

Study on the Prospects of Development of Legal Practice by Hong Kong Law Firms in the Pearl River Delta Region

Research Report



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Executive Summary

In 2003, Mainland China and Hong Kong entered into the *Closer Economic Partnership Arrangement* (“CEPA”), which came into force in 2004. The provisions in CEPA on legal services cooperation laid the foundation for cooperation between Mainland and Hong Kong lawyers. Since the implementation of CEPA, and on the basis of the principal arrangement thereunder, six Supplemental Agreements have been executed which serve to continuously promote and reinforce Mainland-Hong Kong legal services cooperation. Of these agreements, Supplement VI sets out the policy of “early and pilot implementation” in Guangdong Province, liberalizing the restrictions on law firms in the Province which can form associations with Hong Kong law firms.

In 2008, the State Council adopted *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)* (“*Planning Framework*”), which emphasizes that the Pearl River Delta Region (“PRD Region”) will push forward its close cooperation, integration and common development with Hong Kong and Macau so as to forge jointly the most dynamic and internationally competitive city cluster of the Asia-Pacific region, and will also develop a system of modern service industries to match Hong Kong’s status as an international financial centre. The *Planning Framework* also mentions the need to “further efforts in promoting mutual recognition of the professional qualifications for the banking, securities, insurance, appraisal, accounting, law, education, and medical service industries in order to facilitate the development of the service industries.” This shows that the service industries form a main focus of Guangdong-Hong Kong cooperation and that the legal service industries in both places are presented with more opportunities for cooperation.

2010 witnessed a new phase in Guangdong-Hong Kong cooperation. The *Framework Agreement on Hong Kong/Guangdong Cooperation* (“*Framework Agreement*”), which was entered into in April 2010, reinforces the institutional basis for Guangdong-Hong Kong cooperation by giving effect to the policy of “early and pilot implementation” previously offered under CEPA to service industries in Hong Kong, and by allowing service providers in Hong Kong to establish, in accordance with applicable regulations, professional organizations in Guangdong Province to provide services in accounting, law, management consultancy and intermediary services. In this respect, it was agreed to actively seek national support, open more sectors of the market, lower the threshold of entry into the market, and streamline approval procedures.

2010 also saw the final year of the implementation of *The 11th Five-Year Plan for National Economic and Social Development of the PRC*. Various provinces and industries in Mainland China are formulating *The 12th Five-Year Plan for National Economic and Social Development of the PRC*, with a view to mapping out strategies for development in the next five years.

With the advent of this new phase in the development of the PRD Region, we have conducted a study of the legal service industry in the PRD Region and the development of Hong Kong law firms in the PRD Region. The study aims to examine the position and role of Hong Kong law firms in the economic restructuring of the PRD Region, and to put forward suggestions which are conducive to the establishment of practice by Hong Kong law firms in the PRD Region.

Based as it is on statistical data obtained via studies of law firms in the PRD Region, Hong Kong law firms, representative offices of Hong Kong law firms and clients in the PRD Region, this Research Report comprises five sections. Section One gives an overview of the macro-environment and legal services industry in the PRD Region. Section Two examines the demand of clients in the PRD Region for Hong Kong legal services and sets out feedbacks and comments of those clients on Hong Kong law firms. Section Three sums up the implementation of CEPA measures pertaining to legal services and considers possible ways by which cooperation between Guangdong law firms and Hong Kong law firms under the CEPA framework can be fostered. Section Four briefly look at the establishment by Hong Kong law firms of practice in the PRD Region and analyzes the basis of cooperation between Guangdong and Hong Kong law firms. The final section provides an outlook for the development of Hong Kong law firms in the PRD Region and suggests strategies for setting a foothold in the legal service market in the PRD Region.

Investment environment and legal service industry in PRD Region

- The economy in Guangdong Province is enjoying a steady growth. Despite the economic crisis, actual foreign investments in the Province have maintained a positive momentum, with 60% of such investments originating in Hong Kong.
- The PRD Region is the economic pillar of Guangdong Province. With the increase in Hong Kong investment in the Province, foreign investments by the PRD Region are becoming more active, with more and more enterprises in the Region are willing to “reach out”. This helps create more opportunities for cooperation between Guangdong and Hong Kong law firms.
- The legal service industry in the PRD Region has entered a period of rapid growth, with a remarkable increase in the number of law firms and practising lawyers. However, law firms in the Region are still facing problems of insufficient competitiveness and a low level of internationalization.

PRD Region: Demand for and comments on Hong Kong legal services

- The overall demand in the PRD Region for legal services is continuously expanding. Most of the enterprises operating in the Region are of small to medium scale, and with the economic restructuring of the Region and the development and outward expansion of those enterprises, there is a large pool of potential clients for Hong Kong law firms. Furthermore, large enterprises in the PRD Region are successfully “reaching out” using Hong Kong as a bridge.
- The Hong Kong law firms which provide legal services in the PRD Region enjoy a competitive edge in terms of client care, ability to communicate and ability to provide cross-border professional services, and have indeed drawn positive comments from clients in the Region in these respects.
- At the same time, Hong Kong law firms are facing problems in bringing their level of fees in line with that of law firms in the PRD Region. Over 70% of small and medium enterprises cite the level of fees as an important consideration in selecting law firms. Unfamiliarity with the local environment and a lack of networks in the Region also hamper the development of the law practice of Hong Kong firms in the Region.

Implementation of and improvement to CEPA agreements on legal services

- Most of the lawyers in Guangdong and Hong Kong are not conversant with the CEPA agreements on legal services. A much greater effort is needed to promote CEPA measures.
- The development of associations is hindered by a lack of relevant provisions in CEPA and supporting regulations governing associations between Mainland and Hong Kong law firms.
- Allowing, pursuant to the policy of “early and pilot implementation” under CEPA, Hong Kong law firms to employ Mainland lawyers to provide legal services will not subject law firms in the PRD Region to overt competitive pressure, but will facilitate the overall development of the Region and help enterprises in the Region “reach out”.

Development of Hong Kong law firms in PRD Region and basis of cooperation between law firms in Hong Kong and the PRD Region

- The representative offices of Hong Kong law firms in the PRD Region are by and large operating on a relatively small scale, and this will remain the case in the short term. At the same time, the business of the representative offices is restricted by existing policies from further expansion in the Mainland. They

also have to wrestle with significant problems such as inadequate case referrals and difficulty in recruiting employees.

- There are frequent contacts between Guangdong and Hong Kong law firms, and their cooperation mainly takes the form of direct business dealings on a piecemeal, case-by-case basis. On the other hand, they are still exploring the possibility of in-depth cooperation. While they both recognize the advantages of operating as associations, such associations are seldom put into practice.
- There is a solid basis for cooperation between Guangdong law firms and Hong Kong law firms. Cooperation between law firms in the PRD Region and Hong Kong law firms will not only serve to enhance competitiveness of the legal service industry in the Region, but will also facilitate internationalization of legal services in the Region.

Development of Hong Kong law firms in PRD Region: analysis of prospects and strategies

- The law firms in the PRD Region are still growing and they have manifested an intention to cooperate with Hong Kong law firms. Both parties can enter into in-depth cooperation in the area of international legal practice.
- In the short term, Guangdong and Hong Kong law firms will maintain a piecemeal mode of cooperation. However, they have both acknowledged associations as a viable mode of operation, and close associations will become the next stage of cooperation.
- Following economic restructuring of the PRD Region, service industries have become the focus of development. Hong Kong law firms enjoy an absolute competitive edge as far as the relevant supporting legal services are concerned. By developing these areas of practice, Hong Kong law firms will gradually demonstrate their competitive edge and their services will be recognized by clients.
- In setting up and developing legal practice in the PRD Region, Hong Kong law firms should actively strive to achieve localization in the Region. They may also expand their practice in tandem with other relevant service industries so that they can access more resources and secure more clients.
- In setting foot on the PRD Region, Hong Kong law firms should take into account various market segments and try to open up markets in second-tier cities within the Region. They should also bring their fees in line with those of law firms in the Region in order to provide services at a competitive level of fees.

Foreword

Following the implementation of the *Closer Economic Partnership Arrangement* (“CEPA”) in 2003, Hong Kong law firms are allowed to set up representative offices in the Mainland and to operate in association with Mainland law firms, with no geographical restriction on the Mainland law firms in association. With effect from 1 October 2009, Hong Kong law firms which have set up representative offices in the Mainland are allowed to operate in association with Mainland law firms in Guangdong Province which have been established for one year or more and with at least one of the persons who established such firms having been in legal practice for five years or more. As of February 2010, 65 Hong Kong law firms had set up representative offices in 14 Mainland cities, of which 16 offices were set up in Guangzhou and three in Shenzhen; and six Hong Kong law firms were operating in association with Mainland law firms.

The implementation of CEPA, which allows the Hong Kong legal service industry to enter the Mainland legal service market, has indeed served to strengthen collaboration between Mainland and Hong Kong lawyers and foster associations between Mainland law firms and Hong Kong law firms. Nevertheless, the implementation of CEPA over the past years reveals that the development of Hong Kong law firms in the Mainland market has “started early but proceeded slowly”.

Against this backdrop, the Mainland Legal Affairs Committee of The Law Society of Hong Kong commissioned the School of Law of the Sun Yat-Sen University to conduct a research study targeted at the following groups¹:

- (1) Hong Kong law firms with representative offices in Guangdong Province;
- (2) Mainland law firms in the Pearl River Delta Region of Guangdong Province (“PRD Region”);
- (3) Local law firms in Hong Kong; and
- (4) Corporate and individual clients in the PRD Region.

The research study essentially sought to examine the following:

- (1) The basic operation of Hong Kong law firms with representative offices in Guangdong Province, their main areas of practice and main sources of clientele, their business cooperation with law firms in Guangdong Province, and the difficulties which they face in developing Mainland practice;
- (2) The opportunities for cooperation between law firms in Guangdong Province and Hong Kong, and the modes of such cooperation;

¹ A total of nine representative offices of Hong Kong law firms, 26 law firms in the Pearl River Delta Region, 46 Hong Kong law firms and 21 corporate and individual clients in the Pearl River Delta Region participated in the research study.

- (3) The degree of familiarity of Hong Kong law firms with the legal market of the PRD Region, and their desire to set foot on the legal service market of the Region; and
- (4) The demand of corporate and individual clients in the PRD Region for legal services, and their awareness of and demand for legal services from Hong Kong.

The results of the research study formed the basis of this Research Report, entitled *Study on the Prospects of Development of Law Practice by Hong Kong Firms in the Pearl River Delta Region*. The Report mainly delves into the following issues:

- (1) The outlook for development of Hong Kong law firms in the PRD Region in the next three years;
- (2) Provision of forward-looking strategies for Hong Kong firms to develop business in the Mainland market, including the feasibility of further liberalization measures under CEPA;
- (3) Practical issues regarding the operation of Hong Kong law firms in the Mainland legal service market; and
- (4) The demand of corporate and individual clients in the PRD Region for legal services from Hong Kong (including cross-border legal services).

1 Macro-environment in Pearl River Delta Region

1.1 Continued growth of economy of Pearl River Delta Region (“PRD Region”)²

1.1.1 Positive momentum of GDP growth in Guangdong Province

As can be seen from the GDP statistics of Guangdong Province (Chart 1 in the Annex), from 2005 to 2007 the GDP of the Province enjoyed an annual growth of more than 14%. Following the global financial crisis in 2008, the GDP growth in the Province slackened but still managed to proceed at a rate exceeding 9%. In 2009, the GDP of the Province amounted to RMB 3.9 trillion, accounting for 10% of the national GDP. The outlook for GDP growth of the Province remains very positive.

1.1.2 PRD Region as economic pillar of Guangdong Province

- (a) In the three years from 2007 to 2009, the aggregate GDP of the major cities in the PRD Region accounted for 78.53%, 78.08% and 79.98% of the total GDP of Guangdong Province, respectively. This demonstrates the importance of the PRD Region in the Province.
- (b) Among the cities in the PRD Region, Guangzhou and Shenzhen are in the top tier in terms of the gross GDP, Foshan and Dongguan go to the middle tier, whereas the remaining cities are in the bottom tier (Annex, Figure 2).
- (c) All the cities in the PRD Region are experiencing sustained and rapid economic growth.

1.2 Active investments in PRD Region, unlimited opportunities for Guangdong-Hong Kong business cooperation

1.2.1 Foreign investments in PRD Region

(a) Actual foreign investments in Guangdong Province maintained positive momentum of growth despite financial crisis

- (1) Since 2003, there had been a steady growth in actual foreign investments in Guangdong Province. In 2008 and 2009, although the financial crisis resulted in a relatively substantial negative

² In this Report, the Pearl River Delta Region refers to the region comprising nine cities along the Pearl River coastal area, namely Guangzhou, Shenzhen, Foshan, Zhuhai, Dongguan, Zhongshan, Huizhou, Jiangmen and Zhaoqing.

growth of foreign investments in projects and contracted foreign investments, actual foreign investments still recorded a positive growth.

- (2) The continued growth of actual foreign investments reveals a continuously refined investment environment in Guangdong Province, which helped attract significant investment funds into the Province and the PRD Region even during the gloomy period of global financial crisis (Table 1 at the Annex).

(b) The PRD Region is a focal region through which Guangdong Province attracts foreign investments

In 2009, the PRD Region entered into a total of 3,974 foreign investment projects. The contracted foreign investments amounted to USD 14.83 billion, which was 41.7% lower than that of the preceding year; the said amount accounted for 84.5% of the total contracted foreign investments in the Province, which was 4.3% lower than the figure for the preceding year. On the other hand, actual foreign investments amounted to USD 17.51 billion, representing an increase of 3.3% from the preceding year; and the said amount accounted for 89.6% of the total actual foreign investments in the Province, and this was 1.2% higher than the figure for the preceding year.

(c) The service industries in the PRD Region have become a significant “growth sector” for attracting foreign investments

In recent years, the Guangdong Province has been active in implementing a number of policies and measures with a view to speeding up the development of the service industries and to give full effect to CEPA and the policy of “early and pilot implementation” in the Province of measures liberalizing the Mainland service market to Hong Kong and Macau. Foreign investments in service industries have maintained a steady growth. Since 2003, foreign investments in service industries in Guangdong have grown rapidly, and this has not only solidly contributed to the sustained and relatively speedy expansion of the scale of foreign investments in the Province as well as improvement of the investment mechanism, but has also enhanced the quality and standard of utilization of such investments. From 2003 to 2008, the Guangdong service industries benefited from a total of 18,790 foreign investment projects, with contracted foreign investments and actual foreign investments totalling USD 50.48 billion and USD 25.89 billion respectively.

In 2009, 2,403 foreign investment projects were approved in connection with service industries. The contracted foreign investments amounted to USD 6.87 billion, representing a drop of 45.3% from the preceding year, and that amount accounted for 39.1% of the total contracted foreign investments in the Province. Actual foreign investments, on the other hand, amounted to USD 7.58 billion, representing an increase of 6.3% from the preceding year. That amount accounted for 39.1% of the total actual foreign investments in the Province, and was in fact the main reason behind the positive growth of the actual foreign investments in the Province as a whole.³ The service industries in the PRD Region which have been enjoying a relatively speedy growth include:

- (1) Finance;
- (2) Information transfer, computer service and software industry;
- (3) Wholesale and retail;
- (4) Real estate.

1.2.2 Hong Kong accounts for over 60% of actual foreign investment funds in Guangdong Province

(a) Steady growth of actual investments from Hong Kong

Hong Kong is the major source of direct foreign investments in Guangdong Province (Chart 3 in the Annex).

In 2009, actual foreign investments from Hong Kong amounted to USD 11.88 billion, representing an increase of 12.6% from the preceding year, and that amount accounted for 60.8% of the total actual foreign investments in the Province. On the other hand, there was a significant decline in contracted foreign investments from Hong Kong, which amounted to USD 12.50 billion, representing a drop of 47.1% from the preceding year; the said amount accounted for 71.2% of the total contracted foreign investments in the Province, and this was 12.2% lower than the figure for the preceding year.

2008 saw a relatively rapid growth of Hong Kong investments in Guangdong, with 5,245 new investment projects, contracted foreign investments totalling USD 23.90 billion (representing an increase of 10.3% from the preceding year), and actual foreign investments totalling USD 10.54 billion (representing an increase of 27% from the preceding year). Contracted foreign investments and actual foreign investments accounted for 83.4% and 55.0% respectively of the

³ *Guangdong Foreign Economic and Trade Development Report 2010.*

corresponding total investments in the Province during the same period.⁴

(b) Decline in investments from British Virgin Islands

As an offshore financial centre, the British Virgin Islands (BVI) had been an important source of foreign investment in Guangdong Province. However, after 2007, actual investments from the BVI in the Province declined in 2008 and 2009. One reason for this was the impact of the global financial crisis; the other reason was that more and more investors selected Hong Kong as the centre for collecting and distributing funds as Guangdong-Hong Kong cooperation strengthened.

(c) Positive momentum of investments from Japan and other developed countries in Guangdong Province

In recent years, actual investments from Japan and other developed countries in Guangdong Province have maintained a relatively speedy growth. In 2009, actual investments from Japan amounted to USD 630 million, representing an increase of 19.8% from the preceding year.

1.2.3 Active direct investments in foreign markets by enterprises in PRD Region

Adopting the strategy of “reaching out” and fully capitalizing on the opportunities brought out by the global financial crisis, Guangdong Province has been supporting enterprises in carrying out transnational mergers and acquisitions, nurturing local transnational corporations, speeding up joint exploitation of foreign resources, and establishing a secure and stable base for the supply of foreign resources. The Province has also been promoting the establishment of foreign economic and trade cooperation zones, guiding enterprises in making clustered investments, and encouraging enterprises to actively undertake overseas high-tech construction projects. Since 2003, foreign investments made by enterprises in the Province and foreign entities set up by such enterprises have both increased year-by-year (Table 2 in the Annex). Foreign investments by Guangdong enterprises have encompassed more than 80 countries and territories including Hong Kong and Macau, South-east Asia, the Middle East, Africa and South America; and Huawei, ZTE, TCL and Gree are representative of the many Guangdong enterprises who have taken the lead in “reaching out” (Annex, Table 3). Foreign investments by the Province in recent years have mainly assumed the following forms:

(1) Joint exploitation of foreign resources;

⁴ *Guangdong Foreign Economic and Trade Development Report 2010.*

- (2) Establishing independent marketing networks;
- (3) Transnational mergers and acquisitions;
- (4) Undertaking of overseas projects.

The implementation of CEPA attests to the development of Guangdong into one of the major bases for manufacturing industries in the world, as well as the development of Hong Kong into the most important logistic and financial service hub in the world. Guangdong-Hong Kong cooperation is entering a new phase of stable, sustained and pragmatic development, and is gradually focusing on modern service industries, advanced manufacturing industries and high-end and new-tech industries. Corresponding legal services are needed to support the development of industries in the PRD Region and the strengthening of Guangdong-Hong Kong cooperation, and this creates even more opportunities for the legal service industry in the PRD Region.

1.3 Rapid growth of legal service industry in PRD Region, extensive opportunities for cooperation between Guangdong law firms and Hong Kong law firms

1.3.1 Distribution of law firms in PRD Region (“PRD law firms”)

Of all the law firms in Guangdong Province, almost 70% are located in major cities within the PRD Region (Guangzhou, Shenzhen, Foshan, Dongguan, etc) and almost 50% are located in Guangzhou and Shenzhen alone. By reason of its economic status and geographical advantages, the PRD Region has become the “meeting ground” of Guangdong law firms (Chart 4 in the Annex).

1.3.2 Establishment of law firms in the PRD Region

- (a) Generally speaking, the number of law firms being set up in the PRD Region is on the rise (Chart 5 in the Annex).
- (b) As can be seen from the charts showing the yearly numbers of law firms established in Guangdong Province, Guangzhou and Shenzhen, there have been three peak periods for establishment of law firms: the first one was in or about 1994, the second one in or about 2000, and the third one in 2009, subsequent to the global financial crisis.
- (c) Of the second-tier cities in the PRD Region, Dongguan has experienced an obvious increase in the number of newly established law firms since 2000, whereas Foshan is also experiencing an increase,

albeit slowly, in the number of newly established law firms, following the peak period in 2001.

From the rates of increase of newly established law firms in various cities, it can be discerned that the legal service market in the PRD Region is still growing. With the ever-increasing demand for legal services, the growing legal service market in the PRD Region is presenting considerable business opportunities. Hong Kong law firms which are desirous of developing practice in the PRD Region should act swiftly in entering the market and explore feasibility of establishing their practice therein, so as to secure a market share.

1.3.3 Lawyers in PRD Region (“PRD lawyers”)

(a) PRD lawyers aggregate in Guangzhou and Shenzhen

There is a high degree of concentration of major legal services in Guangdong Province (Chart 6 in the Annex):

- (1) In 2009, the number of lawyers in Guangzhou continued to increase at quite a brisk pace. With a record number of more than 6,000 lawyers, Guangzhou has become the third largest legal service market in China, trailing after Beijing and Shanghai;
- (2) PRD lawyers mostly aggregate in the two major cities of Guangzhou and Shenzhen. Lawyers in these two cities add up to 75% of all lawyers in Guangdong Province;
- (3) As the integration of the PRD Region gathers speed, the numbers of practising lawyers in Foshan and Dongguan, two of the second-tier cities in the Region, are also increasing at quite a brisk pace.

(b) Continued and speedy increase of number of PRD lawyers

The following is a comparison between Guangdong Province and Hong Kong in terms of the increase in the number of lawyers (Chart 7 in the Annex):

- (1) In the decade commencing 2000, the number of lawyers in Guangdong Province increased drastically;
- (2) On the other hand, the number of solicitors in Hong Kong increased mildly and steadily, at the rate of approximately 400 per year;

- (3) From this, it can be seen that the demand for legal services in the PRD Region has been rapidly rising and there is a keen demand in that Region for more legal service providers, whereas legal services in Hong Kong are at a well-developed and stable stage.

(c) Distinct regional character of PRD law firms

- (1) Presence of PRD law firms is confined to the PRD Region:

- (i) All of the top ten law firms (in terms of scale) nationwide have at least six branches; in contrast. However, most of the top ten law firms (in terms of scale) in the PRD Region do not have branches and they operate only within the Region;
- (ii) The operation of the top ten law firms (in terms of scale) in the PRD Region points to a very low level of internationalization in the Region with a very limited international business network;
- (iii) The large-scale law firms nationwide possess a strong ability to expand their practices, and most of them do so by setting up branches and operate in a highly organized manner. In contrast, PRD law firms have limited capacity for expansion. Over the past two years they have remained in the PRD Region with no noticeable expansion in their scale of operation.

- (2) There is a considerable lag between PRD law firms and their counterparts in Beijing and Shanghai (Table 4 in the Annex). Cooperation with Hong Kong law firms will present PRD law firms with an opportunity to expand the scope of their own practice and hence enhance their competitiveness nationwide.

(d) Low level of internationalization of legal services in the PRD Region

Representative offices of foreign law firms are mainly located in Beijing and Shanghai. According to the latest statistics in 2010, of the representative offices of foreign law firms, 74 are located in Beijing, 105 in Shanghai, four in Guangzhou, and five in other areas (Chart 8 in the Annex).

This may indicate a lack of international legal work in the PRD Region. Another possible explanation is that, given the close geographical

proximity of the Region to Hong Kong, international law firms can simply engage their Hong Kong offices to handle legal work in the Region.

