



THE

LAW SOCIETY
OF HONG KONG

香 港 律 師 會

Association in the Mainland between Hong Kong Law Firms and Mainland Law Firms

January 2007

This leaflet is for reference only. Please consult professional legal advisers should there be any enquiries.

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I. Association

1. Criteria to be fulfilled by Hong Kong law firms

According to the “Regulations for Association between Hong Kong and Macau Law Firms and Mainland Law Firms”, a Hong Kong law firm shall fulfil the following criteria when applying for an association with a Mainland law firm:

- (1) The law firm has been registered and established as a Hong Kong law firm in accordance with the relevant rules and regulations of Hong Kong;
- (2) The law firm has owned or rented premises in Hong Kong for the operation of substantive business for three years or more;
- (3) The sole proprietor or all the partners are Hong Kong practising lawyers;
- (4) The main scope of operation is the provision of local legal services in Hong Kong;
- (5) The law firm concerned and its sole proprietor or all its partners pay Hong Kong profits tax as required under the law;
- (6) The law firm has obtained approval to set up a representative office in the Mainland; (See Section II for information on Hong Kong law firms applying for approval to establish representative offices in the Mainland)
- (7) The law firm has not been punished by Hong Kong lawyers’ regulatory body during the two year period prior to its application for association.

2. Documents to be submitted by Hong Kong law firms

According to the provisions in Article 6 of Appendix 5 to the Closer Economic Partnership Arrangement (“CEPA”), a Hong Kong law firm, when applying for association with a Mainland law firm, shall first obtain a “Certificate of Hong Kong Service Supplier” from the Hong Kong Trade and Industry Department (“TID”) to prove that it complies with the requirements of a Hong Kong Service Supplier as stipulated in CEPA.

The supporting documents required for the application for a “Certificate of Hong Kong Service Supplier” include:

- (1) “an Application for a Certificate of Hong Kong Service Supplier” [form TID 102 (Rev. 11/2003)] (the form can be downloaded on the TID website <http://www.tid.gov.hk/english/cepa>);
- (2) a copy of statutory declaration certified by recognised Mainland attesting officers; and

- (3) (a) a certified copy of the valid Business Registration Certificate of the applicant certified by the Business Registration Office (“BRO”) of the Inland Revenue Department of the HKSAR or a China Appointed Attesting Officer, and a certified true copy of an Extract of Information on the Register of Businesses issued by the BRO within 90 days prior to the date of submission of an “Application for a Certificate of Hong Kong Service Supplier”;
- (b) a copy of each of the annual Profits Tax Returns submitted by the applicant to the Inland Revenue Department of the HKSAR (“IRD”) and respective copies of the Notice of Assessment and Demand for Tax issued by the IRD within 3 years immediately prior to the date of submission of the application for “a Certificate of Hong Kong Service Supplier”, the relevant copies must be certified by China Appointed Attesting Officers. In the event of loss, the applicant shall submit a copy of the annual Profits Tax Returns submitted by the applicant to IRD within 3 years immediately prior to the date of submission of the application for a Certificate of Hong Kong Service Supplier, respective Statement(s) of Losses, or correspondence issued by IRD to the applicant in the same period stating that the annual submission to IRD of Profits Tax Returns was not required, the relevant copies must be certified by China Appointed Attesting Officers.
- (c) a certificate granted by the Law Society of Hong Kong and certified by a China Appointed Attesting Officer to confirm: (please see Appendix 1 for an Application to the Law Society for the certificate)
- (i) the date the applicant commenced practice;
 - (ii) the name(s) of sole proprietor or all the partners (as the case may be) of the applicant on the day the certificate is issued;
 - (iii) that the sole proprietor or all the partners (as the case may be) of the applicant are Hong Kong lawyers holding valid practising certificates, and they have not been suspended from practice; and
 - (iv) the address of the main office and its branch office(s) (if applicable) within 3 years immediately prior to the date the above certificate is issued; and
 - (v) that the sole proprietor or the partners have not been disciplined by the Law Society of Hong Kong within 2 years before the certificate is issued, or that there is no on-going or pending disciplinary proceedings at the time the certificate is issued.
- (d) a certified true copy of the Computerised Land Register (or other supporting documents) showing the applicant owns premises in Hong Kong for use in its substantive business operations. The copy of the Computerised Land Register concerned must be certified by Land Registry of the HKSAR or China Appointed Attesting Officers; or a copy of valid lease (or other supporting documents) certified by China Appointed Attesting Officers proving that the applicant rents the premises in Hong Kong for use in its substantive business operations.

