of a party or both of the parties concerned is outside the territory of the People's Republic of China;
- (3) the subject matter is outside the territory of the People's Republic of China;
- (4) the legal facts that establish, change or eliminate civil relations occurred outside the territory of the People's Republic of China;
- (5) other situations that may be recognized as foreign-related civil relations.

These provisions would apply as the reference to the issue of application of laws involving civil relations in the Hong Kong Special Administrative Region and Macao Special Administrative Region.

VIII. Appointment as litigation agents in the Mainland

35. What is the situation relating to the implementation of the liberalisation measure allowing Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens?

The relevant measure was promulgated under CEPA Supplement III signed on 29 June 2006. Supplement III took effect on 1 January 2007 but the implementation of this particular measure would require the support of a set of implementation rules. Such rules are still pending to be promulgated by the relevant Mainland authorities and it is understood that the relevant authorities are still studying the matter.

36. What are the existing laws and regulations relating to “agents in civil litigation cases in the capacity of citizens” in the Mainland?

Article 58 of the *Civil Procedure Law* provides that a lawyer, a primary-level legal service provider, a close relative or working staff of the party, a citizen recommended by the community, unit or relevant social organization to which the party belongs 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 further provides that “agent ad litem” shall have the right to investigate and collect evidence and may have access to materials pertaining to the case.

Article 55 of the *Lawyers Law* however provides that if a person has not obtained a lawyer’s practice certificate but engages in the business of providing legal services in the name of a lawyer, he shall be ordered to cease the illegal practice of law while any illegal income shall be confiscated and a fine be imposed.