The entry of Hong Kong law firms to the PRD Region will bring about a large amount of international legal work, and this will help speed up internationalization of PRD law firms.

(e) More opportunities ahead for cooperation between Guangdong and Hong Kong law firms

As Hong Kong continues to increase its investments in Guangdong Province, the demand of the PRD Region for Hong Kong legal services will continue to rise. Given the different legal systems which govern Guangdong and Hong Kong, and in light of Mainland policies and restrictions, the provision of legal services will require communication and cooperation between Guangdong and Hong Kong law firms. At the same time, the sophistication and experience of the Hong Kong legal service industry will further assist PRD law firms in enhancing their own competitiveness.

1.4 Guangdong-Hong Kong cooperation and legal service industry in PRD Region

1.4.1 Impact of Guangdong-Hong Kong cooperation on legal service industry in PRD Region

In 2003, the Mainland entered into CEPA with Hong Kong and Macau. Implemented in 2004, CEPA aims to achieve the following basic objectives: gradually remove the tariff and non-tariff barriers for trade in goods; gradually liberalize trade in services; facilitate trade and investment; and enhance the standard of economic and trade cooperation between the Mainland on the one hand and Hong Kong and Macau on the other. By implementing CEPA, Guangdong and Hong Kong have once again strengthened mutual cooperation and achieved remarkable development.

Under the CEPA framework, Guangdong and Hong Kong had been exploring various opportunities for cooperation, and the *Framework Agreement on Hong Kong/Guangdong Cooperation*, which was entered into on 8 April 2010, represents a mutually beneficial endeavour by Guangdong and Hong Kong and serves to reinforce the institutional basis for Guangdong-Hong Kong cooperation. The document contains, among other agreements, a number of agreements in respect of cooperation between the legal service industries in Guangdong and Hong Kong, including: giving effect to the policy of “early and pilot implementation”

previously offered under CEPA to service industries in Hong Kong; allowing service providers in Hong Kong to establish, in accordance with applicable regulations, professional organizations in Guangdong to provide services in accounting, law, management consultancy and referrals; actively seeking national support, opening more sectors of the market, lowering the threshold of entry into the market, and streamlining approval procedures⁵; and cooperating in legal practice, including: (1) establishing a system for the exchange of texts of laws and regulations, providing guidance on the rules and procedures for investment and trade, establishing a communication system to facilitate mutual notification and consultation in respect of legislative proposals regarding cooperation projects between Guangdong and Hong Kong; (2) establishing a system for legal practice coordination and setting up a specialist working party for coordination and cooperation in respect of legal issues, in order to deal with legal issues arising from Guangdong-Hong Kong legal practice cooperation, putting forward legislative proposals as necessary with a view to strengthening Guangdong-Hong Kong cooperation in various areas; and (3) supporting legal professional service institutions in Guangdong and Hong Kong in developing legal advisory services, promoting exchange and cooperation in legal, notarization and forensic matters.⁶

1.4.2 Impact of *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)* on legal service industry

In 2008, the State Council adopted *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)* (“*Planning Framework*”), which serves as a basis for guiding the PRD Region in outlining action for reform and development and compiling relevant plans of today and a period to come.

In discussing the strategic positioning of the PRD Region, the *Planning Framework* mentions that the Region will uphold the ‘One country, two systems’ guideline and push forward its close cooperation, integration and common development with Hong Kong and Macau so as to forge jointly the most dynamic and internationally competitive city cluster of the Asia-Pacific region ... [and will] develop a system of modern service industries to match Hong Kong as an international financial centre, and develop into an international centre for shipping, logistics, trade, conferences and exhibitions, tourism, and innovation that has a different positioning from Hong Kong and Macau ...”.⁷ That Guangdong and Hong Kong are referred

⁵ *Framework Agreement on Hong Kong/Guangdong Cooperation* (executed on 8 April 2010), Chapter 3, Clause 4(1).

⁶ *Framework Agreement on Hong Kong/Guangdong Cooperation* (executed on 8 April 2010), Chapter 5.

⁷ *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*, Chapter 2, Clause 2, items 3 and 4.

to in the *Planning Framework* as an inseparable strategic region shows the importance of Guangdong-Hong Kong cooperation to the future development of Guangdong and Hong Kong.

The *Planning Framework* contains an extensive coverage of the requirement for Guangdong-Hong Kong cooperation. Clause 2 in Chapter 11 of the *Planning Framework* expresses the need to engage in closer cooperation with Hong Kong and Macau. The *Planning Framework* specifies four aspects of closer cooperation between Guangdong and Hong Kong, namely: advance the convergence of major infrastructures, strengthen industrial cooperation, jointly build a high-quality living community, and introduce innovative modes of cooperation. In respect of strengthening industrial cooperation, the Planning Framework mentions the need to step up efforts in facilitating mutual recognition of the professional qualifications for the banking, securities, insurance, valuation, accounting, law, education, and medical service industries in order to create the conditions for developing service industries.”⁸ This shows that the legal service industry is one of the focal points in industrial cooperation between Guangdong and Hong Kong.

1.4.3 Impact of *The Master Plan of Shenzhen (2010-2020)* on legal service industry

In 2010, the State Council adopted *The Master Plan of Shenzhen (2010-2020)* (“*Shenzhen Plan*”), which serves as a basis for guiding Shenzhen in outlining action for reform and development and compiling relevant plans of today and a period to come.

The *Shenzhen Plan* sets out the overall objectives of the development of Shenzhen City, one of which is “... 3. Rely on South China, keep a foothold in the Pearl River Delta, and strengthen cooperation between Shenzhen and Hong Kong in order to jointly build a world-class urban area.”⁹

The above objective is elaborated by way of specific policies on regional cooperation, as follows: “enhance the level of internationalization of the city 1. further open up service sectors; introduce into Shenzhen internationalized professional service organizations in respect of international finance, accounting and auditing, legal services, management consultancy and marketing; attract internationally renowned educational and medical institutions to come to Shenzhen for investment and cooperation; encourage and support large enterprises, domestic and foreign,

⁸ *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*, Chapter 11, Clause 2, item 2.

⁹ *The Master Plan of Shenzhen (2010-2020)*, Clause 13.

to set up headquarters in Shenzhen; enhance the level of internationalization and competitiveness of the city, exert an influential and leading effect on the region.¹⁰ ... strengthen cooperation between Shenzhen and Hong Kong ... 3. strengthen cooperation with Hong Kong in respect of pillar industries. Riding on Shenzhen network in the Mainland and Hong Kong's networks in the international communities, further expand cooperation between Shenzhen and Hong Kong in high-end and new-tech industries, modern logistics and high-end service industries; vigorously develop headquarters economy; take the lead in opening the service market in Shenzhen to Hong Kong and Macau; facilitate service industries of Hong Kong and Macau to carry out early and pilot implementation in Shenzhen; continuously enhance the international presence of Shenzhen.¹¹”

1.4.4 Impact of *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai* on legal service industry

In 2010, the State Council adopted *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area* (“*Qianhai Plan*”), which seeks to further deepen Guangdong-Hong Kong cooperation and promote, jointly with Hong Kong, the innovative development of modern service industries, and ultimately to achieve the strategic objective of building Qianhai into an exemplary zone for modern service industries under innovative cooperation between Guangdong and Hong Kong.

The general conception, as expressly stated in the *Qianhai Plan*, is to “fully manifest the role of the special economic zone as a pioneer and leader. By leveraging the comparative edges of Guangdong and Hong Kong, cooperation between the two sides will be further tightened by jointly developing modern service industries in Qianhai ... [the project] is a useful exploration for China to create a new opening up layout with a more open economic system, being the example to lead China's endeavour to change development mode and realize scientific development.”¹²

The *Qianhai Plan* then elaborates on the above idea, as follows: “Tentative and innovative efforts will be made in Qianhai, by leveraging the legislative power of the special economic zone, to establish a legal environment which is conducive to the opening up and development of service industries.”¹³ ... “Actively give effect to the relevant CEPA arrangements, carry out first and

¹⁰ *The Master Plan of Shenzhen (2010-2020)*, Clause 21.

¹¹ *The Master Plan of Shenzhen (2010-2020)*, Clause 22.

¹² *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai*.

¹³ *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai*, Part 2 (cooperative framework).

pilot implementation, and continuously explore new modes of cooperation between Hong Kong service industries and the Mainland.”¹⁴ “... Vigorously develop professional services. Relax entry requirements as appropriate ... supporting service providers from Hong Kong in setting up in Qianhai professional service organizations whether as sole proprietorships, joint ventures, cooperations or other modes, so as to provide personalized and high-end professional services ... Develop accounting and legal services to such extent as is appropriate. ... actively explore the mutual recognition of qualifications of practitioners ...”¹⁵.

Throughout the formulation and proposal of the *Qianhai Plan*, the State Council and the Guangdong Provincial Government repeatedly expressed support for the first and pilot implementation of the Qianhai service industries exemplary zone. In approving the *Qianhai Plan* on 25 August 2010, the State Council expressed the need to “further manifest the role of the special economic zone as a pioneer and leader, make use of the opening up and development of Qianhai modern service industries as an opportunity to actively explore the system and mechanism for promoting the development of modern service industries, so as to gain new experiences for the innovative development of modern service industries in China. ... The democratic legal system has to be further improved. The legislative power conferred by the National People’s Congress on the special economic zone has to be fully utilized to create an outstanding legal environment for the development of Qianhai modern service industries.”¹⁶ In a notice dated 10 October 2010, the National Development and Reform Commission pointed out that “... this Commission will take the lead in establishing a coordination mechanism in which the relevant departments of the State Council, the Hong Kong Special Administrative Region, Guangdong Province, Shenzhen City and others will participate, in order to provide active support in implementing the relevant policies, arranging relevant projects and innovating mechanisms.”¹⁷

¹⁴ *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai*, Part 3 (strategic positioning).

¹⁵ *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai*, Part 5 (industrial distribution).

¹⁶ *Approval by the State Council to the Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai*.

¹⁷ *Notice of the National Development and Reform Commission on the Publication of the Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area*.

2 Demand for legal services in PRD Region

2.1 Development of enterprises in PRD Region

2.1.1 Overview of enterprises in PRD Region

(a) Enterprises are mainly of small to medium scale

According to statistics, as at the end of 2006 there were 37,180 small and medium enterprises (“SMEs”) in Guangdong Province, and they constituted over 99% of all the enterprises in the Province; the total assets of these SMEs amounted to RMB 2.3737 trillion, representing over 70% of the total assets of all enterprises in the Province. The number of people employed by these SMEs represented about 80% of all employees of enterprises in the Province; trade exports by these SMEs accounted for 68.53% of national trade exports, and almost all exports in light industries, textile, garments, toys and metal hardware were produced by SMEs. At the same time, of all the growth SMEs nationwide, 14.7% were from Guangdong, and this number exceeded those of all other provinces, being even more than the sum total of SMEs in 14 provinces and cities in Central and Western China.¹⁸ In the past three decades or so, the development of SMEs in the PRD Region has played a pivotal role in propelling the economic development of Guangdong Province as a whole.

(b) Well-developed manufacturing industry

The PRD Region has preliminarily become the base for the manufacture of consumer products worldwide. The tens of thousands of factories set up in the Region have effectively formed a consumer product manufacturing conglomerate of formidable competitiveness. For example, the computer motherboards, scanners, cathode ray tubes and mini motors manufactured in Dongguan have taken up 15% to 40% of the global market share, while the clocks and watches manufactured in Shenzhen have taken up more than 40% of the global market share.¹⁹

(c) Distinct export-oriented character of enterprises

Ever since the implementation of the “reform and opening-up” policy, Guangdong has been active in developing an export-oriented economy, and the PRD Region has been more dependent on external trade. In 2007, the external trade dependence index of the PRD Region was

¹⁸ Source of data: *Guangdong Growth Small and Medium Enterprises Evaluation Report 2007*.

¹⁹ *SME Review*, 2004, Issue No.6.

182% – close to that of Hong Kong but much higher than those of the Yangtze River Delta Region and Taiwan. The Canton Fair had always been the indicator of the direction for the development of SMEs in Guangdong Province, and the USA was the target market for 40% of these SMEs' exports. The outbreak of the global financial crisis struck a heavy blow at the PRD Region.²⁰

For the purposes of the present research, we have selected research samples by reference to the scales of enterprises in the PRD Region and the distribution of industries. Of the research samples, 33.3% are from the manufacturing industry; up to 11.8% are from each of the finance, insurance and real estate industries; and up to 5.9% are from each of the domestic and import-export trade, transportation, ports and harbours, airports, scientific research, education, culture, sports, travel, food and beverage, leisure and entertainment, commercial services, and other industries. In terms of annual income, 38.1% of the sampled clients earn less than RMB 5 million per annum, and more than half (52.4%) of the sampled clients earn less than RMB 10 million per annum.

2.1.2 Trend of development of enterprises in PRD Region

Having reflected upon the impact of the global financial crisis, for some time in the future Guangdong will implement enhanced industrial strategies, at the core of which will be a change in the mode of economic development. The low-end labour-intensive industries in the PRD Region will be relocated to eastern and western Guangdong and the mountainous areas in northern Guangdong, thereby sparing the limited and valuable land in the PRD Region for the development of advanced manufacturing industry and modern service industries. This implies that, with the revamp of the business model in the PRD Region, there will emerge a number of large enterprises and corporate groups with outstanding core businesses and great competitive edges. In order to build up nationally and internationally renowned brands, the leading enterprises will inevitably integrate the numerous SMEs by way of acquisitions, mergers, shareholdings and associations, and will also establish a presence overseas by way of investments, financings, listings, mergers and acquisitions, and expansions. Law firms from the Mainland, Hong Kong and overseas will contend for the high-end legal work incidental to the above business processes.

At the same time, in this new phase of development, the PRD Region will want to draw on the competitive advantages of Hong Kong service industries in order to speed up the change in the mode of economic development and to develop modern service industries. According to the

²⁰ Source of data: *Guangdong Statistical Yearbook 2009*.

Planning Framework, the PRD Region has set the goal of increasing the share of service industries in domestic GDP from approximately 47.3% in 2007 to over 60% in 2020. In this critical period of upgrading and transformation of the manufacturing industry in the PRD Region, Hong Kong should leverage the advantages of its professional service industries (including legal, financial, accounting and insurance services) by providing productive services to enterprises in the PRD Region and assisting them in their upgrading and transforming as well as exploiting the domestic market.

2.2 Demand for Hong Kong legal services in PRD Region

2.2.1 Legal demand in PRD Region

In the past decade, with the economic development of the PRD Region, the total number of cases handled by the courts has increased steadily. In Guangzhou, for example, the number of civil and commercial cases has markedly increased, whereas the number of criminal and administrative cases has remained more or less constant (Chart 9 in the Annex).

As the economy of the PRD Region continues to grow at a brisk pace, the legal demand in respect of civil and commercial cases will certainly continue to increase.

2.2.2 Options for clients in PRD Region in resolving legal problems

(a) Consult in-house advisors in first instance

When asked how they would resolve legal problems, the sampled clients in the PRD Region responded as follows: 47.6% would consult their own in-house legal advisors; 33.3% of the responding enterprises would instruct lawyers from law firms to handle the matters; only 28.6% of the enterprises had their own legal departments; and 23.8% of the enterprises would only consult the relevant law firms.²¹

The main reasons given for selecting the above options are:

- (1) Most Mainland enterprises have a limited budget for legal expenses, and they tend to either retain in-house legal advisors or establish legal service relationships with certain law firms;
- (2) Enterprises in the PRD Region lack the ability to be forewarned of legal risks. Most SMEs tend to seek remedies only when disputes arise.

²¹ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

(b) Less than 30% of enterprises have in place a legal department

Of the sampled clients, only 28.6% engage their own legal departments to resolve legal problems. This shows that an overwhelming majority of the SMEs in the PRD Region do not have in-house legal departments, and that legal matters involving enterprises in the Region are mostly handled by relevant law firms. This shows that there is a huge potential of the legal service market in the Region.

2.2.3 Contact between clients in PRD Region and Hong Kong law firms

(a) Most enterprises in the PRD Region are “insulated” from Hong Kong law firms

Of the clients participated in the survey, 23.8% indicated they have had contact with Hong Kong law firms. Only one client has frequent contacts with Hong Kong law firms, and the remaining clients have had an aggregate of fewer than five (very few) contacts with Hong Kong law firms.

Given the close “geo-relationship” between Hong Kong and the PRD Region, the scanty contacts with Hong Kong law firms indicates that, among enterprises – particularly SMEs – in Guangdong, Hong Kong law firms are not their first choice.

With the implementation of liberalization policies in recent years, Hong Kong law firms have been progressively penetrating the legal service market of China. Their priority, however, is the vast amount of non-litigation legal work in the high-end foreign capital market, and the focus of their contention is for high-end professional legal work in respect of foreign investments, mergers and acquisitions, listings of Mainland enterprises, and matters such as anti-dumping litigation overseas. For the local SMEs, they still prefer the localized services provided by Mainland lawyers when it comes to general litigation work in which those enterprises often get involved. Coupled with the many restrictions imposed on Mainland legal practice by Hong Kong lawyers, most local enterprises are “insulated” from Hong Kong law firms.

(b) Avenues of contact between clients in the PRD Region and Hong Kong law firms

- (1) Conferences and meetings as an important platform for promoting Hong Kong legal services

Of the clients who have had contacts with Hong Kong law firms, 60% came to know about Hong Kong law firms through conferences and meetings. This shows that the exchanges and interactions between the two sides provide an effective platform for Hong Kong law firms to expand their practices. In the survey conducted among Hong Kong law firms, Hong Kong lawyers also indicated keen interest in attending conferences and exchange programmes organized by lawyers associations and commercial institutions in the Mainland, through which Hong Kong lawyers may be exposed to more business opportunities.

(2) Word-of-mouth promotion of Hong Kong legal services

Another 20% of the sampled clients established contact with Hong Kong law firms through recommendations of close acquaintances and telephone calls. In the Mainland society which places much emphasis on networking and word-of-mouth, it is important for Hong Kong law firms to make more effort to establish networks and build a good reputation by word of mouth.

(3) A serious lack of media promotion

It should be noted that none of the clients under survey came to know about Hong Kong law firms through the mass media including Internet media, industry publications and the television. This reveals defects in the Mainland marketing strategies and approaches of Hong Kong law firms. Mainland law firms often distribute self-published newsletters to enterprises or sponsor sporting events with a view to connecting more closely with enterprises. They also gain more exposure by making comments on specific court cases. These are means of promotion which Hong Kong law firms can consider adopting.

2.2.4 Analysis of demand of enterprises in PRD Region for Hong Kong legal services

By reason of their “geo-relationship” with Hong Kong and their considerable dependence on the international market, enterprises in the PRD Region are expressing an ever-increasing demand for Hong Kong legal services.

The results of our survey, the participants of which are mostly SMEs and individual clients, shows that the types of legal services that clients call for include (in descending order):

- (1) Arbitration (47.6%);²²
- (2) Taxation (42.9%);
- (3) Litigation (38.1%);
- (4) Legal consultancy (33.3%);
- (5) Corporate matters (33.3%);
- (6) Finance and securities (33.3%);
- (7) Foreign-related matters (33.3%);
- (8) Real Estate (23.8%).

(a) Rare contacts between small enterprises and Hong Kong law firms

As stated above, SMEs in the PRD Region are the main driving force behind the economic development of Guangdong. Most of the small enterprises are either newly established or growing. Their capital input is limited and they adopt a simple organizational structure, employing limited labour. The disputes they face are mainly concerned with labour disputes with employees and disputes with customers. The legal work that lawyers are required to handle for these small enterprises includes: resolving labour disputes through mediation and litigation; assisting the enterprises in establishing satisfactory regulatory and management systems; handling disputes arising from performance of contracts; and alerting the enterprises to the need for legality in production and operation, in order to help them grow in a proper and healthy direction.

However, these small enterprises can only set aside a very limited budget for legal expenses, and in respect of the general litigation in which they often become involved, they still prefer the localized services provided by Mainland lawyers. One reason is that local lawyers are more familiar with Mainland laws and more acquainted with the procedures and approaches of the courts, procuratorates, public security authorities, tax authorities and administrative agencies for industry and commerce. Another reason is that the legal fees of Mainland law firms are lower than those of Hong Kong law firms. The sampled small enterprises in the PRD Region also had very limited contacts with Hong Kong law firms.

(b) Increase in demand for non-litigation legal services by medium-sized enterprises

²² In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

In comparison, medium-sized enterprises are on a more secure footing. Having accumulated ample raw capital, they are developing soundly and ready to expand. They often place much emphasis on product research and development, carefully plan their brands, and have overseas clientele. A greater proportion of the legal matters that they normally encounter involve non-litigation matters such as asset restructuring, share issues, transfers of property rights, capital expansion, and industrial restructuring. These operational and managerial activities will spin off relevant legal matters which require the professional services of a large number of competent lawyers. Some of these enterprises have their own legal advisors to whom they will turn for advice in respect of all sorts of legal issues.

Our survey reveals an ever-increasing need for and dependence on lawyers by individual and corporate clients in the PRD Region. An increasing number of enterprises are looking for lawyers to provide non-litigation legal services including the provision of legal advice and written legal opinions, and the preparation and execution of contracts for various major projects.

Our research results indicate a great demand from enterprises in the PRD Region for non-litigation services of Hong Kong law firms, in particular the following types of services:

- (1) Taxation (42.9%);
- (2) Finance and securities (33.3%);
- (3) Real Estate (23.8%).

(c) The bridging effect of the dependence of large enterprises in the PRD Region on Hong Kong law firms

Hong Kong is a member of the World Trade Organization and an independent tariff zone. With a free trade system, a government which adheres to the “low tax” policy and an established legal system, Hong Kong has been enjoying the status of a major financial and trade centre in the world. The city now also acts as an important bridge, facilitating trade and commerce between the Mainland and countries around the world. A large number of multinational corporations and international financial syndicates have established their China regional headquarters in Hong Kong, which not only serves as a gateway for foreign and Hong Kong enterprises to invest in the Mainland, but is also home to substantive listings, financing and entrepot trade by Mainland enterprises.

Hong Kong law firms are able to provide leading enterprises in the PRD Region with a vast array of legal services. As our survey shows, currently most of the enterprises are inclined to choose Hong Kong law firms for handling Hong Kong-related legal matters. Given Hong Kong's geographical proximity to the PRD Region, and the establishment of representative offices in Guangdong, Hong Kong law firms are ideally positioned to handle legal matters and are becoming the first choice among Guangdong law firms.

(1) Litigation and arbitration matters

According to the results of our survey, the demand for litigation services and arbitration services adds up quantitatively to as much as 85.7%. It follows that, although Hong Kong lawyers do not enjoy the rights of Mainland litigation lawyers, services of Hong Kong lawyers are still much needed by litigants whenever issues of Hong Kong law arise.

(2) Financial services and securities

Hong Kong has been a centre of foreign listing activities for enterprises in the PRD Region, with a number of holding companies in the Region having been listed in Hong Kong. However, due to historical factors, the listing rules in Hong Kong are different from those in the Mainland, and therefore enterprises in the Region require legal services of Hong Kong lawyers to ensure compliance with the rules in Hong Kong. Our survey shows that as many as 33.3% of sampled clients require this type of service by Hong Kong law firms.

(3) Matters involving foreign parties

Over the years, Hong Kong lawyers have gained considerable experience and knowledge pertaining to investments in the international market. In making foreign investments, enterprises in the PRD Region will benefit from sound legal advice by Hong Kong law firms which enjoy extensive business networks and which are conversant with the laws of the relevant countries and territories.