In normal circumstances, TID will complete the approval procedure within 14 working days on receipt of the duly completed application, a certified true copy of statutory declaration, and the necessary documents. The successful applicant will receive a “Certificate of Hong Kong Service Supplier”. The Certificate is valid for 2 years.

3. Criteria to be fulfilled by Mainland law firms

- (1) Mainland law firms which have fulfilled the following criteria are eligible to apply for association:
 - (a) have been established for 3 years;
 - (b) with not less than 20 full-time lawyers;
 - (c) have not been punished administratively or disciplined professionally within 2 years prior to the application for association.
- (2) The branch office of a Mainland law firm must not apply for association as a member of the association.

4. Application procedures

- (1) After having been issued with the “Certificate of Hong Kong Service Supplier”, Hong Kong law firms and Mainland law firms can jointly apply for association by submitting the following documents to the judicial administrative department of the province where the association is to be located:
 - (a) an application for association signed by both parties;
 - (b) a draft association agreement between both parties;
 - (c) a copy of the practice licence of the Mainland law firm, copies of the practising certificates of all the practising lawyers, and other relevant supporting documents;
 - (d) a copy of the practice licence of the representative office from Hong Kong law firms and a list of the representative(s) stationed in the office; and
 - (e) the “Certificate of Hong Kong Service Supplier” from TID
- (2) Application materials must be in Chinese and in triplicate. Where the materials are in a foreign language, Chinese translations must be provided.

5. Approval procedures

- (1) The provincial judicial administrative department shall make a decision on whether the application is approved within 20 days from the receipt of the materials for application for association.
- (2) Where a decision cannot be made within 20 days, there can be an extension of 10 days upon approval of the person-in-charge of the department, and the applicant shall be informed of reasons for the extension.

- (3) Where the application for association is granted, the provincial judicial administrative department shall file with the Ministry of Justice the approval documents and relevant materials within 30 days from the date of issue of the association licence.

6. Mode of Association

- (1) A Mainland law firm and a Hong Kong law firm can enter into an association with each other in the Mainland and provide Mainland and Hong Kong legal services to their clients according to their respective rights and obligations as set out in their agreement.
- (2) Both the Hong Kong law firm and the Mainland law firm can jointly charge the clients, and then split the fees according to the association agreement between the two parties.
- (3) Both parties can share premises, facilities, office resources and administrative staff. The expenses to be borne by each party shall be in accordance with the terms of the association agreement.
- (4) Both parties can jointly conduct business promotion activities.
- (5) Association shall not be established as a partnership or legal entity. The legal status, name and finance of both parties of the association should be kept independent of each other. Both parties shall bear their own civil liability.
- (6) Both parties of the association and the lawyers joining the practice of the association should join professional indemnity schemes in their own capacities in accordance with the relevant regulations of Hong Kong and the Mainland respectively.

7. Restrictions on Association

- (1) As a member of an association, the Hong Kong law firm and its lawyers shall not engage in the provision of Mainland legal services.
- (2) A Hong Kong law firm which has set up a representative office in the Mainland can only associate with one Mainland law firm in the area where its representative office is located.

II. Representative Office in the Mainland

1. Criteria to be fulfilled by Hong Kong law firms

A Hong Kong law firm applying for the establishment of a representative office and the stationing of representatives in the Mainland shall satisfy the following conditions:

- (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 the Law Society 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. Among them, the chief representative shall be in practice for not less than three years outside the Mainland and is a partner of a holder of an equivalent post in the law firm;
- (3) The law firm has a genuine need to establish a representative office in the Mainland.