Furthermore, compared with foreign lawyers, Hong Kong lawyers better understand Mainland laws and, as such, will play an important role in conducting foreign-related business negotiations and drafting relevant contracts on behalf of Mainland clients. For this reason, 33.3% of the sampled clients would like to be provided with this type of service by Hong Kong law firms.

2.3 Comments of clients in PRD Region on Hong Kong legal services

2.3.1 Positive comments from clients in the PRD Region on Hong Kong legal services

(a) Ability of Hong Kong is good in communication

Our survey reveals that enterprises in the PRD Region are generally positive about the communication skills of Hong Kong lawyers. 83.3% of the respondents considered it easy to communicate with Hong Kong lawyers, because Guangdong and Hong Kong share the same deep roots in terms of language and culture. This provides an ideal setting for enterprises in PRD Region and Hong Kong law firms to engage in business dealings.

(b) High level of professionalism in Hong Kong law firms

During the survey, we discovered that half of the sampled clients considered that Hong Kong law firms exhibit a higher level of professionalism than their Mainland counterparts. It is true that, apart from handling civil, criminal and administrative litigation, some of the larger partnership law firms in the Mainland also provide legal services in diverse areas encompassing real estate, finance and investment, intellectual property protection, domestic and external trade, and company incorporation and liquidation. In practice, however, such legal matters often require the handling lawyers to possess extensive professional knowledge; and, hindered by a lack of practitioners proficient in foreign languages and a relatively narrow scope of practice, many law firms in the Mainland are finding transnational legal matters more difficult to handle than they expect. On the other hand, with their familiarity with the workings of transnational financing, corporate mergers and acquisitions, international trade, and a firm grasp of the cultural backgrounds and practices of foreign clients as well as international customs, Hong Kong lawyers will be able to assist Mainland enterprises in dealing with high-end transactions.

(c) Well-developed international business networks and ability to provide cross-border legal services

Half of the sampled clients gave much weight to the international business networks of Hong Kong law firms, while 25% of the clients selected Hong Kong law firms on account of their ability to provide cross-border legal services.

Hong Kong law firms possess well-developed international business networks and are able to provide Mainland enterprises with legal services in respect of the drafting of foreign-related contracts and the handling of foreign-related intellectual property disputes. Besides, enterprises in the PRD Region consider the Hong Kong securities market as the ideal springboard for overseas listings, and in the process of “reaching out” to the global market, those enterprises will benefit from advice by Hong Kong lawyers on the listing rules and post-listing requirements in Hong Kong.

Furthermore, the dependence of the PRD Region on external trade means that conflicts with foreign trading parties are inevitable, resulting in a continuous supply of legal work in respect of, for example, anti-dumping and countervailing investigations, resolution of international trade disputes, and protection of global intellectual property rights. This will generate even more business opportunities for the Hong Kong legal profession which is conversant with the rules of international trade.

(d) Client care

The provision of thoughtful and attentive services is an attribute of Hong Kong law firms which has elicited praises from the highest percentage (75%) of sampled enterprises in the PRD Region. For example, in providing legal advice, Hong Kong law firms follow a very strict procedure – an oral reply or advice will be confirmed in writing, and request for the client’s acknowledgement of the advice. Hong Kong law firms also attach great importance to maintaining relationship with clients. The firms always take the initiative to contact clients so that the clients feel at ease and contented.

2.3.2 Negative comments from clients in the PRD Region on Hong Kong legal services

(a) Legal fees are relatively high and beyond the reach of SMEs

For enterprises in the PRD Region, a major criterion in determining the choice of legal service provider is the level of fees. In our survey, 72.2% of the sampled clients considered the criterion “very important” or “quite important”. On lawyers’ rates, Mainland lawyers base their legal fees on piece work or the proportion of an involved amount, in accordance with the provisions of the *Provisional Procedures for the Administration of Lawyers’ Service Charges* promulgated in 1997. In comparison, Hong Kong lawyers usually charge clients on the basis of an hourly rate, with fees to be negotiated between the lawyer and the

client. Fees of barristers in Hong Kong are negotiated between the instructing solicitor and the client, and barristers' fees are never publicized. 33.3% of the sampled clients considered the relatively high level of fees as a reason for not selecting Hong Kong law firms as legal service providers.

(b) Hong Kong law firms are not too familiar with the local environment and do not have networks in the Region

76.2% of the sampled enterprises pointed to the unfamiliarity of Hong Kong law firms with the local environment as the major reason for not selecting Hong Kong law firms as legal service providers. In this context, "environment" is a composite concept which comprises the judicial and living environment of the Mainland and the needs of the Mainland market. The local enterprises in Guangdong are skeptical about the ability of Hong Kong lawyer to handle Mainland cases independently, and take the view that Hong Kong law firms have to further familiarize themselves with the Mainland environment before exploiting the Mainland market.

38.1% of the respondents cited the lack of networks or connections as a major drawback suffered by Hong Kong firms. First, the disparity, in terms of geography and background, between Hong Kong and the Mainland means that, unlike Mainland law firms, Hong Kong law firms cannot possibly move around freely and gain advantage from all sides in the Mainland. Second, Hong Kong law firms only focus on business achievements and do not accord much importance to communicating with administrative and judicial authorities and other institutions. While recognizing the professional achievements of Hong Kong law firms, the sampled clients doubted whether the approaches of Hong Kong law firms would be workable in the Mainland.

3 Problems pertaining to cooperation between Hong Kong and Mainland law firms under CEPA framework

CEPA is the short form for *Closer Economic Partnership Arrangement*, which comprises the *Mainland and Hong Kong Closer Economic Partnership Arrangement* entered into between the Central People's Government and the Government of the Hong Kong Special Administrative Region, and the *Mainland and Macau Closer Economic Partnership Arrangement* entered into between the Central People's Government and the Government of the Macau Special Administrative Region.

Executed on 29 June 2003, CEPA has to date been in operation for seven years. With the successive implementation of six Supplements, CEPA has created an increasingly liberal environment for the cooperation between Hong Kong solicitors and Mainland lawyers. Nevertheless, by reason of the inadequacies of the supporting regulations, the cooperation between Hong Kong and Mainland law firms under the CEPA framework leaves much to be desired.

3.1 Much greater effort needed to promote CEPA

It can readily be seen from Chart 10 in the Annex that, except for the lawyers at representative offices, to whom CEPA is highly relevant, the degree of familiarity of most Hong Kong lawyers and Mainland lawyers with the CEPA arrangement is far from satisfactory – only 8.7% of sampled Hong Kong lawyers and 7.7% of sampled Mainland lawyers said they were “very familiar” with the arrangement, and as many as 32.6% of sampled Hong Kong lawyers and 23.1% of sampled Mainland lawyers said they “[had] heard of but [were] not familiar” with the arrangement. It follows that much greater effort is needed to promote CEPA.

3.2 Development of associations hindered by lack of relevant provisions in CEPA and supporting regulations

It is obviously advantageous for a Hong Kong law firm and a Mainland law firm to operate in the form of an association as provided for under CEPA. First, an association can provide clients with “one-stop” services in respect of matters involving both jurisdictions of the Mainland and Hong Kong. Second, an association helps expand the practices of both the Hong Kong law firm and the Mainland law firm. Furthermore, both firms will greatly benefit from the sharing of information, exchange of managerial experiences and mutual training of personnel that an association entails.

For these reasons, the idea of an association has been well received by both Hong Kong law firms and Guangdong law firms. Our survey results show that, as far as Guangdong is concerned, as many as 76% of the sampled lawyers took the view that forming associations with Hong Kong law firms would facilitate both sides in expanding their practices, 60% considered that associations would help integrate legal service resources of Hong Kong and the Mainland, and 36% considered that associations would give law firms more room for development.

On the Hong Kong side, 64.4% of the sampled lawyers took the view that forming associations with Mainland law firms would facilitate both sides in expanding their practices, 55.6% considered that associations would help integrate legal service resources of Hong Kong and the Mainland, and 55.6% considered that associations would give law firms more room for development. Only 8.9% took the view that associations would not mean much.²³

Notwithstanding the above, the development of associations has to some extent been hindered by certain defects, both in the CEPA agreement itself and in the supporting regulations, in the provisions regarding associations. The major concerns raised by respondents in our survey are summarized below:

3.2.1 CEPA only allows Hong Kong law firms with representative offices in Mainland to form associations with Mainland law firms

In common with the relevant provisions under the *Measures for the Administration on Associations formed by Law Firms of the Hong Kong Special Administrative Region or the Macau Special Administrative Region with Mainland Law Firms* approved by the Ministry of Justice on 27 November 2003, the CEPA provision requires, as a condition precedent, a Hong Kong firm to “set up a representative office in Mainland China” in order to form an association with a Mainland law firm. At present, 65 Hong Kong law firms have representative offices in the Mainland, of which only 19 are established in Guangdong. In fact, the provision has the effect of excluding the vast majority of Hong Kong law firms from the prospect of forming associations, and is particularly unfavourable to small to medium law firms which are minded to develop Mainland practices.

²³ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

3.2.2 No guiding provisions regarding risk distribution and profit sharing of associations

The CEPA agreement or the supporting regulations should expressly provide for profit sharing and risk distribution of associations between Mainland law firms and Hong Kong law firms. Many of the sampled lawyers indicated that “it is very difficult for an association to come up with a mutually satisfactory arrangement in respect of the sharing of profits”, and some of the lawyers took the view that an association as a mode of operation “is rather loose, on the face it is associative cooperation, but in practice it is very difficult to jointly manage and share resources”. The Mainland and Hong Kong are governed by different legal systems, and the forms of management of Mainland law firms and Hong Kong law firms also differ in many respects. This being the case, it is necessary for CEPA to provide guiding provisions regarding risk distribution and profit sharing, in order to minimize disagreements between the two parties and strengthen the prospect of associations being successful.

3.2.3 No express provisions in CEPA governing liability of parties to associations

The legal liability of associations and the parties thereto is currently governed by the *Measures for the Administration on Associations formed by Law Firms of the Hong Kong Special Administrative Region or the Macau Special Administrative Region with Mainland Law Firms* and the *Law of the People’s Republic of China on Lawyers* (“PRC Lawyers Law”).

Article 23 of the said *Measures* provides that, where an association formed by a law firms of Hong Kong or Macau with a Mainland law firm contravenes a law, rule or regulation of the Mainland or acts in contravention of any provision of the *Measures*, the provincial judicial administrative authority will issue a warning notice ordering the association to rectify the mistake within a specified time period; an association which fails to do so will be liable to pay a fine not exceeding RMB 10,000; where an association has earned any illegal income, the association will be liable to pay a fine between two times and three times of such income, provided that the fine shall not exceed RMB 30,000. In other words, where an association contravenes a law, rule or regulation of the Mainland, the Hong Kong party to the association will be subject to a maximum penalty of a fine of RMB 30,000.

Furthermore, the Mainland party to the association is governed by the *PRC Lawyers Law*, under which the heaviest penalty is revocation of the certificate for practice. By reason of the lack of express provisions in the CEPA agreement or the supporting regulations govern liability of parties to

associations, the two parties are subject to unequal treatments in respect of legal liability.

3.3 Expansion of representative offices restricted by prohibition against employing Mainland lawyers to provide legal service

Hong Kong law firms have set up a number of representative offices in the Mainland. The results of our survey indicate that, while the establishment of representative offices is conducive to the development of the legal service industries in both the Mainland and Hong Kong, the current regulations do not contain detailed provisions or measures to govern and support representative offices; instead some of the provisions are hindering the development of such offices.

As it stands, CEPA is silent as to whether representative offices of Hong Kong law firms in the Mainland can employ Mainland practising lawyers and as to the scope of Mainland practice of lawyers employed by such offices. These aspects are therefore still governed by the *Measures for the Administration of the Representative Offices Stationed in the Mainland of China by Law Firms of the Hong Kong Special Administrative Region and the Macau Special Administrative Region*.

Article 16 of the said *Measures* provides that a representative office of Hong Kong law firm in the Mainland cannot employ any Mainland practising lawyer, and that the support staff employed by that office cannot provide legal services. Where a representative office contravenes that above provision, the justice department (bureau) of the relevant province, autonomous region or municipality will issue a warning notice ordering the office to rectify the mistake within the specified time period; where the circumstances of the contravention are serious, the relevant justice department (bureau) will make an order suspending the office from practising for a specified period of time; and where the office still fails to rectify the mistake within the specified time period, the Ministry of Justice will revoke the certificate for practice of the office. “This provision makes it clear that the Mainland is still taking a cautious and conservative approach towards the liberalization and opening up of the legal service industry, and that there is still a long way to go to meet the requirement of full liberalization of the cooperation of legal services on both sides.”

In view of the core importance of lawyers to a law firm, a representative office, which is governed by the current provisions, has no alternatives but to assign solicitors from the “mother firm” in Hong Kong to the Mainland to provide services. This will inevitably increase the cost of operating the office and form a big obstacle to practice development. The results of our research show that, although the representative office makes a lot of profits

for its “mother firm” in Hong Kong, the inability to employ Mainland practising lawyers means that the representative office can only act as a bridge between the Mainland and Hong Kong. In fact, 88.9% of the representative offices are operating at a deficit and require support by their “mother firms”. This is without doubt a serious handicap to the normal activities of representative offices and a hindrance to their development.

The relaxation of the restriction against representative offices on employing Mainland practising lawyers to provide legal services may bring about the following positive effects:

(a) The employment by representative offices of Mainland practising lawyers to provide legal services can help broaden the horizon of Mainland practising lawyers and speed up the internationalization of Mainland lawyers

According to the results of our survey, all of the Hong Kong firms which have set up representative offices in the Mainland have thereby been given more opportunities to cooperate with Mainland lawyers, and as the areas of practice of those representative offices have a strong foreign flavour, the Mainland-Hong Kong cooperation will no doubt greatly facilitate the internationalization of Mainland lawyers.

In terms of statistics, the types of practice which make up most of the business of representative offices are:²⁴

- (1) Setting up Hong Kong or overseas company (88.9%);
- (2) China-appointed Attesting Officer service (66.7%);
- (3) Assisting Mainland enterprises in setting up or acquiring foreign business in Hong Kong and or overseas (66.7%);
- (4) Assisting Mainland enterprises to attract foreign investment by forming joint ventures in a similar model as adopted in Hong Kong (55.6%).

It can easily be seen that the areas of practice of most representative offices contain a foreign element. This is where the competitive edge of Hong Kong lawyers—and precisely where the weakness of Mainland lawyers – lie. At present it is virtually impossible for Mainland lawyers to practise in other countries and very difficult for them to practise in Hong Kong. Therefore, if representative offices are allowed to employ Mainland lawyers to provide legal services, Mainland lawyers can be involved in these “front-line” practice areas, and this will go a long way toward training up Mainland lawyers and thereby enabling them

²⁴ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

to withstand competition of foreign law firms in the increasingly open legal market of the Mainland.

(b) Representative offices can enrich the types of practice in the Mainland legal service industry, without subjecting Mainland law firms to overt competitive pressure

From the data obtained in our survey in relation to various areas of legal practice (Chart11 in the Annex), it is clear that the most of the areas of practice of representative offices possess distinctive characteristics. A comparison between Guangdong law firms and representative offices of Hong Kong firms reveals that the main areas of practice of Guangdong law firms are the conventional areas such as litigation, real estate and corporate legal advisory service. This is markedly different from the focus of practice of representative offices. It can be said that the legal practice of representative offices contains a strong Hong Kong element, and by reason of their own locations and their edge both internationally and professionally, they will have no difficulty whatsoever in handling the Hong Kong-related legal work. It is therefore natural for clients to select representative offices to handle this type of work.

As there is little overlap in their practices, neither Mainland law firms nor representative offices consider there would be overt competition with each other. This also finds support in the data obtained from our survey. Of the sampled Guangdong law firms, 36% considered that the measure would give rise to competition for the Mainland law firms, but the majority took the opposite view, and 28% of the sampled lawyers did not consider competition to be a concern, in view of the enormous size of the Mainland legal market. It is noteworthy that the vast majority of those law firms which did not think competition would arise are large firms which have frequent contacts with Hong Kong law firms.

A large number of representative offices see Hong Kong law firms as their major competitors, and these offices do not envisage intense competition with Mainland law firms. In our survey of representative offices about their perceived major competitors, 44.4% selected Hong Kong law firms and 22.2% opted for Mainland law firms. This shows that by reason of areas of practice and the level of expertise, representative offices will mainly compete with Hong Kong law firms with similar areas of practice and will not create much impact on Mainland law firms.

Furthermore, 44.4% of the sampled representative offices did not consider competition to be a concern at all. Not being too familiar with the Mainland market, representative offices of Hong Kong law firms have a clear idea of their own position, and many law firms do not expect their work to bring about intense competition with Mainland law firms.

(c) The employment by representative offices of Mainland practising lawyers to provide legal services can provide convenience to Hong Kong enterprises and Mainland enterprises in PRD Region

The survey data indicates that the types of practice of representative offices are relatively new. For this reason, apart from facilitating the handling of legal issues which arise when Hong Kong enterprises seek to enter the Mainland market, representative office will also greatly assist enterprises in the PRD Region in exploiting the Hong Kong market and the international market. As things currently stand, while the legal matters handled by representative offices are still predominantly Hong Kong-related, the Mainland practice of most of those offices has increased substantially. Of the sampled representative offices, 55.6% focused on the development of practice in the PRD Region, and 77.8% considered themselves to enjoy a competitive edge in acting for clients in handling the formalities in setting up Hong Kong or overseas company.

With the continuous increase in interaction between enterprises in Hong Kong and the Mainland, and the ensuing rise in the demand for legal services, there appears to be an increasingly pressing need on the part of representative offices for Mainland practising lawyers. Mainland lawyers are more familiar with the economic, political and social environment of the Mainland, are better versed in Mainland laws, and have more extensive connections in the Mainland. Accordingly, being allowed to employ Mainland lawyers will obviously enable representative offices to provide even better legal services. This will certainly also provide more convenience to enterprises in both Hong Kong and the Mainland because they will be able to obtain a full set of Mainland-related and Hong Kong-related legal service from one single office instead of having to instruct different firms to provide different services. In our survey, 88.9% of the sampled representative offices were of the view that being allowed to employ Mainland lawyers would not only provide more convenience to Hong Kong enterprises in the PRD Region in handling Mainland-related legal matters but also promote further cooperation between Guangdong and Hong Kong law firms in providing legal services in the PRD region.

3.4 Restrictions in CEPA on legal practice by Hong Kong lawyers in Mainland

3.4.1 National Judicial Examination as gateway for Hong Kong lawyers to practise in Mainland

The current CEPA agreement contains the following provisions regarding the legal practice by Hong Kong lawyers in the Mainland:

- (1) 15 Hong Kong lawyers who have already acquired Mainland lawyer qualifications are allowed to undertake internship programme and practise on non-litigation work in the Mainland.
- (2) Hong Kong permanent residents with Chinese citizenship are allowed to sit the legal qualifying examination in the Mainland and acquire Mainland legal professional qualification in accordance with the *National Judicial Examination Implementation Measures*.
- (3) Those who have acquired Mainland legal professional qualification as stated above (i.e. item 4 in the agreement) are allowed to engage in non-litigation legal work in Mainland law firms in accordance with the *PRC Lawyers Law*.

Supplement III to CEPA, which was signed in 2006, specifically commits “to allow Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens”. On the other hand, Hong Kong solicitors are required to pass the National State Judicial Examination (“NJE”) before they can practise in the Mainland as lawyers. The SJE therefore becomes the gateway for Hong Kong lawyers to practise in the Mainland.

The NSJE is a qualifying examination administered by the State which specifically pertains to the acquisition of legal professional qualification. A person must pass the SJE in order to become a judge, procurator or notary public or to obtain qualification as a lawyer in the Mainland. What was originally a lawyer qualifying examination was, in 2002, grouped with two other qualifying examinations within the judicial system, namely the procurators examination and the judges examination, and become one single national examination, which is characterized by difficult examination questions and low passing rates (Chart 12 in the Annex).

Generally speaking, the number of candidates and the passing rates of the NJE have both been on an increasing trend year-to-year. The following factors may have contributed to this trend:

(a) The State needs a large number of legal talents to beef up its legal team

Given the huge population of Mainland China, the small number of Mainland legal practitioners is hardly sufficient to serve the needs of the Mainland society. The proper relaxation of the number of candidates passing the SJE is also a response to the need for progress of the Mainland legal system.

(b) The reduction of the level of difficulty of the NJE is in line with international development

In modern times, the practice of selecting legal talents by means of difficult judicial examinations is gradually dying out among countries which adhere to the rule of law. In the USA, the average passing rate of first attempts at lawyers qualifying examinations is approximately 75%. Even in Japan and Korea, both of which had always been known for low passing rates at judicial examinations, efforts were made in recent years to reform their examination systems as they were hard-pressed by a shortage of judicial talents.

In 2004, Japan abolished the quota on the number of people passing the judicial examinations. The passing rate at the examinations, which in 2000 was approximately 3% of the total number of candidates, is expected to increase to 70% to 80% by 2020.

In Korea, the National Assembly passed in early July 2007 the *Law of Specialist Law School*, which provides for the establishment of a “graduate school of law” and requires a person to complete a graduate programme in law before he or she can sit the judicial examination. The judicial examination and the graduate school will concurrently operate until 2014 when the former will be completely abolished.

(c) The NJE has been in place for years and, as candidates become more familiar with the examination system and with more and more study materials and tutorial courses being available, the NJE is becoming less difficult to candidates

Despite the increase in its passing rate over recent years, the difficulty in passing the NJE is evident. A student who has properly acquired undergraduate legal education at an institution of higher learning has to spend approximately 600 hours preparing for the SJE in order to stand a better chance of passing the Examination.

In fact, for many people who are keen to enter the legal profession, the NJE presents an exacting challenge. It is by no means unusual for people to make repeated attempts at the NJE. It is not difficult to imagine how formidable the NJE is to a Hong Kong lawyer who was trained and has long been practising under the Anglo-American legal system and setting.

In our survey, only 4.3% of sampled Hong Kong law firms indicated that they “have solicitors who have passed the NNE”, and 13% of the respondents “have sent solicitors to sit the SJE but basically those solicitors have not passed the Examination”. In our survey of Mainland representative offices of Hong Kong law firms about the same subject, as many as 55.6% of the sampled representative offices indicated that none of their staff lawyers had passed the NJE. On the whole, the results of Hong Kong lawyers in the NJE can hardly be viewed with optimism (Table 5 in the Annex)

As to the reasons for failing the NJE, some lawyers indicated that it was “too difficult to pass” the NJE and that they “had no time to prepare” for the Examination as they were busy with work. Some lawyers also considered that their Mainland partners were competent enough and it was unnecessary to arrange for Hong Kong solicitors to sit the NJE.

Notwithstanding the various hurdles, many of the sampled lawyers indicated that they would continue to “encourage lawyers to participate” in the NJE or “arrange for assistant lawyers to prepare for the NJE”.

3.4.2 Feasibility of a special examination: analysis and suggestions

Some of the respondents to our survey put forward the suggestion that Hong Kong solicitors be allowed to obtain qualification as Mainland lawyers by way of a special examination, pursuant to Article 8 of the *PRC Lawyers Law*.