2. Documents to be submitted by Hong Kong law firms

To apply for the establishment of a representative office, a Hong Kong law firm shall submit the following documents and materials to the judicial department (bureau) of the province, autonomous region or municipality directly under the Central Government where the representative office is to be located:

- (1) an application for establishing the representative office and the stationing of representatives signed by the principal responsible person of the law firm. The name to be adopted by a representative office shall be “The Resident Representative Office of XX Law Firm (Chinese name of the law firm) in XX (name of city in the Mainland).”
- (2) document certifying that the law firm is lawfully established in Hong Kong;
- (3) the partnership agreement or the charter of the law firm and a name list of its responsible persons and partners;
- (4) a letter of authorisation appointing the representatives designate of the representative office and documents confirming that the chief representative designate of the representative office is a partner or a holder of an equivalent post in the law firm;
- (5) documents certifying the practising qualifications and practising period of the representative designate of the representative office at least three years of chief representative designate and at least two years for other representatives designate outside the Mainland;

- (6) documents issued by the Law Society of Hong Kong to certify that the representatives designate of the representative office are members of the Society (see Appendix 2 for application form of applying to the Law Society of Hong Kong for relevant certificates);
- (7) documents to certify that neither the law firm nor the representative designate of the representative office have been punished for criminal liability or for any professional misconduct or any violation of the code of practice.

Documents and materials submitted by the law firm shall be in triplicate and each bound into one set. Where they are in foreign language, Chinese translation shall be provided.

3. Approval procedures

- (1) The judicial department (bureau) of a province, autonomous region and municipality directly under the Central Government shall complete the vetting process within three months from receipt of the documents and materials and submit them together with comments of the application to the Ministry of Justice for approval.
- (2) The Ministry of Justice shall make a decision within six months. Where approval is given to a law firm to establish a representative office, the Ministry of Justice shall issue a practice licence to the law firm and practising certificates to its representatives. Where approval is denied, a written notice of the reasons for the denial shall be given.

4. Scope of operation

- (1) a representative office and its representatives may engage in the following businesses not involving Mainland law:
 - (a) provide to its client legal advice regarding the laws of Hong Kong and countries outside China where the lawyers of the law firm are allowed to engage in the provision of legal services, as well as advice on international conventions and international practices;
 - (b) accept instructions from its clients or a Mainland law firm to handle the legal affairs in the regions where the lawyers of the law firm are allowed to engage in the provisions of legal services;
 - (c) a representative office and its representatives can cooperate with lawyers of the associated Mainland law firm to handle business relating to the association in accordance with the association agreement;
 - (d) engage, on behalf of its clients of Hong Kong, a Mainland law firm to handle affairs involving Mainland laws;
 - (e) provide any legal services through a long term entrustment agreement with a Mainland law firm;
 - (f) provide information relating to the impact on Mainland law environment.

- (2) A representative office shall not hire practising Mainland lawyers and the paralegals under its employ shall not provide legal services to its clients.

5. Residency requirements

There is no minimum residence requirement for a representative of a representative office located in the Mainland.

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Appendix 1

ASSOCIATION BETWEEN HONG KONG FIRM AND MAINLAND FIRM

APPLICATION FOR CERTIFICATE OF STANDING

Name of firm	English:		
	Chinese (if applicable):		
Name(s) of Sole Principal/Partner(s) and year(s) of admission as Hong Kong solicitors	<u>Sole principal</u> Name: Year of admission in Hong Kong:		
	<u>Partner(s)</u> 1. Name: Year of admission in Hong Kong:		
	2. Name: Year of admission in Hong Kong:		
	3. Name: Year of admission in Hong Kong:		
	(Please continue on separate sheet, where necessary)		
	Particulars of representative office(s) in the Mainland	1.	Name
			Address
Date of approval of establishment			
2.		Name	
		Address	
		Date of approval of establishment	
(Please continue on separate sheet, where necessary)			
Address(es) of the firm in the previous 3 years	1.	Address	
		Period	
	2.	Address	
		Period	

Address(es) of the branch office(s) of the firm in the previous 3 years	1.	Address	
		Period	
	2.	Address	
		Period	
Fee for application HK\$3,000 in respect of the certificate for the firm	Cheque payable to The Law Society of Hong Kong for the total sum of HK\$ _____. * <input type="checkbox"/> attached <input type="checkbox"/> not attached (*Please tick as appropriate)		

I undertake to complete the attached Confirmation on the Establishment of an Association within 14 days after the commencement of the term of the Association.