The said Article 8 provides that, where a person who has completed a legal curriculum at an undergraduate or higher level course in an institute of higher learning, has been performing professional work in fields short of legal service personnel for 15 years or more, and is holding a senior professional title or the same professional level as well as possessing law-related professional knowledge, applies for full-time legal practice, he or she shall, after passing an examination by the judicial administration department of the State Council, be

permitted to practise; and that specific measures shall be determined by the State Council.

This system, commonly described by Mainland academics as a “practising lawyers licensing system”, has been set up with a view to remedying the defects of the SJE and refining the mechanism by which Mainland lawyers are allowed to practise. The licensing system is intended to benefit senior experts and professional talents who have been performing professional work in fields short of legal service personnel for at least 15 years and who are holding senior professional titles or the same professional level – which, in fact, means that those people are already competent enough to undertake lawyers’ work. On the other hand, many of them work in specialized fields and, as such, have difficulty meeting the requirement of possessing all-round knowledge that the NJE calls for. Furthermore, many of them are aged and busy at work, and do not satisfy the objective requirements for taking the NJE. For these reasons, the judicial administration department of the State Council may organize special examinations to provide this group of talents with another avenue of obtaining the requisite qualification.

(a) An analysis of the feasibility of a special examination

The setting up of a special examination specifically for Hong Kong lawyers may meet with the following obstacles:

(1) Restrictions under the current law

The *PRC Lawyers Law* does not apply to Hong Kong. Hong Kong lawyers who wish to invoke Article 8 of the *PRC Lawyers Law* to support the setting up of a specialist examination to obtain qualification to practise in the Mainland will, as a start, have to resolve the problem regarding the applicability of the relevant law.

Furthermore, the said Article 8 is intended to apply to those who have been “performing professional work in fields short of legal service personnel”. The definition of “fields short of legal service personnel” urgently awaits clarification.

(2) Attitude of the legal profession

Our survey reveals that support for implementing the policy of “allowing Hong Kong lawyers to obtain professional practice qualification by means of a special examination” comes mostly from lawyers at representative offices of Hong Kong law firms.

The results of the survey show that as many as 77.8% of the respondents believed that the provision (Article 8 of the *PRC Lawyers Law*) should apply to Hong Kong lawyers, 33.3% of the respondents agreed that the provision should apply to Hong Kong lawyers but should be modified as appropriate, and only 11.1% of the respondents were opposed to the above policy.²⁵

As the major beneficiary, Hong Kong lawyers have rather shown little enthusiasm about the policy apart from saying that they welcome it. Specifically, 52.3% of the respondents believed that the provision (Article 8 of the *PRC Lawyers Law*) should apply to Hong Kong lawyers, 31.8% of the respondents agreed that the provision should apply to Hong Kong lawyers but should be modified as appropriate, and 18.2% of the respondents were opposed to the above policy.²⁶

This difference in attitude stems from a difference in the standpoint of the parties concerned. Representative offices handle various types of Mainland legal matters throughout the year, and, being bound by relevant policies, they are unable to employ Mainland lawyers to provide legal services. This being the case, representative offices are of the view that developing a pool of Hong Kong lawyers with Mainland practice qualification can be an oblique way to “rescue” the lawyers profession of the State. However, as discussed above, the NJE is an unknown creature to Hong Kong lawyers who have grown up in the Anglo-American legal environment and will prove too thorny to them as a means of obtaining professional qualification in the Mainland. On this basis, easing off the restrictions of the NJE will certainly be beneficial to Hong Kong solicitors. Therefore, representative offices have shown the greatest support for and endorsement of the policy.

Hong Kong law firms are facing the same problem with respect to practising in the Mainland. However, the volume of Mainland legal work directly handled by Hong Kong firms is less than that by representative offices, which means that the demand of Hong Kong firms for Mainland practice qualification is not as strong as that of representative offices. Furthermore, many Hong Kong law firms are getting around the problem by cooperating with Mainland law firms which involves the referral of Mainland legal matters, and such an

²⁵ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

²⁶ *Ditto*.

arrangement has been working well in practice. Therefore, for Hong Kong law firms, it will be nice to have the above policy, but the absence of such policy will not do them any harm.

Mainland lawyers have taken a rather equivocal stance on the proposal, with voices of opposition by and large prevailing. 69.2% of the respondents were opposed to setting up a special examination for Hong Kong lawyers, and 53.8% took the view that Hong Kong lawyers who desire to practise in the Mainland must pass the NJE. Of the 42.3% of respondents who supported the proposal, 11.5% considered it necessary to modify the terms of the proposal. Those who unconditionally supported the proposal account for 30.8% of all respondents. The more or less equally divided views on the proposal show that the Mainland legal profession has not yet formed a consensus on this issue.²⁷

(b) The proposal of a special examination

Our survey reveals that, in respect of such legal matters as transnational financing, formation and liquidation of companies, mergers and acquisitions, international trade and protection of intellectual property rights, clients in the PRD Region often require services involving a high level of professional expertise, and, hindered as they are by a lack of proficiency in foreign languages and narrow international vision, Mainland lawyers are often unable to handle these high-end legal matters as smoothly as they would like. Furthermore, with the significant strengthening of the economy of China and industrial restructuring in the developed regions, more and more large enterprises in the PRD Region – and indeed throughout China – will be in need of the abovementioned high-end legal services. In the short run, it will be difficult for the Mainland to train up a pool of qualified legal service personnel to meet the ever-increasing demands of enterprises, but at the same time, there is an abundance of this type of personnel in Hong Kong.

In these circumstances, by allowing (in accordance with Article 8 of the *PRC Lawyers Law* and subject to stringent supervision and approval) senior Hong Kong lawyers in “fields short of legal service personnel” to obtain the relevant Mainland practice qualification by passing a relatively flexible special assessment organized by the relevant department, not only can the dearth of high-end Mainland legal personnel in the current transitional period be alleviated, but an

²⁷ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

opportunity will also be created for the Mainland to train up young lawyers in the fields short of legal service personnel. In light of the practical problems currently faced by the Mainland legal profession, it is possible to try to implement a special assessment in the following manner:

(1) Eligibility for sitting the special examination

A person has to fulfill all the following conditions in order to be eligible for sitting the examination:

- (a) The field in which the person is working is short of Mainland personnel, such as transnational financing and international trade;
- (b) The person possesses a high practice standard and extensive practice experience;
- (c) The person is familiar with the Mainland legal environment;
- (d) The person is of good character and does not have any bad record in the Mainland and Hong Kong;
- (e) The person intends to develop practice in the Mainland.

Furthermore, at the initial stage of the special examination, further restrictions may be imposed on the basis of the above conditions. For example, the candidate may have to:

- (a) possess the qualification of a China-Appointed Attesting Officer (Hong Kong);
- (b) be a Hong Kong lawyer who has or will soon set up a representative office or an association in the Mainland and who has engaged in Mainland legal practice.

According to the *Measures for the Administration of China-Appointed Attesting Officers (Hong Kong)* promulgated in 2002, eligible Hong Kong lawyers can become China-Appointed Attesting Officers by passing a special examination administered by the Ministry of Justice and, as China-Appointed Attesting Officers, they are entitled to attest to legal acts which take place in Hong Kong as well as facts and instruments having legal effect. The attestations are to be used in the Mainland. To date, more than 300 Hong Kong lawyer have obtained the qualification of China-Appointed Attesting Officers. Most of them

have been practising in Hong Kong for years with extensive practising experience, and the legal matters they handle are mostly high-end in nature. Hong Kong lawyers who work at representative offices of Hong Kong law firms or associations in the Mainland have to some extent engaged in Mainland legal practice. They are familiar with the Mainland legal environment and are desirous of developing practice in the Mainland. Confining the candidates of the special examination to this group of solicitors will serve to attract outstanding lawyers to participate in Mainland legal affairs and, at the same time, control the number of entrants so as to minimize any impact that they may cause to the Mainland legal market.

(2) Special examination: Question-setting and assessment

The special examination does not imply a relaxation of the level of difficulty of the examination questions. As the examination aims to select talents in fields short of personnel, the examination questions should display an appropriate level of difficulty to achieve the objective of choosing the best of the best. As far as the content and method of assessment are concerned, useful reference can be made to the relevant provisions or rules under the *Measures for the Administration of China-Appointed Attesting Officers (Hong Kong)* and the OLQE (Overseas Lawyers Qualification Examination). For example:

- (a) The assessment should not cover too much of what is irrelevant to the development of Mainland practice by Hong Kong lawyers, but should rather focus on professional knowledge or expertise and requisite knowledge of the public law, such as private international law, international economic law, civil and commercial law, civil litigation law, arbitration law, legal professional ethics and professional duties.
 - (b) The power to set questions for the examination and to assess candidates' performances should be vested in and exercised by the Ministry of Justice.
- (3) Imposing restrictions on the locations and durations of practice of those who pass the special examination

Taking into account the need to achieve “a win-win situation” for both Hong Kong and the Mainland, it is necessary to impose restrictions on the locations of practice during the initial phase when Hong Kong lawyers who have passed the special examination are allowed to practise in the Mainland. When the arrangement is well in place, those

restrictions can be relaxed step by step so that Hong Kong solicitors will be able to practise in other regions of the Mainland.

The *Qianhai Plan*, which was adopted by the State Council in 2010, expresses the need to “fully manifest the role of the special economic zone as a pioneer and leader. By leveraging the comparative edges of Guangdong and Hong Kong, cooperation between the two sides will be further tightened by jointly developing modern service industries in Qianhai”; “... Actively give effect to the relevant CEPA arrangements, carry out first and pilot implementation, continuously explore new modes of cooperation between Hong Kong service industries and the Mainland.”²⁸; “... Vigorously develop professional services. Relax entry requirements as appropriate”²⁹.

Accordingly, in the early stage of implementation of the special examination, it is desirable to confine the location of practice of Hong Kong lawyers who have obtained Mainland practice qualification by passing the examination, to the Qianhai area which has been described as “a special zone within a special zone, an experimental field within an experimental field”, as this will facilitate administration by the relevant departments and also enable Hong Kong solicitors to more quickly familiarize themselves with the Mainland legal environment. According to the *Qianhai Plan*, Qianhai will be built into “an important base for the modern service industries nationwide, as well as a centre for manufacturing service industries which possesses much influential strength”³⁰. In light of this, a platform which is restricted but which has a large capacity will be more suitable for implementing a pilot scheme for Hong Kong lawyers to practise in the Mainland.

Furthermore, in order to prevent Hong Kong lawyers from “sitting on” their Mainland practice qualification and being slow in developing Mainland practice, with the result that the objective of select talents to work in fields short of personnel cannot be achieved, it is suggested that lawyers are required to develop Mainland practice within a specified time (e.g. 12 months) from their obtaining Mainland practice qualification, failing which their qualification will be revoked.

On the basis that stringent control on eligibility and qualification is put in place, a special examination for Hong Kong lawyers, as outlined and suggested above, is eminently feasible.

²⁸ *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area*, Part 3 (strategic positioning).

²⁹ *The Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area*, Part 5 (industrial distribution).

³⁰ See *Reply by the State Council to the Overall Development Plan on Shenzhen-Hong Kong Cooperation on Modern Service Industries in Qianhai Area*, Chapter 3.

3.4.3 Restrictions on locations at which Hong Kong residents allowed to practise in Mainland may receive training

Training is a must for anyone who wishes to become a lawyer, and is indeed a norm among legal professions in most countries and territories. A lawyer's ability to handle and resolve practical problems is often even more important than his or her conversance with the law itself. It is widely accepted that, by undergoing training (for a period ranging from a few months to a few years) with the supervision and guidance of a senior practitioner, a new lawyer will be able to hone his or her practical skills and develop a stronger sense of professional ethics, thereby acquiring the basic ability needed to provide professional legal services. However, for Hong Kong lawyers who desire to develop Mainland practice, the choice of a training location poses a dilemma.

(a) Current provisions

Article 6 of the *Measures for Administering the Engagement in Legal Practice in the Mainland by Residents of the Hong Kong and Macau Special Administrative Regions with the Mainland Legal Profession Qualification* (as amended in 2009) provides that, except in circumstances specified under Article 11 of the said *Measures*, Hong Kong and Macau residents who have obtained the Mainland legal profession qualification have to undergo one-year training offered by Mainland law firms in accordance with the *PRC Lawyers Law* and the rules laid down by the Ministry of Justice and the All-China Lawyers Association, and upon completion of the training, they can apply to practise at law firms in the Mainland.

Article 11 of the said *Measures* provides that Hong Kong and Macau residents who have obtained the Mainland legal profession qualification and who are Hong Kong or Macau legal practitioners with at least five years' experience in legal practice have to undergo intensive training offered by lawyers associations in the Mainland that lasts for at least one month, and upon completion of the training and passing an assessment, they can apply to practise as lawyers in the Mainland.

(b) Dilemma in choosing the location of training

Governed by different systems of law, the judicial environments in Hong Kong and the Mainland are vastly different. Hong Kong lawyers minded to practise in the Mainland have to undergo a longer period of training in order to gain a better understanding of Mainland legal

practices. As the fundamental objective of such training is to become familiar with Mainland legal practices, it is clearly inappropriate for the training to take place in a Hong Kong law firm. Hence the current requirement for a Hong Kong lawyers wishing to practise in the Mainland, namely that, apart from passing the NJE, he or she has to either undergo one-year training at Mainland law firms (where he or she has less than five years' experience in legal practice), or undergo intensive training offered by lawyers associations in the Mainland that lasts for at least one month and then pass an assessment (where he or she has at least five years' experience in legal practice).

However, there are problems with confining a Hong Kong lawyer's place of training to a Mainland law firm.

As it is, the CEPA agreement only allows Hong Kong lawyers who have obtained Mainland lawyer qualification to practise on non-litigation legal work in Mainland law firms or to engage in activities as agents in matrimonial and succession cases relating to Hong Kong in the capacity of Mainland lawyers. This suggests that even if a Hong Kong lawyer is allowed to practise as a lawyer in the Mainland, his or her areas of practice will be confined to non-litigation legal work and matrimonial and succession cases relating to Hong Kong.

Furthermore, the direction of development of a Hong Kong law firm in the Mainland is dictated by the location and professional edge of the firm itself. There are distinct differences in the main areas of practice between Hong Kong law firms and Guangdong law firms. The latter focus on conventional litigation, real estate and corporate legal advice, whereas the legal work undertaken by the former has a strong Hong Kong or foreign element.

From the two points above, the following conclusion can be drawn: for Hong Kong lawyers who practise in the Mainland, it is best for them to engage in non-litigation work and work relating to Hong Kong. These are precisely where the weakness of Mainland law firms – and the strength of Hong Kong law firms – lies. Viewed from this perspective, to compel Hong Kong lawyers to undergo training in Mainland law firms would be to require them to take a longer route than necessary and would not do any good to the advancement of their career.

In summary, neither Hong Kong law firms nor Mainland law firms provide the ideal location for training up Hong Kong solicitors desirous of practising in the Mainland: the former would deprive them of the opportunity to get used to the Mainland judicial environment, whereas the latter would adversely affect their career development.

(c) Advantages of representative offices of Hong Kong law firms

The representative offices of Hong Kong law firms in the Mainland may provide a good way out. First, being in the Mainland and hence having extensive dealings with judicial authorities, lawyers and clients in the Mainland, representative offices constitute perfect windows through which Hong Kong lawyers can know more about the Mainland. Second, their areas of practices being similar to those of Hong Kong law firms, representative offices will greatly assist the career development of Hong Kong solicitors by fully utilizing their unique strengths and abilities.

Notwithstanding the natural advantages of representative offices in providing training to Hong Kong lawyers, at this stage it is most desirable, in view of the practical complexity of the issues involved, to adopt a “two-pronged” approach by allowing Hong Kong solicitors desirous of developing Mainland practice to choose, having regard to their own circumstances, between Mainland law firms and representative offices of Hong Kong law firms as the location of training.

4 Development of Hong Kong law firms in PRD Region and analysis of basis of cooperation

4.1 Development of representative offices of Hong Kong law firms in PRD Region

4.1.1 Overview of scale and staff of representative offices

(a) Representative offices smaller in scale and content with *status quo*

The sampled representative offices were set up after 1992. They are mainly located in Guangzhou and Shenzhen. They are smaller in scale with few employees. 66.7% of the sampled representative offices had fewer than five staff members, while 75% had fewer than five lawyers.

In the next three years the representative offices will maintain the status quo and will not substantially increase or reduce the number of staff members. Most of the representative offices have a stable team of staff; the larger the scale and volume of business are, the higher the mobility of staff is. 88.9% of the sampled representative offices expressly indicated that they only wanted to maintain the *status quo*. The survey about the mobility of staff at sampled representative offices over the previous year has elicited the following results: 55.6% showed neither inflow nor outflow of staff; 22.2% showed outflow of two staff members; 11.1% showed outflow of three to four staff members; and 22.2% showed inflow of three staff members.

(b) Main place of work of chief representatives not in PRD Region

The position of chief representative at representative offices is taken up by law firm partners. On average, chief representatives spend only one to five days per month at the representative offices. This may be due to the small volume of work in the PRD Region or of work which can be directly undertaken in the PRD Region.

(c) Young staff members not optimistic about status quo of representative offices

Representative offices provide better benefits to their staff members. All the representative offices “have in place insurance coverage for staff members as required by the State”; eight representative offices (representing 88.9% of the samples) provide “paid annual leave”; four representative offices (representing 44.4% of the samples) provide “legal training and education”; one representative office (representing 11.1% of the samples) provides “commercial insurance”. None of the

sampled representative offices provides the benefit of “education assistance programme” for children of staff members.

While the benefits provided by representative offices, which do not significantly differ from those provided in Hong Kong, can cater for the basic needs of staff members, the staff members have not considered their job satisfactory. Merely 44.4% of the sampled staff members were “confident of career future” and “intend[ed] to work long-term”, and only administrative staff responsible for daily operation showed greater job stability. Moreover, the younger personnel who are exposed to substantive legal matters tend to see representative offices as springboards to even better opportunities for career development, and this group of people exhibit higher mobility.

This is an oblique indication that the inability of representative offices to undertake Mainland legal matters is in effect limiting the career prospects of younger staff members. This adversely affects the training up and accumulation of talents at representative offices, runs counter to the original intent of CEPA, and is hardly conducive to the interaction and mutual strengthening of the legal service industries between the Mainland and Hong Kong.

4.1.2 Sources and types of businesses

(a) Business mainly comprises Hong Kong legal matters and predominantly comes from individuals and corporations

The major type of work undertaken by representative offices is legal advisory work. Of the sampled representative offices, 66.7% took up an average of fewer than 10 legal advisory cases per month, whereas 33.3% took up on average 10 to 30 such cases per month. 55.6% of the samples handled work which mainly came from the Mainland; 77.8% handled work which mainly came from corporate and individual clients.

77.8% of the samples had Hong Kong as the chief source of business; 66.7% had the Mainland as the chief source; and 22.2% had overseas as the chief source.

It is clear from the above data that the majority of representative offices do not have a large volume of business. On the face, Hong Kong and the Mainland make up the dominant sources of business of representative offices; but in our survey, the lawyers of sampled representative offices indicated that the bulk of legal matters handled by representative offices are still Hong Kong legal matters, and even

the Mainland legal matters being handled have a Hong Kong component.

This also shows that representative offices of Hong Kong law firms have been developing tardily in the Mainland and that there is still much room for them to expand their practice. With the implementation of the “reach out” policy among Mainland enterprises, there will be a substantial increase in the number of cases involving foreign-related legal and policy advice and litigation. Having regard to issues of costs and economic security, Mainland enterprises should gradually reduce reliance on foreign legal services. How the international experience that the Hong Kong legal service industry has accumulated over the years can be further utilized would, to a large extent, depend on the degree of Mainland-Hong Kong cooperation and the degree of guidance and support offered by the relevant policies.

(b) Types of practice focus on areas over which Hong Kong law firms have an edge, with a relatively low proportion of other practice areas

Of the areas of practice developed by representative offices in the PRD Region, a relatively large amount relates to matters such as formation of companies, overseas acquisitions by Mainland enterprises, and banking and finance – areas in which Hong Kong law firms enjoy a competitive edge (Chart 13 in the Annex).

The first step in implementing the State’s “reach out” strategy is to form companies in Hong Kong or overseas. The acquisition of overseas businesses is an important segment of the development of Mainland enterprises; it follows from the need of enterprises to grow and exploit new markets, and also the need for Mainland enterprises to enhance their competitiveness and visibility.

Introducing investments from Hong Kong as a successful way of capital operation is a manifestation of increased economic and trade cooperation between the Mainland and Hong Kong as well as sensible allocations of resources and capital. The advantages of this approach has been demonstrated by the achievements made since the implementation of the State’s “reform and opening up” policy. This approach will continue for some time to come, and there will still be a sizable market for business in that respect.

As for banking and finance, Hong Kong as an international financial hub possesses extensive experience in capital financing and a

sophisticated financial sector. As such, Hong Kong is well placed to provide financial services to Mainland clients.

Hong Kong has been following international standards in nurturing talents and its education system is of a high quality both in Asia and in the world. The years of contact between Hong Kong law firms and educational institutions and government organizations overseas has served to lay a solid foundation for the smooth development of legal practices relating to immigration and overseas studies, and the wealth of experience of Hong Kong law firms has ensured the success of these practice areas. Nowadays, when overseas studies are becoming an option for more and more people who wish to receive high-quality tertiary education, representative offices are in a better position to provide visa-related legal services.

Representative offices basically undertake the types of work over which they have a competitive edge. Other types of work make up a relatively small proportion of their business. Works such as “arbitration and enforcement of Mainland arbitral awards”, “legal services relating to personal asset management”, “bridging loans by Hong Kong to assist Mainland enterprises in restructuring, raising capital and getting listed in Hong Kong or overseas”, “corporate governance structure”, “brand promotion, management of trademarks and intellectual property rights”, “divorce cases” and “advice on Mainland legal matters” account for merely 10% to 20% of the business of representative offices.

Social development and changes necessarily entail a change in the economic structure of a society. This means economic phenomena and conflicts are always in a state of flux. The demand of a society for legal services is not static either. As the world moves into the era of knowledge-based economy, there will be a gradual increase in the demand for legal services which are at present not extensively offered by representative offices, such as management of trademarks and intellectual property rights and brand promotion.

(c) Plight of representative offices: inadequacies in policies and sources of business

(1) Problems in opening up practice areas as a hurdle in the process of establishing representative offices

In respect of the establishment of representative offices, 88.9% of the respondents took the view that the fact that representative offices can only provide Hong Kong legal services is stifling the

development by these offices of Mainland legal practice. 55.6% of the respondents considered the degree of openness of the Mainland market inadequate and the relevant policies adverse to the establishment of representative offices by Hong Kong law firms. Some of the respondents also considered the Mainland policies overly complicated. Only one respondent commented that “the procedure for establishment is clear and smooth and does not pose any difficulty”. This shows that Hong Kong law firms seeking to establish representative offices in the Mainland are facing some obstacles which mainly arise from relevant policies.

The government has to make more comprehensive evaluations and strike a balance between the need for economic development and the demands of enterprises and the society, taking into account other factors in the process. The government should then announce relevant policies as soon as possible, to eliminate all obstacles to the smooth implementation of CEPA. This will also help turn round the present state of affairs, where 88.9% of the survey respondents are operating at a deficit and only wish to maintain the *status quo* within the next three years and 55.6% of the respondents have no plan to set up representative offices in other cities in China.

(2) Inadequate business sources as the major problem in the course of operation

The legal matters handled by representative offices mainly comprise advisory matters, with very few substantive cases. The cases from the Mainland are chiefly advisory cases, but even so, representative offices are receiving very few of those cases. 66.7% of the sampled representative offices received ten or fewer legal advice matters. 66.7% of the respondents considered the inadequacy of business sources to be an obstacle, and 33.3% considered the unfamiliarity with relevant policies adverse to business expansion.

Operational costs, cultural differences and disparity in professional knowledge have not been perceived as major problems; only 22.2% of the respondents pointed to high operational costs as a problem in business operation. As regards the expenses of representative offices in Guangzhou and Shenzhen, 55.6% of the sampled representative offices had a monthly expenditure of less than RMB 50,000; 22.2% spent between RMB 60,000 and RMB 100,000 per month; and 22.2% spent more than RMB 200,000 per month. The monthly expenditure of a

representative office with fewer than ten staff members is roughly estimated at RMB 50,000 to RMB 80,000. Only 11.1% of the respondents regarded cultural differences, disparity in professional knowledge, degree of recognition of Hong Kong law firms and employment of suitable personnel as problems in business operation.

4.2 Cooperation between Hong Kong law firms and law firms in PRD Region

4.2.1 Frequent contacts and close cooperation between Guangdong law firms and Hong Kong law firms

(a) Very frequent contacts between Guangdong law firms and Hong Kong law firms

Our survey results show that, of the 26 sampled PRD law firms, as many as 25 (which translates to 96.2%) have had contacts with Hong Kong law firms. It can therefore be seen that, as the economic link between the Mainland and the world strengthens, coupled with the competitive edge enjoyed by Hong Kong law firms, there is a demand for cooperation between Guangdong law firms and Hong Kong law firms, so that both sides are actively seeking opportunities for and means of interaction despite the considerable restrictions on Mainland legal practice of Hong Kong law firms.

(b) Contacts between Guangdong law firms and Hong Kong law firms mainly take the form of direct business dealings

Since 1992 when the Mainland formally opened up its legal service market, Guangdong law firms and Hong Kong law firms have engaged in close interaction. As for the forms of interaction, our survey reveals that 96.0% took the form of “to-the-point” business dealings, whereas interactive activities and social/personal interaction accounted for 40.0% and 64.0% respectively.

Mainland law firms enjoy an intrinsic competitive edge by reason of their being located in the Mainland; in particular, they are both qualified and able to bear legal risks. Hong Kong law firms, on the other hand, are able to capitalize on their familiarity with clients and enjoy considerable advantage on resources and services. The need to supplement each other forms the driving force behind the business interaction between Mainland law firms and Hong Kong law firms.

Furthermore, by virtue of their geographical advantages, PRD law firms have ample opportunities to interact with Hong Kong lawyers on a social level. Lawyers on both sides gain a deeper understanding of each others through activities organized by lawyers associations and chambers of commerce. As more and more Hong Kong law firms set up representative offices in the PRD Region, they are providing yet another platform for cooperation and exchange.

(c) The majority of Guangdong law firms have the experience in cooperating with Hong Kong law firms

Our survey shows that 73.1% of the sampled PRD law firms had cooperated with Hong Kong law firms before. That the majority of Guangdong law firms have the experience in cooperating with Hong Kong law firms shows that a basis for cooperation does exist and that both sides have evinced an intention to cooperate with each other.

(d) Hong Kong law firms handle Mainland legal matters mainly with assistance of *ad hoc* or long-term business partners

Jointly handling legal matters or cases enables both sides to learn from each other. This form of cooperation assists Hong Kong law firms in developing Mainland practice.

In our survey, 63% of the sampled Hong Kong law firms indicated that they would instruct Mainland law firms to handle Mainland legal matters. This shows that Hong Kong law firms tend to look for *ad hoc* business partners in the Mainland to handle specific cases. This approach has the advantage of being flexible, allowing Hong Kong law firms to find the most suitable partners to handle particular cases.

19.6% of the sampled Hong Kong law firms opted for cooperation with specific Mainland law firms on a long-term basis. The advantage of this approach is that both sides have a good understanding of the work practice or style of each other, and this will facilitate communication and cooperation between them.

15.2% of the sampled Hong Kong law firms opted for setting up offices in the Mainland to handle Mainland legal matters.

4.2.2 Associations as widely recognized mode of operation but seldom implemented in practice

(a) Associations are the first choice for PRD law firms wishing to enter Hong Kong market

In our survey, 80% of the sampled PRD law firms selected associations with Hong Kong law firms as a means of entering the Hong Kong market. 26.7% opted for setting up branches in Hong Kong; 20% opted for sending Mainland lawyers to Hong Kong to practise; 20% opted for employing Hong Kong solicitors to exploit the Hong Kong market; 13.3% opted for piecemeal cooperation with Hong Kong law firms; and 6.7% opted for direct referral of matters or cases to Hong Kong law firms. It is therefore clear that associations are the first choice for PRD law firms wishing to enter Hong Kong market (Chart14 in the Annex).

(b) Associations are recognized by Hong Kong law firms

Our survey of Hong Kong law firms reveals that the mode of associations is well-received among most respondents. 64.4% of the sampled solicitors considered that associations with Mainland law firms would facilitate practice development on both sides, while 55.6% considered that associations would help integrate legal service resources in the Mainland and Hong Kong. Moreover, 55.6% took the view that associations would allow law firms more room for development. The voices opposing associations are much softer; only 8.9% of all respondents considered that associations did not have much meaning.

(c) Although associations are widely recognized, they are seldom implemented in practice

In our survey about the current mode of cooperation, as many as 84.2% of the sampled PRD law firms opted for “cooperation over specific cases”, 15.8% opted for “information sharing”, only 10.5% opted for “associations”, and 10.5% opted for “others”. At present, therefore, cooperation between Guangdong law firms and Hong Kong law firms is still mainly in a piecemeal fashion, namely by working together on specific cases although associations are widely recognized by both sides, they do not find much favour in practice. Section 3.2 in chapter 3 of this Report contains a detailed analysis of the reasons behind this.

4.3 Analysis of basis of cooperation between Hong Kong law firms and law firms in PRD Region

4.3.1 Objective conditions for cooperation met

(a) Living environment in PRD Region are recognized by Hong Kong lawyers

In our survey, 88.9% of the sampled Hong Kong lawyers working in the PRD Region considered that the Region possessed geographical advantages, neighbouring Hong Kong and Macau and equipped with convenient transport. As for the living environment in the Region itself, the average scores given by respondents to various living conditions (with 6 being the highest score) are set out in Annex, Figure 15.

It can be seen that the living conditions in the Region can basically satisfy the needs of personnel at the Mainland offices of Hong Kong law firms. They are quite satisfied with the cultural, entertainment, dining and shopping facilities in the Region, although they are generally not satisfied with the air quality. This indicates that the effort of the Region in building up the “hardware” has received recognition.

(b) Opportunities for cooperation are embedded in macro-environment and relevant policies

With the further development of the economy of Guangdong Province and the continuous increase of Hong Kong investments in the Province, there will be a rising demand in the PRD Region for Hong Kong legal services. As Guangdong and Hong Kong are governed by different systems of law, coupled with the restrictions under Mainland policies, the provision of legal services will require communication and cooperation between Guangdong law firms and Hong Kong law firms. At the same time, CEPA confers upon Guangdong the benefit of “early and pilot implementation” of various measures. On the basis of the ever-increasing input by the State on the development of the PRD Region, there will be more opportunities for cooperation between Guangdong law firms and Hong Kong law firms.

(c) Practices of Guangdong law firms and Hong Kong law firms being mutually supplementary

As far as the legal practice of Hong Kong law firms which are developing in the PRD Region is concerned, it focuses on areas with a distinct Hong Kong element and over which Hong Kong law firms enjoy a competitive edge. The areas over which Hong Kong law firms consider themselves to have an advantage include:

- (1) Assisting Mainland enterprises to attract foreign investment by forming joint ventures in a similar model as adopted in Hong Kong (50%);³¹
- (2) Personal wealth management and other related legal services (47.8%);
- (3) Profit transfer & tax planning (41.3%);
- (4) Consultation service on Mainland-related matters (32.6%);
- (5) Settlement of tax and remittance in the Mainland (30.4%);
- (6) Probate matters(30.4%);
- (7) Legal consultancy (30.4%);
- (8) Corporate governance (30.4%);
- (9) China-appointed Attesting Officer service (30.4%);
- (10) Assisting Mainland enterprises in setting up or acquiring foreign business in Hong Kong and or overseas (28.3%);
- (11) Foreign-related transactions (27%);
- (12) Brand promotion, management of trademarks and intellectual property rights (26.1%);
- (13) Banking and finance (19.6%);
- (14) Arbitration and enforcement of Mainland arbitral awards (19.6%);
- (15) Handling formalities for setting up companies in Hong Kong or overseas (19.6%);

In practice, the main areas of practice of representative offices include:

- (1) Assisting Mainland enterprises to attract foreign investment by forming joint ventures in a similar model as adopted in Hong Kong (43.5%);³²
- (2) Foreign-related transactions (41.3%);
- (3) Profit transfer & tax planning (34.8%);
- (4) Personal wealth management and other related legal services (34.8%);
- (5) Assisting Mainland enterprises in setting up or acquiring foreign business in Hong Kong and or overseas (23.9%);
- (6) Corporate governance (21.7%);
- (7) China-appointed Attesting Officer service (21.7%);
- (8) Brand promotion, management of trademarks and intellectual property rights (21.7%);
- (9) Consultation service on Mainland-related matters (21.7%);
- (10) Banking and finance (17.4%);
- (11) Handling formalities for setting up companies in Hong Kong or overseas (17.4%);
- (12) Legal advisory service(17.4%) and divorce cases (17.4%);

³¹ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

³² *Ditto*.

(14) Litigation in Hong Kong Courts (15.2%).

As can be seen from Chart 11 in the Annex, there is no conflict between the areas of practice of representative offices of Hong Kong law firms in the PRD Region and the main areas of practice of Guangdong law firms. It is worth noting that tax planning services, over which Hong Kong law firms consider themselves to have an advantage, do not form part of the services provided by the sampled Guangdong law firms. Therefore, as far as the legal market in the PRD Region is concerned, the practices of Guangdong law firms and Hong Kong law firms are mutually supplementary, and the two sides can cooperate and at the same time develop their respective practices.

4.3.2 Strengthening exchange, grasping opportunities for cooperation

(a) PRD law firms desire to be assisted by Hong Kong law firms on the road to internationalization

In our survey of Guangdong law firms, only 26.9% of the sampled PRD law firms were rarely exposed to international legal practice. 53.8% indicated that the volume of their international practice increased year by year, and 19.2% indicated that international practice was part of their main practice. The overall results of our survey show that, although the level of internationalization of PRD law firms is relatively low, they are aware of the importance of international legal practice. 88.5% of the respondents took the view that, with more and more Mainland enterprises “reaching out”, there would be a further growth in the demand for foreign-related legal services; 53.8% considered that foreign-related international practice would form the focus of practice development of law firms. It can therefore be seen that international legal practice is gradually attracting the attention of PRD law firms.³³

As regards the means available to develop international legal practice, 73.1% and 46.2% respectively of the respondents indicated willingness to “cooperate with Hong Kong law firms in developing practice” and “develop international practice through foreign law firms”. The statistics show that, in developing international practice, most PRD law firms tend to select Hong Kong law firms as cooperative partners.

The majority of PRD law firms are already competent enough to handle international legal matters, and the proportion of international work in their overall practices is on the rise. Indeed, foreign-related international practice has become part of the main business of some of the well-known law firms in

³³ Ditto.

the Mainland. International practice will become a fertile ground for cooperation between Guangdong law firms and Hong Kong law firms.

(b) Cooperation with Hong Kong law firms will assist PRD law firms in enhancing their management ability

Of the Guangdong law firms participated in the survey, 50% of them were managed by partners, 23.1% by officers-in-charge, 26.9% by management committees, and only 23.1% by the more sophisticated corporate management systems.³⁴ Some of the law firms do not have a well-defined mode of operational management and are managed by both managing partners and officers-in-charge. By contrast, some other firms have better-defined management systems by setting up management committees or establishing corporate management systems.

Many law firms in the Mainland have to be managed by partners. The management of law firms is essentially a matter of experience. Partners of law firms, who have to take care of their own legal practice, can only devote limited energy to law firm management, and their approach to management lacks scientificity. As a law firm develops and expands, its management requirements become increasingly stringent. Some law firms have a pressing need to professionalize their operational management.

Most of the more established law firms are inclined to manage the firms by way of management committees or corporate management models. Hong Kong law firms have well-developed modes of management, and this is one of the most important factors in favour of Mainland-Hong Kong cooperation. A well-established management system facilitates more efficient risk control – an essential prerequisite for expansion of law firms.

(c) Cooperation with Hong Kong law firms will assist PRD law firms in enhancing their own competitiveness

Almost 60% of Guangdong law firms pointed to the intense competition within the legal profession. This being the case, cooperation with Hong Kong law firms will help Guangdong law firms develop their areas of practice and establish international practice networks. Close cooperation with Hong Kong law firms will also serve to expose younger lawyers in the PRD Region to high-end international legal practice, which will in turn enhance the professional standard of PRD lawyers as a whole.

For the above reasons, whether viewed objectively (in terms of opportunities for development) or subjective (in terms of the desire to cooperate), there is a

³⁴ *Ditto*.

rock-solid basis for cooperation between Hong Kong law firms and PRD law firms. Guangdong law firms and Hong Kong firms should grasp the golden opportunity of economic transformation in the PRD Region, strengthen communication and exchange, and exploring the possibility of further and closer cooperation. By making full use of their respective competitive edges and by engaging in close coordination and collaboration, the legal service industries in both Guangdong and Hong Kong will grow and prosper.

5 Development of Hong Kong law firms in PRD Region: analysis of prospects and strategies

5.1 Outlook for practice establishment and development of Hong Kong law firms in PRD Region

In our survey, nearly 80% of the sampled Hong Kong law firms identified Mainland China as the geographical focus of practice development in the next two years, whereas 30.4% and 47.8% opted for the PRD Region and other Mainland markets, respectively. It follows that quite a number of Hong Kong law firms are desirous of exploiting the market in the PRD Region. At the same time, enterprises in the PRD Region require legal services of Hong Kong solicitors over a wide range of matters. In a nutshell, the outlook for practice development of Hong Kong law firms in the PRD Region is positive.

5.1.1 Hong Kong law firms and firms in PRD Region will jointly undertake international legal work

The relevant statistics show that of the sampled PRD law firms, only 26.9% were rarely exposed to international legal practice, 53.8% indicated that the volume of their international practice increased year by year, and 19.2% indicated that international practice was part of their main practice. This shows that the majority of PRD law firms are already competent enough to handle international legal work, and that the proportion of international legal work in their overall practice is on the rise.

Furthermore, PRD law firms will continue to actively develop their international practices. 73.1% of the sampled Guangdong law firms indicated that they would actively exploit the international market, and some of them have set up branches in Hong Kong, with a view to actively developing their international practices. 73.1% of the respondents indicated they would “cooperate with Hong Kong law firms in developing practice”. The statistics show that, in developing international practice, most PRD law firms are inclined to select Hong Kong law firms as cooperative partners, and that international practice will become a fertile ground for cooperation between Hong Kong law firms and PRD law firms.

In the next ten years, the PRD Region will “actively attract investment by the world’s top 500 enterprises and the global leaders of various industries in the world”, and will also “encourage eligible enterprises to set up manufacturing bases, marketing centres, R & D institutions, and economic and trade cooperation zones in foreign countries, and undertake cooperative exploitation of overseas resources, international labour service cooperation, and international engineering contracting, and purchase or merge foreign

small and medium enterprises specializing in key technologies, R & D institutions, and marketing networks.”³⁵ These policies are set to attract more foreign enterprises to the PRD Region and also encourage more enterprises in the Region to reach out. The transnational flow of enterprise investments will certainly create demands for transnational legal services.

However, as PRD law firms are subject to regional restrictions and have a low level of internationalization, they will have to cooperate with foreign law firms in handling these transnational legal matters in order to satisfy clients’ needs. Judging from the statistics in respect of the inclinations of PRD law firms, they are very likely to select Hong Kong law firms as cooperative partners in dealing with most of the legal matters.

5.1.2 Hong Kong law firms and firms in PRD Region will maintain piecemeal cooperation in short term

The survey statistics show that 73.1% of PRD law firms have had cooperation with Hong Kong law firms. As regards the mode of cooperation between representative offices of Hong Kong law firms in the PRD Region and PRD law firms, of the sampled representative offices, two (28.6%) adopted the mode of “information sharing”, six (85.7%) adopted “cooperation over specific cases”, and one (14.3%) adopted the mode of “associations”. Of the sampled PRD law firms which responded to the same question, 15.8% adopted the mode of “information sharing”, 84.2% adopted the mode of “cooperation over specific cases”, only 10.5% adopted the mode of “associations”, and 10.5% answered “others”.³⁶

Guangdong and Hong Kong are geographically close, but at present the law firms on the two sides are cooperating in a piecemeal fashion. A return trip between Shenzhen or Dongguan and Hong Kong, which are a short distance apart, can be made within one day, and there is no pressing need to set up representative offices or associations in these cities. As regards Guangzhou, where more representative offices are located, their cooperation with Hong Kong law firms is also mostly piecemeal, namely cooperation over specific cases. By reason of the types of practice and the policy restrictions on associations, such form of cooperation is unlikely to change remarkably in the next few years.

³⁵ *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*.

³⁶ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

5.1.3 Associations as mode of cooperation into which Hong Kong law firms and firms in PRD Region will develop

At present, cooperation between Hong Kong law firms and PRD law firms mainly takes the form of collaboration over specific cases. However, this very form of cooperation serves to promote mutual understanding, with the result that both sides evince an intention to cooperate more closely with each other. 80% of the sampled PRD law firms have chosen to form associations with Hong Kong law firms in the course of exploiting the Hong Kong market. Of the sampled Hong Kong law firms, 64.4% considered that associations with Mainland law firms would facilitate practice development on both sides, and 55.6% considered that such associations would help integrate the legal service resources in Hong Kong and the Mainland. Furthermore, 55.6% of the respondents considered that associations would allow law firms more room for development. The voices opposing associations are softer. Only 8.9% of all respondents did not consider associations to have much meaning. It is therefore clear that the vast majority of the sampled lawyers are still positive about and receptive of the mode of associations.

The views of Hong Kong law firms and PRD law firms on the question of associations are basically consistent. Most of the law firms believe that associations will create a “win-win” situation and are inclined to cooperate with each other by means of associations. It is true that the mode of associations as it currently stands has a lot of problems. However, as both sides become more acquainted with each other through collaborating on specific cases, as representative offices of Hong Kong law firms in the PRD Region continue to expand, and as PRD law firms establish and develop foreign-related areas of practice, further interaction will certainly take place between the two sides, and the mode of associations, which is familiar to and recognized by both sides, will represent the direction of development of cooperation between the two sides.

5.1.4 Demand of clients in PRD Region will focus on non-litigation work involving Hong Kong and foreign parties

Looking at the statistics of our survey of enterprises in the PRD Region, 76.2% of the sampled enterprises would select Hong Kong law firms in dealing with Hong Kong-related legal matters, and 33.3% of the sampled enterprises would select Hong Kong law firms in dealing with cross-border legal matters (particularly financing, mergers and acquisitions involving Hong Kong). 42.9% of the sampled enterprises would select Hong Kong law firms in respect of foreign-related legal matters. The data on the classification of cases handled by representative offices of Hong Kong law

firms in the PRD Region shows that the demand of clients in the Region for Hong Kong legal services is focused on non-litigation work.

The PRD Region is now at the critical stage where its economy is being restructured and the form of development is being changed. Enterprises in the Region frequently engage in a wide range of operational and administrative activities including overseas investments, foreign trade, asset restructuring, share issues, transfers of property rights, expansion of capital, adjustments to industrial structure, and applications for and protection of patent rights. High-quality and efficient legal services – particularly non-litigation legal services – are part and parcel of the successful completion of these activities.

5.1.5 Demand of service sector for provision of legal services by Hong Kong law firms is expected to increase

Since the implementation of the State’s “reform and open up” policy, the service industries in the PRD Region have made substantial development. However, those industries are suffering from the following problems: saturation of traditional industries; inadequacy in the development of new and emerging service industries; lack of high-quality capital, management and technology; lack of innovative and lucrative services for which there is a market; weakness in product research and development; tardy development of productive service industries; and low competitiveness of monopolistic service industries.

According to *The Planning Framework*, priority will be given to the development of service industries, with emphasis to be placed on developing finance, convention and exhibition service, logistics, information service, science and technology service, commercial service, service outsourcing industry, culture and creation industry, headquarter economy, and tourism.³⁷ The legal work and matters brought about by such development are well within the expertise of Hong Kong law firms and pertain to areas over which Hong Kong law firms enjoy a competitive edge. In some of the areas, such competitive edge cannot be matched by PRD law firms. Therefore, in the next ten years, with the development of service industries in the PRD Region, Hong Kong law firms will provide more legal services to service enterprises in the Region.

5.1.6 Hong Kong law firms will enjoy obvious competitive edge in certain practice areas

Besides Hong Kong-related and foreign-related legal matters, there are other areas over which Hong Kong law firms enjoy an obvious competitive

³⁷ *The Framework on Development and Reform Planning for the Pearl River Delta Region (2008-2020)*.

edge. The results of our survey show that areas such as tax planning, brand promotion, management and planning of intellectual property rights and legal services relating to personal asset management are new and emerging areas of practice in the PRD Region and, as such, are not familiar to lawyers in the Region. Furthermore, Hong Kong law firms have more experience than PRD law firms in handling cases, and Hong Kong solicitors possess a higher level of professionalism and more encompassing skills, and therefore enjoy a very obvious competitive edge in the abovementioned areas. Being restricted by background and linguistic limitations, PRD lawyers are in the short term unlikely to be able to catch up with Hong Kong solicitors in professional skills, which means Hong Kong law firms can confidently expect to maintain the said competitive edge for some time to come.

5.2 Analysis of strategies for Hong Kong law firms to enter market in PRD Region

5.2.1 Focus on developing advantageous practice areas and also embrace other areas

At present, there is intense competition among PRD law firms over the practice area of conventional litigation which is well-developed in the Region. PRD law firms have their own competitive edges, and, being restricted by fees levels imposed by relevant departments, conventional litigation practice is generating limited fee income for PRD law firms. In this practice area, Hong Kong law firms, which possess both the experience in neither handling cases in the Region nor any network in the Region, and which charge relatively higher legal fees, are at an obvious disadvantage. Hong Kong law firms should therefore focus on developing those practice areas in which they enjoy a competitive edge, such as intellectual property, and credit and finance. They can also capitalize on their advantages in possessing all-round skills and internationalization and seek a “breakthrough” in practice areas in which PRD law firms seldom engage, such as tax planning and legal services relating to personal asset management.

5.2.2 Strengthen promotion and marketing to raise profile of Hong Kong law firms

The statistics of our survey of representative offices show that 88.9%, 77.8% and 66.7% respectively of the respondents considered that The Law Society of Hong Kong, the Hong Kong Trade Development Council and the chambers of commerce of Hong Kong had played a very useful role in

promoting Hong Kong legal services.³⁸ It can therefore be seen that these three organizations have been highly instrumental in promoting Hong Kong law firms and playing a very important part in establishing the “collective brand” of Hong Kong law firms. It follows that these organizations can further promote and market the Hong Kong legal service industry and raise the profile of Hong Kong law firms.