Signed by sole principal/partner	
Full name of sole principal/partner in capital letters	
Date	

- Note:**
1. All names of solicitors should be stated in the same way as they appear on their practising certificates.
 2. All names and addresses should be stated in both English and Chinese (if applicable).

Appendix 2

ESTABLISHMENT OF REPRESENTATIVE OFFICE IN THE MAINLAND

APPLICATION FOR CERTIFICATES OF STANDING FOR:

- (1) FIRM
- (2) CHIEF REPRESENTATIVE
- (3) EACH OF THE REPRESENTATIVES

Name of firm	English:	
	Chinese (if applicable):	
Address of intended representative office in the Mainland		
Particulars of intended chief representative	Name	English:
		Chinese (if applicable):
	Position in the firm	
	Date of admission as a Hong Kong solicitor	
	Years of practice as a qualified legal practitioner outside the Mainland (Please tick as appropriate)	<input type="checkbox"/> 3 years or more <input type="checkbox"/> less than 3 years
Particulars of intended representative(s)	1. Name	English:
		Chinese (if applicable):
	Position in the firm	
	Date of admission as a Hong Kong solicitor	
	Years of practice as a qualified legal practitioner outside the Mainland (Please tick as appropriate)	<input type="checkbox"/> 2 years or more <input type="checkbox"/> less than 2 years
2. Name	English:	
	Chinese (if applicable):	
	Position in the firm	
	Date of admission as a Hong Kong solicitor	
	Years of practice as a qualified legal practitioner outside the Mainland (Please tick as appropriate)	<input type="checkbox"/> 2 years or more <input type="checkbox"/> less than 2 years

Note: Please continue on separate sheet for additional representative(s).

Intended date of establishment of representative office		
Number of staff in the firm (Please indicate, where appropriate, if the number includes the chief representative and the representatives)	Partners	(include/does not include the chief representative/representative(s))
	Consultants	(include/does not include the chief representative/representative(s))
	Assistant Solicitors	(include/does not include the chief representative/representative(s))
	Unqualified Staff	
Name and address of the Mainland Department to which the certificate is addressed for the purpose of applying for approval to establish a representative office in the Mainland	Name	English:
		Chinese:
	Address	English:
		Chinese:
Fee for application (a) HK\$3,000 in respect of the certificate for the firm (b) HK\$1,000 in respect of a certificate for each of the chief representative and representative(s)	<ul style="list-style-type: none"> * Cheque payable to The Law Society of Hong Kong for the total sum of HK\$ _____. * <input type="checkbox"/> attached <input type="checkbox"/> not attached (*Please tick as appropriate)	

I undertake to complete the attached Confirmation of the Establishment of a Representative Office in the Mainland and return it to the Society within 14 days after the commencement of business of the representative office in the Mainland.

Signed by sole principal/partner	Date
Full name of sole principal/partner in capital letters	

Appendix 3

Regulations and Management Measures for reference

1. Amendments 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 (Order No. 100) (effective from 1 January 2006)

Amendments to the Measures for the Management of Associations Formed by Law Firms of the Hong Kong Special Administrative Region with Mainland Law Firms (Order No. 106) (effective from 1 January 2007)

2. Measures for the Management of Representative Offices set up by Law Firms of the Hong Kong and Macao Special Administrative Regions in the Mainland (Order No. 70) (effective from 1 April 2002)

The Decision of the Ministry of Justice regarding the Amendment of Measures for the Management of Representative Offices set up by Law Firms of the Hong Kong and Macau Special Administrative Regions in the Mainland (Order No. 84) (effective from 1 January 2004)

Amendments to the Measures for Administration of Representative Offices set up by Law Firms of the Hong Kong and Macao Special Administrative Regions in the Mainland (Order No. 104) (effective from 1 January 2007)

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