A large number of respondents were of the view that lawyers associations, trade associations and government authorities in the Mainland were also very helpful in promoting and marketing Hong Kong law firms. Despite the considerable difficulties in implementation, these options for promotion and marketing are, as far as the relevant conditions permit, well worth considering.

Individual Hong Kong law firms can also consider promoting themselves by the methods which some PRD law firms have been using, for example: sending self-published marketing brochures to target enterprises, seeking to have sports events named after the firms, gaining more exposure by expressing comments in the mass media on selected legal cases, and sponsoring activities of tertiary education institutes. These methods can help raise the profile of law firms within a short period of time.

5.2.3 Exploit markets in second-tier cities

Our survey reveals that Mainland law firms based in the cities of Dongguan and Foshan where no representative offices of Hong Kong law firms are found, have expressed huge demands for Hong Kong legal services. With the continuous strengthening of PRD law firms, coupled with the foray of Shanghai law firms into the legal service markets of Shenzhen and Guangzhou, there is already very intense market competition in those two cities. At the same time, with the development of their industries, the economy of the second-tier cities should not be underestimated. With more and more local, Hong Kong and foreign enterprises being set up in these second-tier cities, there is an ever-growing demand among the enterprises for legal services. Hong Kong law firms should be aware of this trend and develop their practice in second-tier cities in a timely manner.

5.2.4 Exploit markets by cooperating with other service industries

Accounting firms and law firms are the two major types of entities which buttress modern service industries. Many large-scale projects, such as listings of Mainland corporations, require the participation of accounting firms, law firms and other parties, and these projects often prove highly

³⁸ In the survey questionnaire, this question allowed respondents to select two or more options, and therefore the resultant percentages may add up to more than 100%.

lucrative for law firms. “Lateral” cooperation with other service industries in the PRD Region (for example, the internationally renowned “big four” accounting firms) will help Hong Kong law firms enrich their information resources and facilitate the sharing of information, joint use of resources and joint exploitation of markets with other service industries. Such “lateral” cooperation may take the form of cross-referrals of clients, which will increase the volume of business of both sides, satisfy the often diversified needs of clients, and help both sides reduce the cost of promotion. This is a feasible way of exploiting the market.

5.2.5 Formulate appropriate level of fees

33.3% of the sampled enterprises indicated they did not instruct Hong Kong law firms because the latter’s service fees were excessive. The fees of a Hong Kong lawyers are usually calculated by multiplying an hourly rate by the number of hours spent by the solicitor on the relevant matter or case, whereas the fees of a PRD lawyer are based on piece work or risks. The variance between the two places in the fee-charging approach and consumer habits makes it difficult for some enterprises in the PRD Region to accept the approach of Hong Kong law firms. Taking into account the wide acceptance by clients in the Region of the method of calculating fees of PRD lawyers, Hong Kong law firms will have to adjust themselves to the customs of the PRD legal service industry and formulate, after careful assessment of what clients can accept, a level of fees appropriate for the PRD legal service market.

5.2.6 Actively work towards localization of law firms

Localization of Hong Kong law firms is dependant on clients’ demands. 76.2% of the sampled enterprises pointed to the unfamiliarity of Hong Kong law firms with the local environment as the major reason for not instructing them to provide legal services. Localization of Hong Kong law firms will serve to cater for the needs of the Mainland legal market and attract more potential Mainland clients to the firms themselves. Localization can also assist Hong Kong law firms in building up their own “brand” and image in the Mainland. The support of local clients and the local government will be more conducive to the development of practice by Hong Kong law firms.

Localization of Hong Kong law firms in the Mainland will also help strengthen the Mainland legal service industry. Such localization will bring in lawyers who are experienced in international legal work, which will help enhance the quality of Mainland legal services in respect of international legal matters. Furthermore, localization of internationally renowned Hong Kong law firms will create a “brand effect”, so that Mainland law firms can

learn from the more advanced law firm management systems. This will help promote “brand-building” among Mainland law firms, which will be able to expand and strengthen themselves in the Mainland market and then “reach out”.

Localization of relationship forms the core of localization of Hong Kong law firms. 38.1% of the respondents in our survey identified the lack of networks as one of the major disadvantages of Hong Kong law firms in the Mainland. In other words, clients in the PRD Region consider that PRD law firms are more familiar with the local environment and have more extensive networks. This explains why as many as 85% of the sampled clients in the Region were more inclined to instruct Mainland law firms to provide legal services. In China, a country traveling along the road to modernization, “relationships” are essential social resources. Localization of relationship will greatly assist Hong Kong law firms in gaining the trust and confidence of the government and clients.

Moreover, there are restrictions on the localization of legal service personnel in Hong Kong law firms. The current policy in the Mainland prohibits Mainland representative offices of Hong Kong law firms from employing Mainland practising lawyers and also prohibits support staff employed by representative offices from providing legal services to clients.

In these circumstances, there are two ways for Hong Kong law firms to localize their legal service personnel. One is to strive for relaxation by the Mainland of the above policy so that Hong Kong law firms are allowed to employ Mainland lawyers, especially relaxation in respect of Guangdong Province which benefits from the “early and pilot implementation” policy. The other is to arrange for Hong Kong lawyers to obtain Mainland practice qualification and become localized legal service personnel in the Mainland. Section 3.4.2 in Chapter 3 of this Report contains a detailed analysis of this particular avenue.

In the meantime, Hong Kong law firms can strengthen professional and business exchange with Mainland law firms and actively arrange for Mainland lawyers to receive training in Hong Kong law firms, so as to enable more legal service personnel from the Mainland to learn more about the practice standards and daily operation of Hong Kong law firms, and to attract more people to Hong Kong law firms to provide legal services.

It is only through localization in the PRD Region that Hong Kong law firms will be recognized by more enterprises in the Region as the “first choice” legal service providers and hence have more business opportunities.

5.2.7 Review mechanism of association to improve and refine mode of association

Our survey reveals that both Hong Kong law firms and PRD law firms regard associations as an excellent way to expand their respective practices and integrate their resources. However, the development of associations between the two sides has been rather tardy. In this connection, it is noted that Hong Kong law firms and PRD law firms are holding different views on mutual communication and profit sharing between the parties to associations. The mode of associations should be further refined.

- (1) At present, Hong Kong law firms and PRD law firms cooperate by way of piecemeal collaborations over specific cases, and associations are nothing more than a formality. This should be changed. Both sides should extend the scope of cooperation, integrate resources and promote more substantive and closer cooperation, with a view to provide clients with a complete range of services;
- (2) The parties to an association should step up communication and understanding. They should familiarize themselves with each other's daily operation through staff exchange and training programmes. Hong Kong law firms should provide conduits through which Mainland lawyers can gain a better understanding of the legal practice in Hong Kong and develop more practice in Hong Kong with the help of Hong Kong law firms;
- (3) Hong Kong law firms should use Chinese more frequently in interacting with PRD law firms to remove unnecessary obstacles in communication. Both sides should establish a convenient and efficient system of communication.

Conclusion

In the new phase of development of the PRD Region, service industries have become one of the focuses of Guangdong-Hong Kong industrial cooperation. At the same time, the continuous rise in demand in the PRD Region for legal services is presenting the legal service industry with more opportunities for cooperation. Furthermore, the Region benefits from the policy of “early and pilot implementation” of the opening-up of the service market to Hong Kong under CEPA. Given these favourable conditions, Hong Kong law firms can consider adopting the following strategies in developing legal practice in the Region:

(1) Focus on developing practice areas over which Hong Kong law firms enjoy competitive edge

Following the economic restructuring in the PRD Region, service industries have become the focus of development. Hong Kong law firms enjoy an absolute competitive edge in the provision of the supporting legal services, and by developing those areas of practice, Hong Kong law firms will be able to gradually demonstrate its edge and gain recognition by clients. Hong Kong law firms should focus on developing the practice areas in which they enjoy a competitive edge, such as intellectual property, financing and trust. They can also capitalize on their high level of professionalism and internationalization and seek a “breakthrough” by developing practice areas in which PRD law firms seldom engage, such as tax planning and legal services relating to personal wealth management.

(2) Exploit markets by cooperating with other service industries

“Lateral” cooperation with other service industries in the PRD Region (for example, the internationally renowned “big four” accounting firms) will help Hong Kong law firms enrich their information resources and facilitate the sharing of information, joint use of resources and joint exploitation of markets with other service industries. Such “lateral” cooperation may take the form of cross-referrals of clients, which will increase the volume of business of both sides, satisfy the diversified needs of clients, and help both sides reduce the cost of promotion. This is another feasible way of exploiting the market.

(3) Actively work towards localization of Hong Kong law firms in PRD Region

In developing practice in the PRD Region, Hong Kong law firms should actively cooperate with Mainland law firms in order to speed up localization, muster more resources and attract more clients. At the same time, the Mainland can consider allowing eligible Hong Kong solicitors to obtain, by passing a special examination administered by the Ministry of Justice,

Mainland practice qualification in specified practice areas, and also allowing Mainland representative offices of Hong Kong law firms to employ Mainland practising lawyers to provide legal services, so as to facilitate achievement of localization of Hong Kong law firms in the PRD Region and the ensuing “win-win” situation.

(4) Exploit markets in second-tier cities of PRD Region and formulate competitive level of fees

In entering the market of the PRD Region, Hong Kong law firms should take into account the various market segments, avoiding those cities in the Region where competitive is intense and looking to second-tier cities for practice development. With the development of their industries, the economy of the second-tier cities should not be underestimated; and with more and more local enterprises, Hong Kong enterprises and foreign enterprises being set up in these cities, there is an ever-growing demand among the enterprises for legal services. As for the level of fees, Hong Kong law firms should, in line with PRD law firms, formulate competitive level of fees.

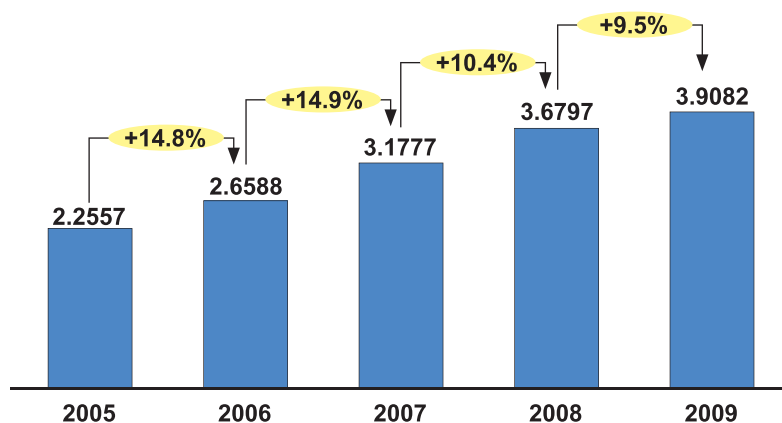
(5) Actively explore the mode of associations and promote close cooperation between Hong Kong law firms and PRD law firms

In the short run, Guangdong law firms and Hong Kong law firms continue to cooperate mainly in a piecemeal fashion, but associations are recognized by both sides and close associations represent the next stage of cooperation between the two sides. Both sides should actively promote the further development of associations by stepping up mutual communication and understanding, organizing more staff exchange and training programmes, and becoming familiar with the daily operation of each other. Hong Kong law firms should provide conduits through which Mainland lawyers can gain a better understanding of the legal practice in Hong Kong and develop more practice in Hong Kong with the help of Hong Kong law firms, which will strengthen the basis of cooperation between the two sides.

Charts and tables

Chart 1:

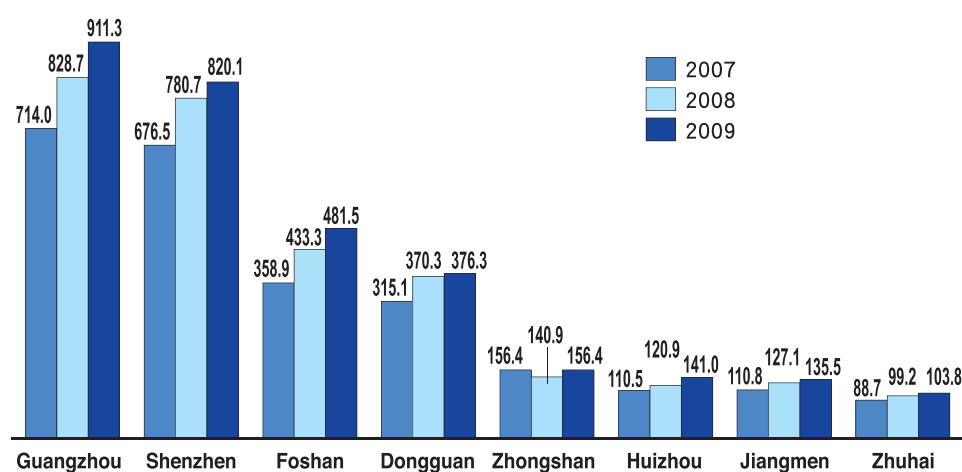
GDP Growth in Guangdong Province, 2005-2009
(Unit: RMB trillion)



Source of data : Website of the Statistics Bureau of Guangdong Province

Chart 2:

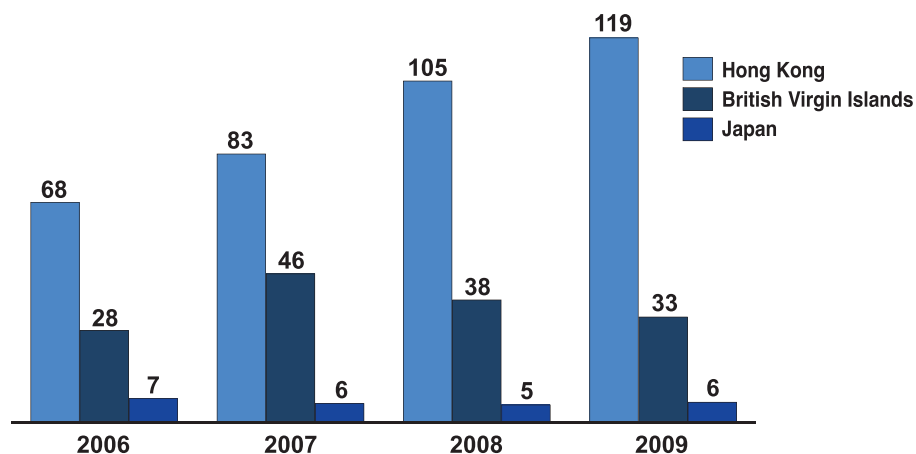
Comparison of GDPs among cities in the Pearl River Delta Region, 2007-2009
(Unit: RMB billion)



Sources of data : Data published on websites of relevant local governments

Chart 3:

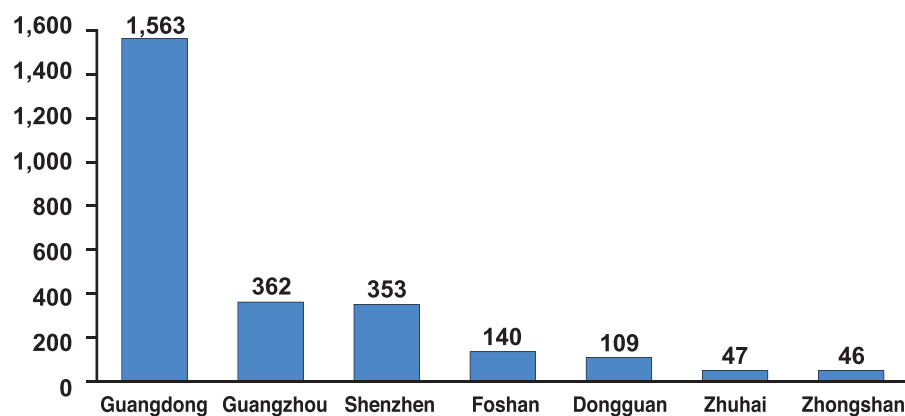
Top three geographical sources of actual foreign investments in Guangdong Province, 2006-2009



Source of data : Website of the Department of Foreign Trade and Economic Cooperation of Guangdong Province

Chart 4:

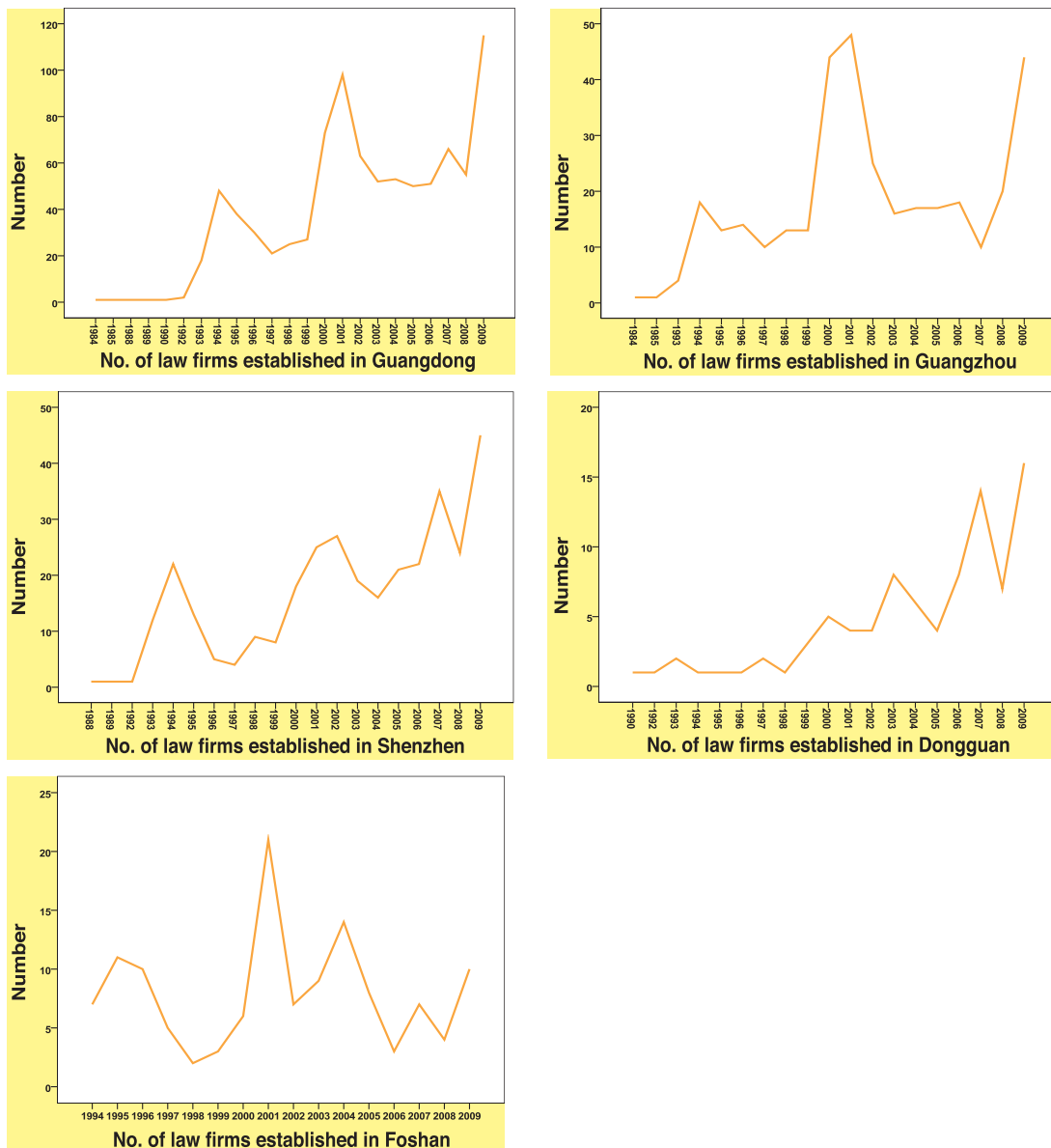
Numbers of law firms in Guangdong Province and cities in the Pearl River Delta Region



Sources of data : Websites of relevant lawyers associations in Guangdong Province

Chart 5:

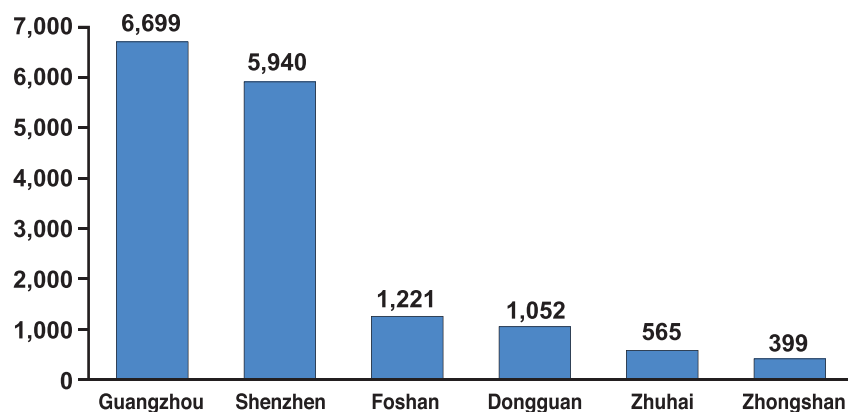
Numbers of law firms established in major cities in Guangdong Province (Guangzhou, Shenzhen, Dongguan, Foshan)



Sources of data : Websites of relevant lawyers associations in Guangdong Province

Chart 6:

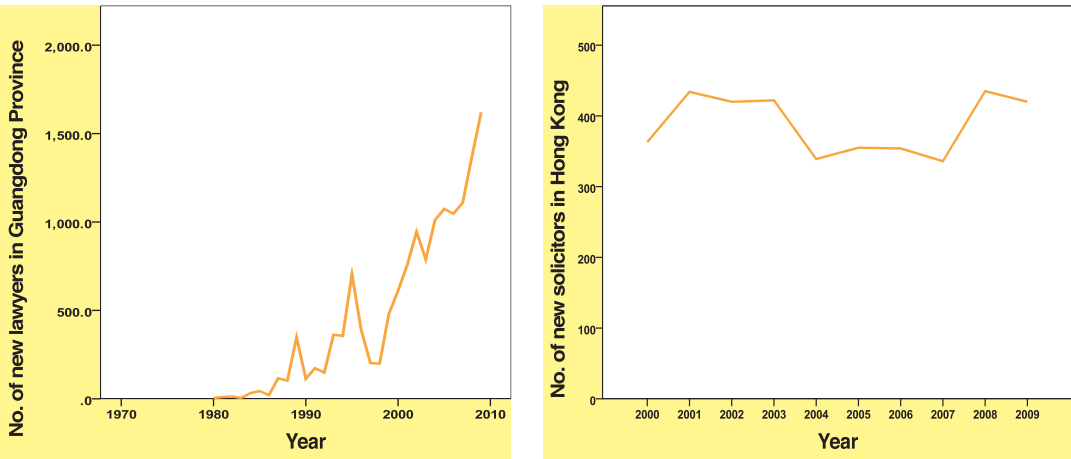
Numbers of lawyers in major cities in the Pearl River Delta Region



Sources of data : Statistics shown on websites of lawyers associations in various cities (as of August 2010)

Chart 7:

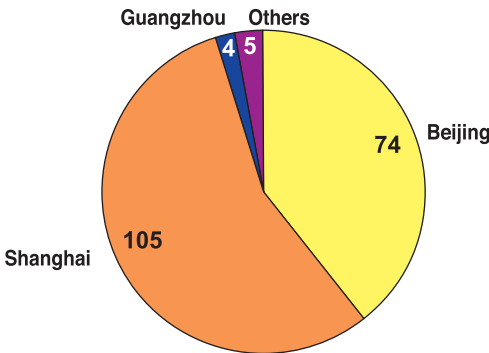
Comparison of numbers of new lawyers in Guangdong Province and Hong Kong



Sources of data : Statistics shown on website of Guangdong Lawyers Association (as of August 2010);
The Law Society of Hong Kong: Annual Report 2009

Chart 8:

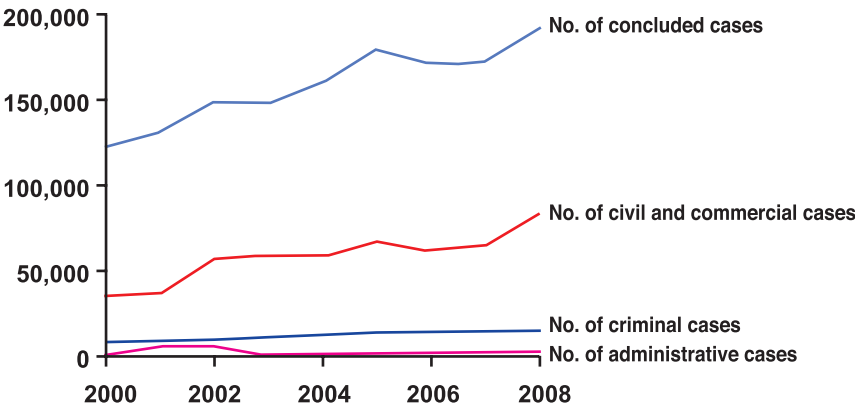
Distribution of representative offices of foreign law firms in China



Source of data : Website of lawfirm50

Chart 9:

Numbers of pending and concluded legal cases in Guangzhou, 2000-2008



Source of data : Guangzhou Yearbook of relevant years

Chart 10:

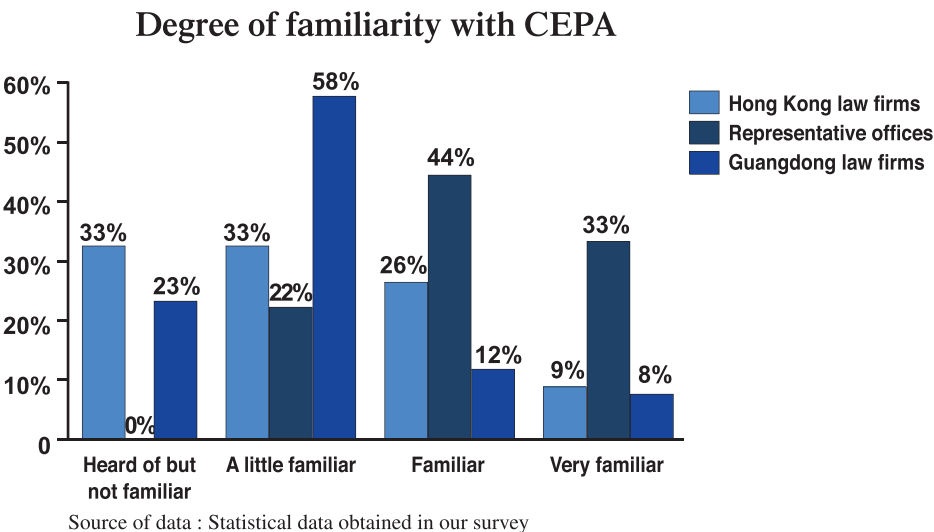


Chart 11:

**Comparison of practice areas of law firms
in the Pearl River Delta Region and Hong Kong law firms**

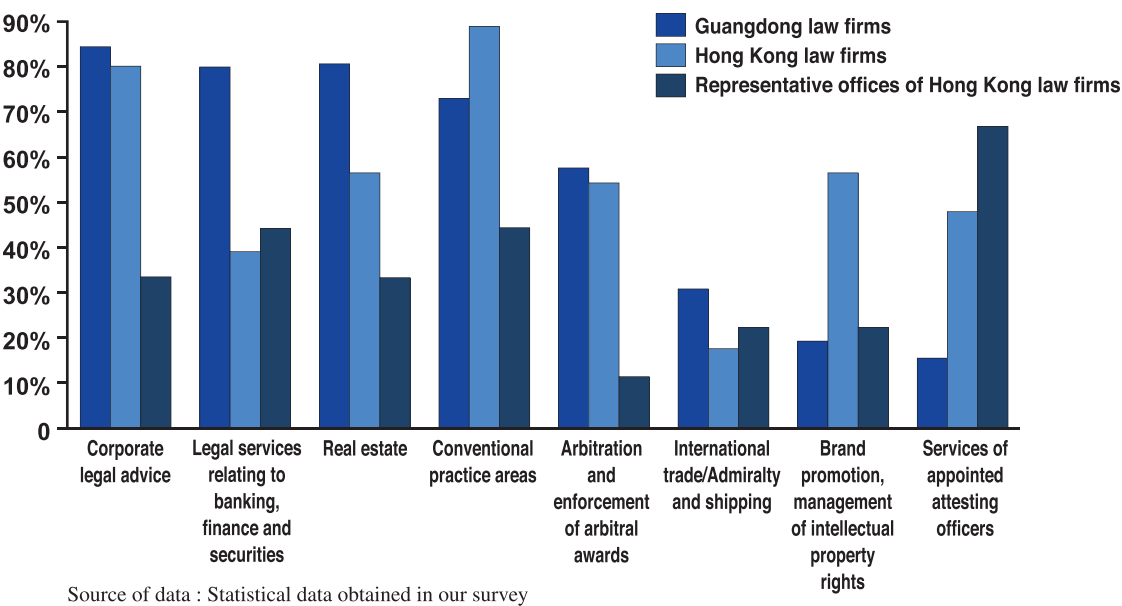


Chart 12:

**State Judicial Examination:
Numbers of candidates and passing rates**

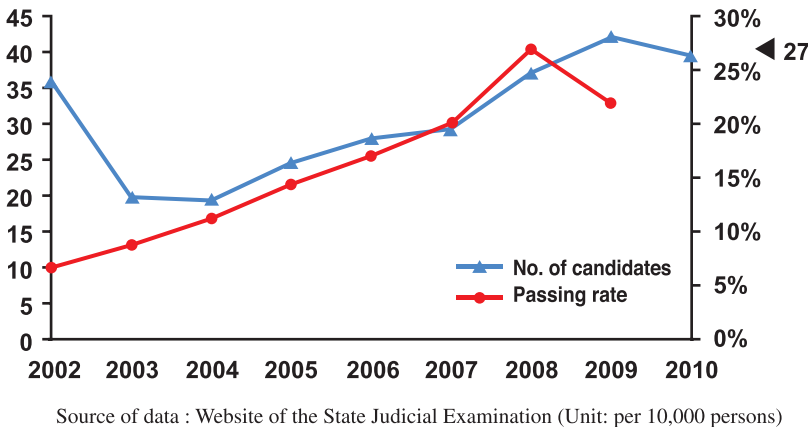
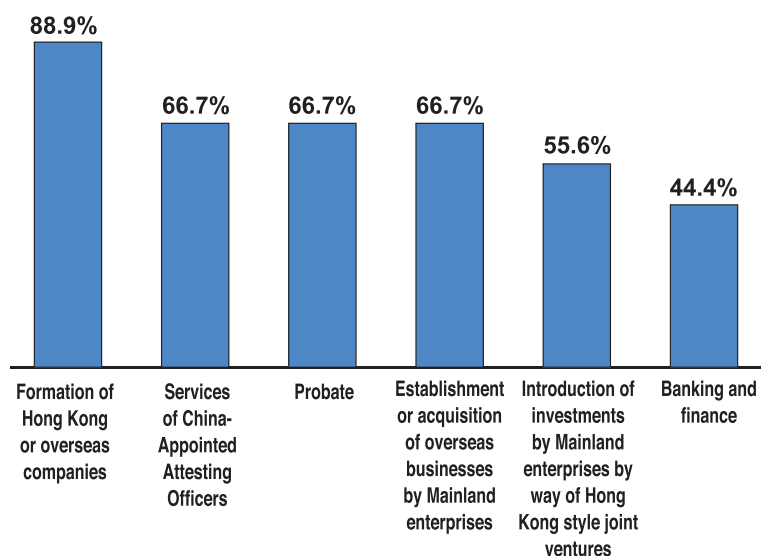


Chart 13:

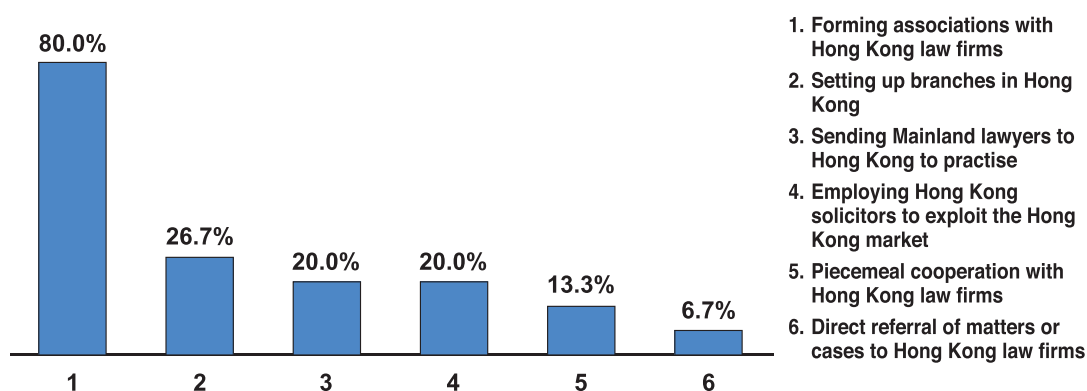
Practice areas in which Hong Kong firms have competitive advantage



Source of data : Statistical data obtained in our survey

Chart 14:

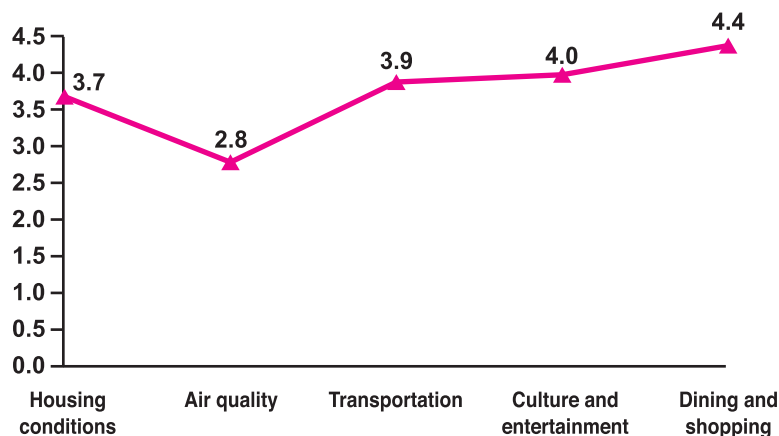
Selection of means of exploiting Hong Kong market



Source of data : Statistical data obtained in our survey

Chart 15:

Evaluation of living environment in the Pearl River Delta Region



Source of data : Statistical data obtained in our survey

Table 1:

**Scale and growth of actual foreign investments in
Guangdong Province, 2003-2009 (Unit: USD billion)**

	Projects		Contracted foreign investments		Actual foreign investments	
	Number	Growth rate (%)	Amount	Growth rate (%)	Amount	Growth rate (%)
2003	7306	10.5	21.79	34.8	15.58	18.8
2004	8322	N/A	19.36	N/A	10.01	N/A
2005	8384	0.8	23.74	22.6	12.36	23.5
2006	8452	0.8	24.57	3.5	14.51	17.4
2007	9506	12.5	33.94	38.1	17.13	18.1
2008	6999	-26.4	28.64	-15.6	19.17	11.9
2009	4346	-37.9	17.56	-38.7	19.53	1.9

Source of data : Compiled from business statistics of the Department of Foreign Trade and Economic Cooperation of Guangdong Province

Table 2:

Foreign investments by Guangdong enterprises					
	2006	2007	2008	2009	2010 (January to August)
Approved contracted investments (USD billion)	0.64	1.2	2.18	1.497	1.349
Approved non-financial enterprises established in foreign areas (number)	108	169	218	356	334

Sources of data : Websites of the Guangdong Provincial Government, the Department of Foreign Trade and Economic Cooperation of Guangdong Province and Guangdong External Investments

Table 3:

Rankings of Guangdong enterprises within the top 50 Mainland enterprises which make the largest amounts of foreign investments	
Name of enterprise	Ranking
GDH Limited	26
Huawei Technologies Co., Ltd.	27
Yuexiu Group, Guangzhou	32
Shenzhen Investment Holdings Co., Ltd.	33
TCL Corporation	34
Guangdong Province Navigation Holdings Co., Ltd.	35
ZTE Corporation	36
Guangdong Nuclear Power Holding Corporation, Ltd.	37

Source of data : Published statistics of direct foreign investments by China in 2009

Table 4:

The ten largest law firms in China		
Name of law firm	Headquarters city	No. of lawyers
Dacheng Law Offices, Beijing	Beijing	1406
King & Wood, Beijing	Beijing	830
Deheng Law Offices, Beijing	Beijing	685
Grandall Legal Group	N/A	495
Allbright Law Offices, Shanghai	Shanghai	380
Yingke Law Firm, Beijing	Beijing	347
Zhong Yin Lawyers, Beijing	Beijing	346
Jun He Law Offices, Beijing	Beijing	343
Zhong Lun Law Firm, Beijing	Beijing	331
Zhong Lun W&D Law firm, Beijing	Beijing	317

Source of data : 20 top law firms in China as listed in ALB 2010

The ten largest law firms in Guangdong		
Name of law firm	Headquarters city	No. of lawyers
Guanghe Law Firm, Guangdong	Shenzhen	258
Everwin Law Office, Guangdong	Guangzhou	213
Sun Law Firm, Guangdong	Shenzhen	179
Greenleaf Law Firm, Guangdong	Guangzhou	130
Global Kingway Law Firm, Guangdong	Guangzhou	118
廣東國信聯合律師事務所	Guangzhou	105
Goldsun Law FirmGuangda Law Firm, Guangdong	Guangzhou	101
Guangxin Lawyers, Guangdong	Guangzhou	90
SD & Partners, Guangdong	Shenzhen	89
Zhong Lun Law Firm, Beijing: Shenzhen Office	Beijing	88

Sources of data : Statistics shown on websites of lawyers associations in various cities (as of August 2010)

Table 5:

Statistics on participation by Hong Kong residents in the State Judicial Examination, 2004-2010							
Year	2004	2005	2006	2007	2008	2009	2010
No. of Hong Kong residents who sat the Examination	436	278	182	143	152	159	120
No. of Hong Kong residents who completed the Examination	396	240	158	130	134	132	104
No. of Hong Kong residents who passed the Examination	4	4	8	8	12	15	15

Source of data : Website of the Department of Justice, Hong Kong (<http://www.doj.gov.hk/eng/topical/wto.htm>)

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- 12·大珠三角商務委員會，回應《珠江三角洲地區改革發展規劃綱要》研究報告，2009 年 9 月。

附表四：

全國規模前十律師事務所		
律所名稱	總部城市	律師人數
北京大成律師事務所	北京	1406
北京金杜律師事務所	北京	830
北京德恒律師事務所	北京	685
國浩律師集團事務所	N/A	495
上海錦天城律師事務所	上海	380
北京盈科律師事務所	北京	347
北京中銀律師事務所	北京	346
北京君合律師事務所	北京	343
北京中倫律師事務所	北京	331
北京中倫文德律師事務所	北京	317

資料來源：ALB 2010全國律所規模20強

廣東省規模前十律師事務所		
律所名稱	總部城市	律師人數
廣東廣和律師事務所	深圳	258
廣東法制盛邦律師事務所	廣州	213
廣東國暉律師事務所	深圳	179
廣東格林律師事務所	廣州	130
廣東環球經緯律師事務所	廣州	118
廣東國信聯合律師事務所	廣州	105
廣東廣大律師事務所	廣州	101
廣東廣信律師事務所	廣州	90
廣東晟典律師事務所	深圳	89
北京中倫（深圳）律師事務所	北京	88

資料來源：各城市的律協網站統計結果（截止2010年8月）

附表五：

香港居民參加2004年至2010年國家司法考試的相關數據							
年份	2004	2005	2006	2007	2008	2009	2010
報名參加考試的香港居民	436	278	182	143	152	159	120
完成考試的香港居民	396	240	158	130	134	132	104
獲取合格成績的香港居民	4	4	8	8	12	15	15

資料來源：香港律政司網站 (<http://www.doj.gov.hk/chi/topical/wto.htm>)

附表一：

2003—2009年廣東吸收外商直接投資規模及增長情況（單位：億美元）

	項目		合同外資		實際外資	
	個數	增長%	金額	增長%	金額	增長%
2003	7306	10.5	217.9	34.8	155.8	18.8
2004	8322	N/A	193.6	N/A	100.1	N/A
2005	8384	0.8	237.4	22.6	123.6	23.5
2006	8452	0.8	245.7	3.5	145.1	17.4
2007	9506	12.5	339.4	38.1	171.3	18.1
2008	6999	-26.4	286.4	-15.6	191.7	11.9
2009	4346	-37.9	175.6	-38.7	195.3	1.9

資料來源：根據歷年廣東省外經貿廳業務統計數據整理

附表二：

廣東企業對外投資情況					
	2006	2007	2008	2009	2010 (一月至八月)
經核准協定投資額 (億美元)	6.4	12	21.8	14.97	13.49
經核准在境外設立非 金融類企業 (個)	108	169	218	356	334

資料來源：廣東政府網，廣東對外貿易廳網站和廣東對外投資網

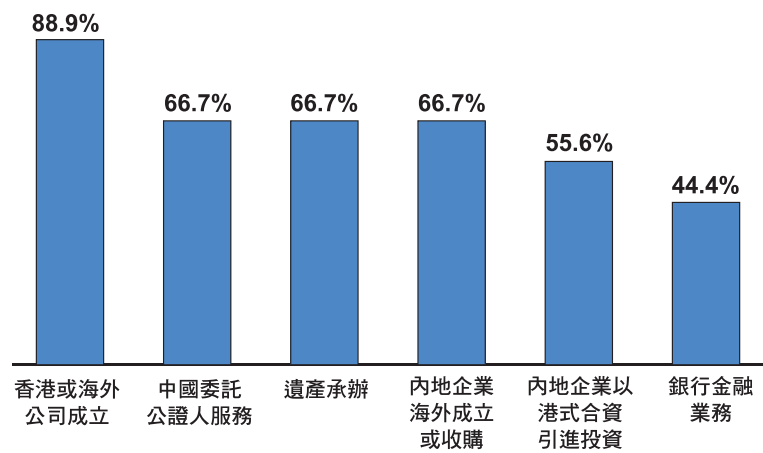
附表三：

廣東企業在全國對外投資存量前50名企業中的排名列表	
企業名稱	排名
廣東粵海控股有限公司	26
華為技術有限公司	27
廣州越秀集團公司	32
深圳市投資控股有限公司	33
TCL 集團有限公司	34
廣東省航運集團有限公司	35
中興通訊股份有限公司	36
廣東核電集團有限公司	37

資料來源：2009年度中國對外直接投資統計公報

附圖十三：

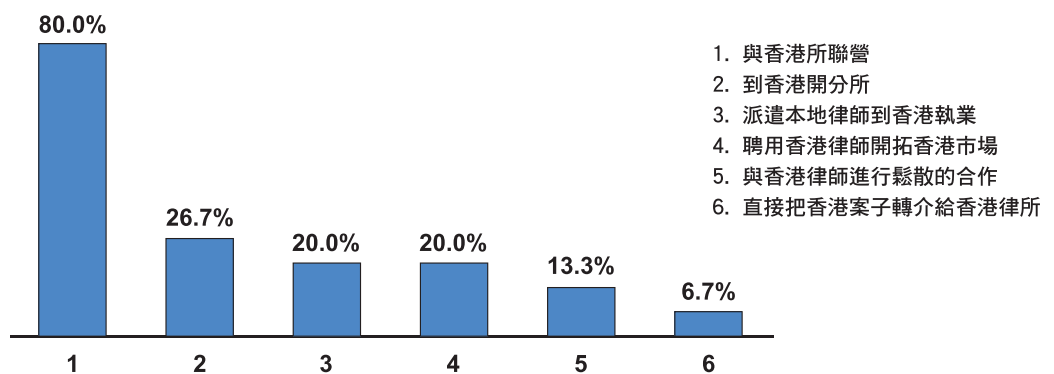
香港律所優勢業務統計圖



資料來源：項目調研數據統計結果

附圖十四：

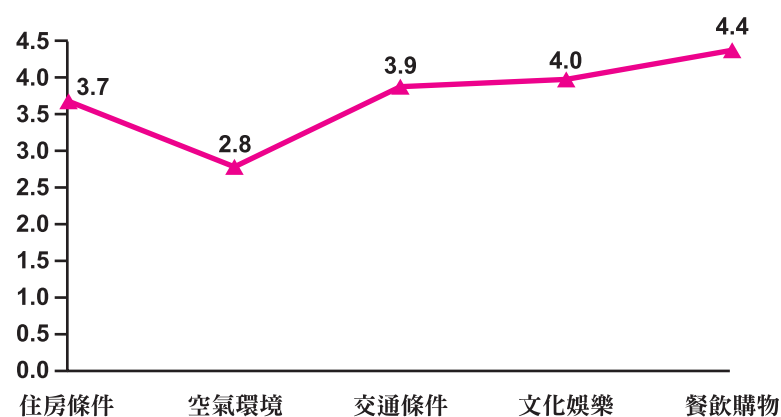
開拓香港市場的管道選擇圖



資料來源：項目小組調研數據統計結果

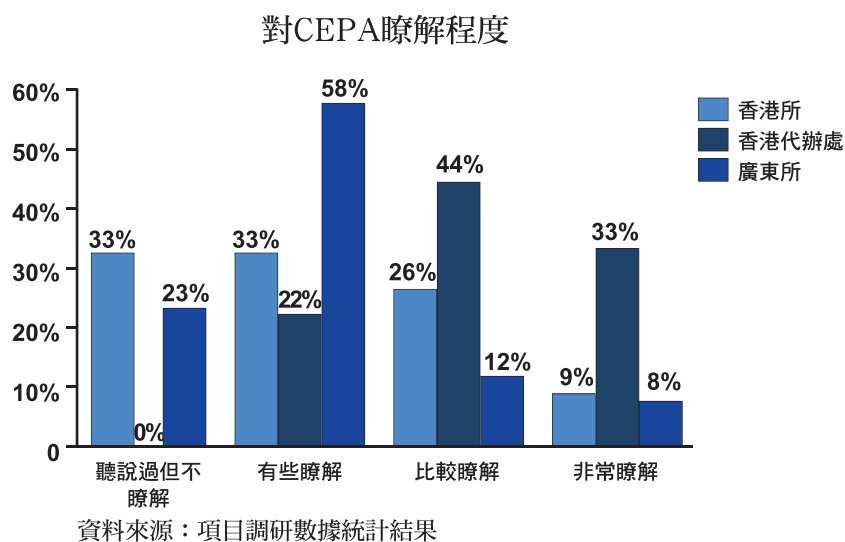
附圖十五：

珠三角生活環境評價圖

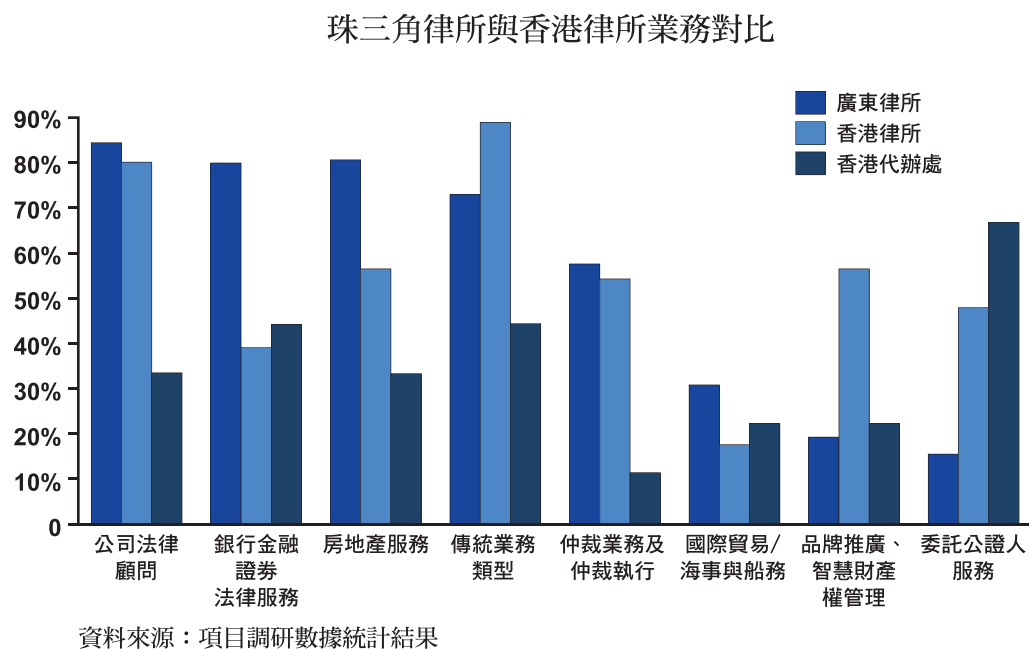


資料來源：本項目調研數據統計結果

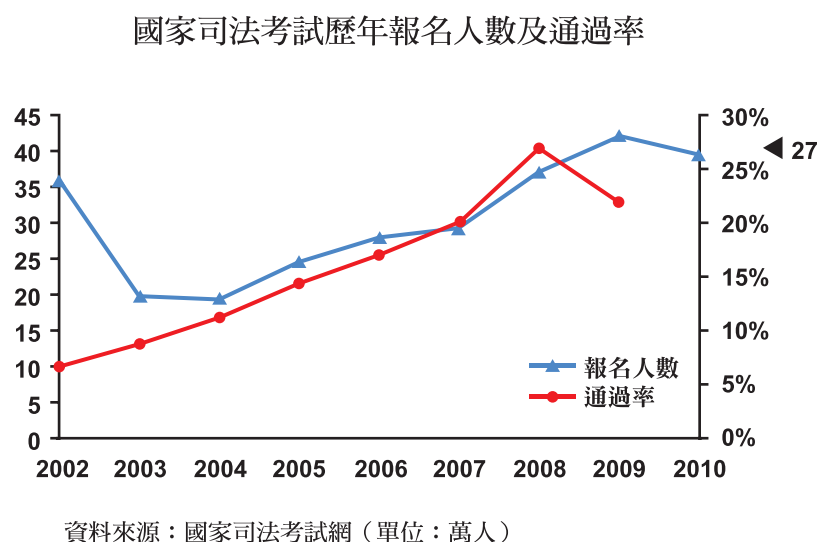
附圖十：



附圖十一：

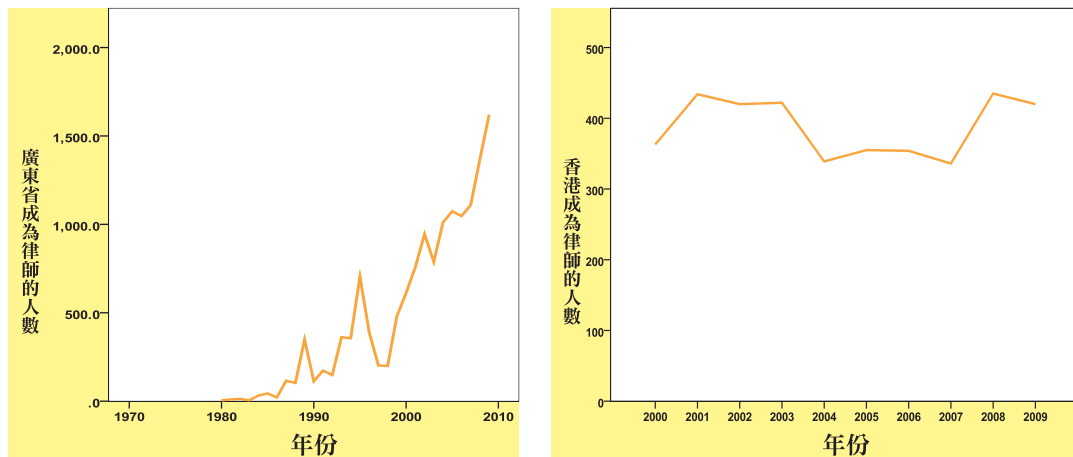


附圖十二：



附圖七：

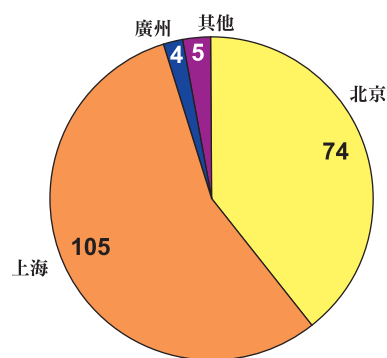
廣東省與香港新增律師人數對比圖



資料來源：廣東省律協網站統計結果（截止2010年8月），香港律師會2009年年報

附圖八：

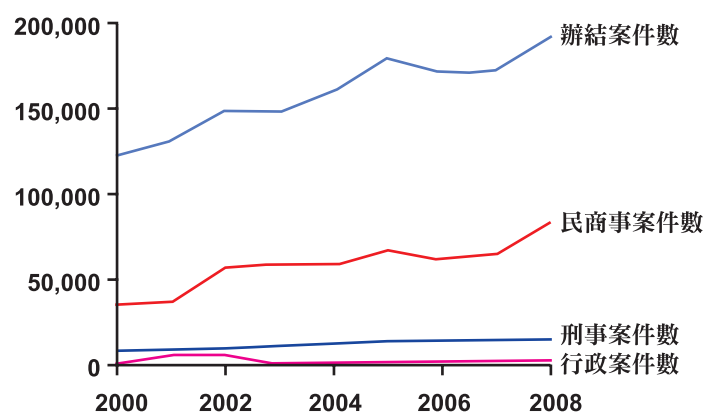
國外律所代表處在國內的分佈圖



資料來源：lawfirm網站

附圖九：

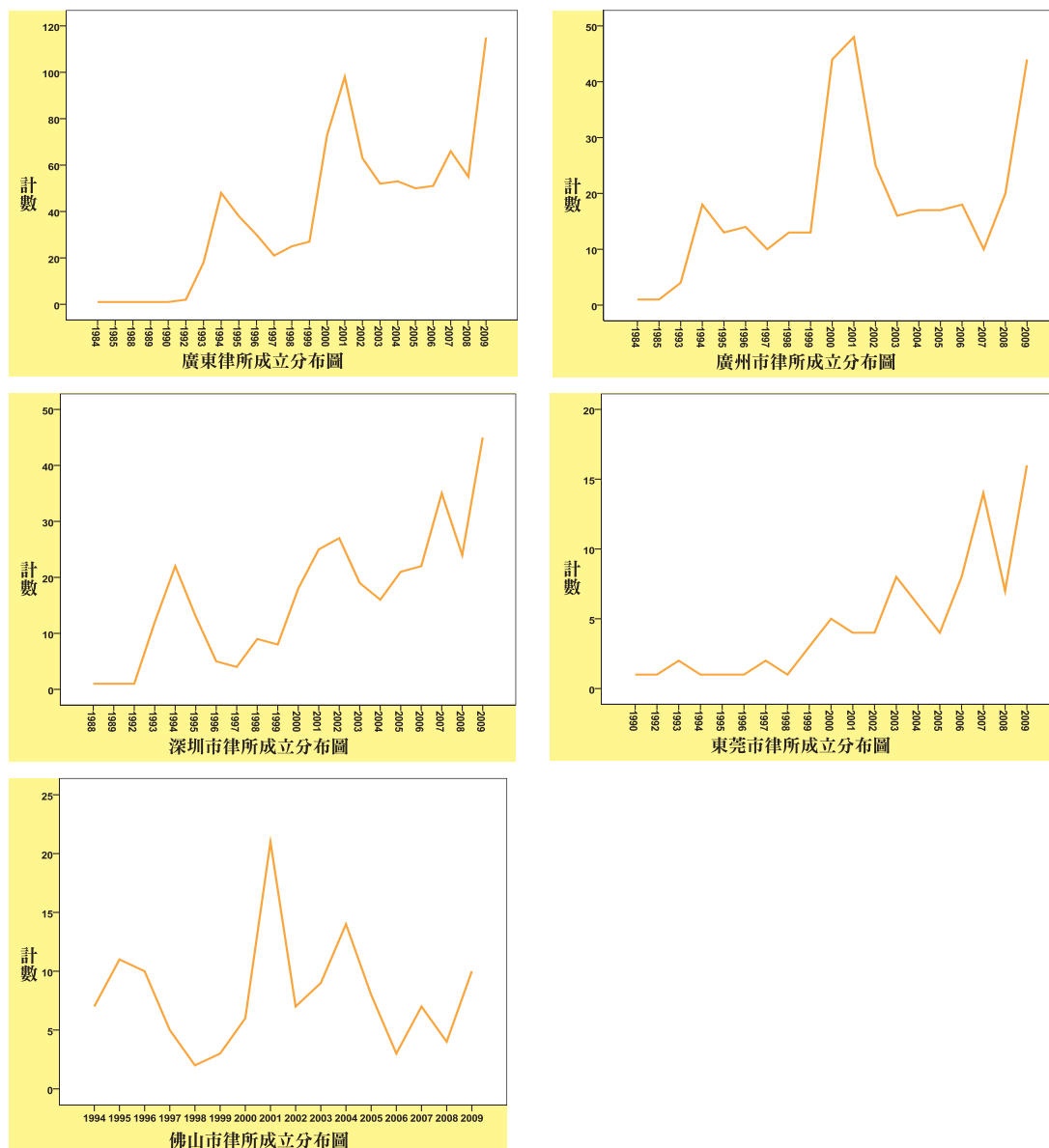
2000-2008年廣州市的一審案件及辦結案件數統計圖



資料來源：歷年《廣州年鑒》

附圖五：

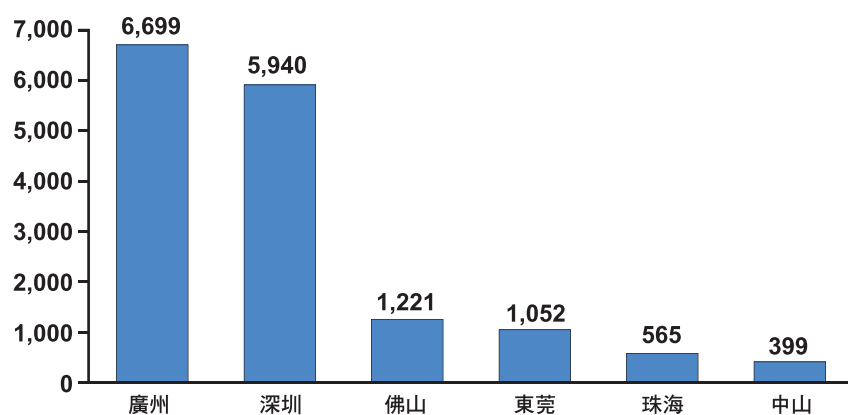
廣東省主要城市律所成立分佈圖（廣州、深圳、東莞、佛山）



資料來源：廣東省各城市律協網站

附圖六：

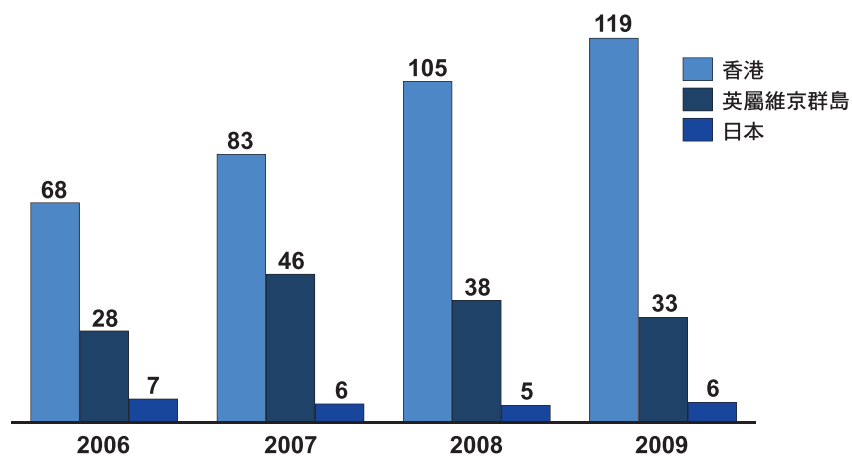
珠三角主要城市律師人數分佈圖



資料來源：各地區的律協網站的統計資料（截止2010年8月）

附圖三：

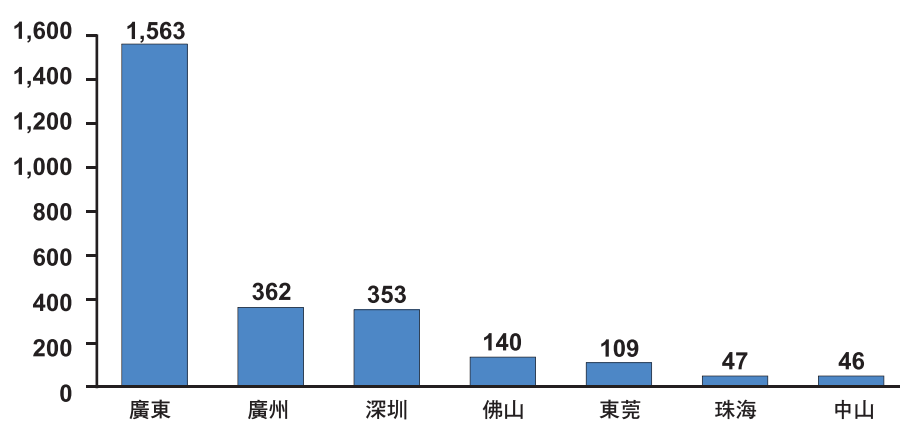
2006-2009年外商實際投資排名前三地區



資料來源：廣東省經貿廳網站

附圖四：

廣東省及珠三角城市律所數量圖

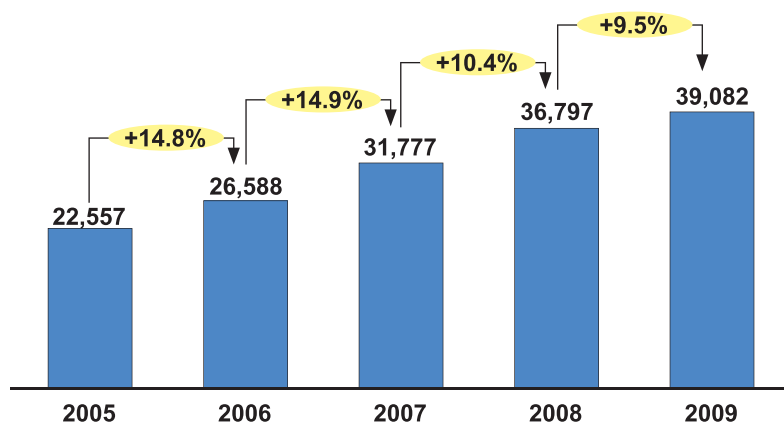


資料來源：廣東省各市律協網站

附圖及附表

附圖一：

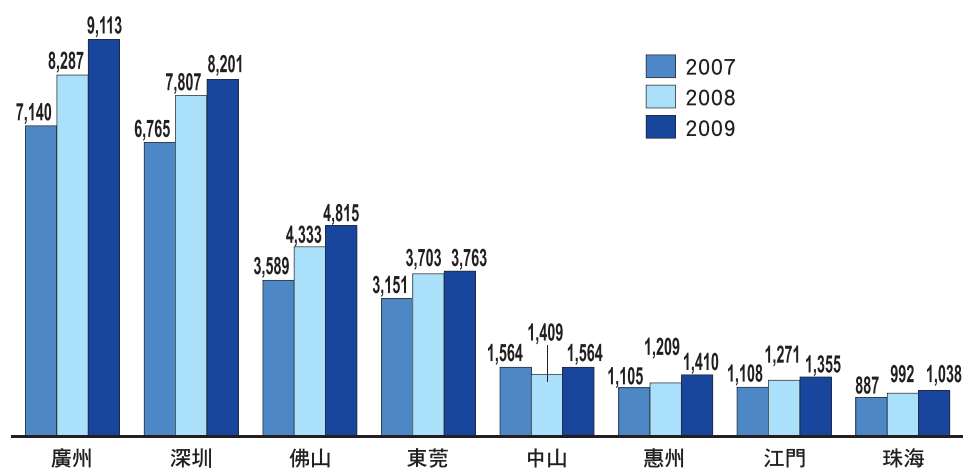
廣東省 2005年 - 2009年GDP增長情況（單位：億元）



資料來源：廣東省統計局網站

附圖二：

2007-2009年珠三角各城市GDP對比圖（單位：億元）



資料來源：各地方政府網站公佈資料

而加速本土化的步伐，掌握更多的資源，得到更多客戶的選擇。此外，內地方面也可以考慮允許符合條件的香港律師在內地特定的區域，通過司法部組織的特設考試取得內地執業資格，允許香港律所駐內地代辦處聘用內地律師從事法律服務，從而實現香港律所在珠三角地區的本土化，達到雙贏的效果。

（四）拓展珠三角二線城市業務，形成有競爭力的服務價格

香港律所進入珠三角地區，應考慮市場的細分，適當避開法律服務競爭比較激烈的珠三角大城市，發展開拓珠三角地區二線城市的業務。隨著產業的發展，珠三角二線城市經濟實力已經不容小看，而且相當多的民企、港資、外資企業聚集在二線城市，這些企業對法律服務的需求日益增長。而在收費標準上，應該與珠三角地區接軌，形成有競爭力的服務價格。

（五）積極探索聯營模式，促進兩地律所實現更緊密合作

短時間內，粵港兩地的律所仍然以鬆散的合作模式為主，但聯營的模式得到雙方的認可，緊密的聯營合作是兩地律所合作的下一階段。兩地的律所應該積極推進聯營模式的進一步的發展，加強溝通和瞭解，互派人員交流學習，熟悉對方工作方式。香港律師事務所積極提供管道讓內地律師瞭解香港業務，並可以借助香港律所開拓更多業務，穩固雙方的合作基礎。

總結

在珠三角發展的新階段，服務業是粵港產業合作的重點之一，同時珠三角地區的法律服務業需求不斷增大，法律服務業面臨著更多的合作機遇，另外，珠三角地區擁有落實 CEPA 及服務業對港開放的“先行先試”優惠政策。在這些的有利條件下，香港律所在珠三角地區開展業務上可以重點考慮以下的一些策略：

（一）專注於香港律所具有競爭優勢的法律服務業務

隨著珠三角的經濟結構轉型，服務業成為重點發展行業，香港律所在相關的配套法律服務上佔有絕對優勢，通過開展這些業務，香港律所的優勢將逐步體現，並得到客戶的認可。香港律所應重點發展具有自身優勢的業務，例如知識產權業務、融資信託業務等。此外，香港律所也可以利用自己專業化和國際化的優勢，在珠三角律所開展尚少內地律所涉及的業務，比如稅務籌畫、個人財富管理的相關法律服務上尋求突破。

（二）通過與其他服務行業合作開拓市場

香港律師事務所如果能夠與珠三角地區的其他服務行業比如國際知名的“四大”會計師事務所實現橫向合作，將有利於擴展自己的資訊範圍，實現與其他服務行業資訊共通、資源分享、市場共拓。這種橫向聯合可以在各自的領域為對方介紹客戶，擴大雙方的業務量，而且能滿足客戶的多元化需要，同時還能減低橫向聯合雙方的業務推廣成本。也是一種可行的開拓市場的模式。

（三）積極實現香港律所在珠三角地區的本土化

香港律所在珠三角開拓業務，應積極通過與其他內地律所合作開展業務，從

得到改善。

（一）改變當前模式下合作鬆散、個案協作為主、聯營流於形式的狀況，應擴大合作範圍，整合資源，推動實質性的更緊密的合作，為客戶提供全方位的服務；

（二）聯營雙方應加強溝通和瞭解，互派人員交流學習，熟悉對方工作方式。香港律師事務所要提供管道讓內地律師瞭解香港業務，借香港律所開拓更多業務；

（三）香港律師事務所在與珠三角律所交流時，要多用中文，減少雙方溝通的不必要的障礙，雙方建立方便快捷的聯繫方式。

務的法律服務水準，再者，香港的國際知名的律所的本土化，將帶來品牌效應，使內地的律所能夠吸收更為先進的律所管理經驗，推動內地律所的品牌建設，使內地的律所在本土市場上做大做強，有更多的內地律所能夠“走出去”。

香港律所本土化的過程中，關係本土化是香港律所本土化的核心。38.1%的被調查者認為香港律所缺乏人脈是其主要劣勢之一，換句話說，客戶認為珠三角地區的律所對本地環境更加熟悉，擁有更加廣泛的人脈。基於這些原因，高達85%的受訪的珠三角客戶在處理法律事務時更傾向於選擇大陸律所。中國社會正處在從傳統走向現代的過程中，“關係”是一種十分重要的社會組織資源。關係本土化能夠在很大程度上幫助香港律所贏得政府和客戶的信任。

其次，香港律所法律服務人員本土化面臨著政策的限制。目前內地的政策規定，香港律師內地代表處不得聘用內地執業律師，聘用的輔助人員不得為當事人提供法律服務。

在這樣的背景之下，實現香港律所服務人員的本土化的途徑有兩條，其一是香港律所應當進一步爭取內地在該政策上的開放，特別是擁有“先行先試”優惠政策的廣東省地區的開放，允許香港律所聘用內地律師；其二是香港律師通過獲得內地的執業資格，成為內地本土化的法律服務人員，這條途徑在報告第三章的3.4.2中已進行了詳細的分析。

與此同時，香港律所可以通過與內地的律所加強業務間的交流，以及積極吸收內地的人員到香港律所中學習，讓更多的法律服務人員瞭解香港律所的業務水準及工作狀況，讓更多的人有意願到香港律所從事法律服務工作。

香港律所只有珠三角地區實現本土化，才能被更多的珠三角地區的企業認同，作為第一選擇，從而獲得更多的機會。

5.2.7 探索聯營機制，實現更加緊密的聯營模式

在調研中，香港和珠三角地區律所認為聯營是一個很好的模式，可以擴張雙方的業務，整合雙方的資源。但是目前兩地律所聯營發展較為緩慢。對此，兩地律師對聯營的聯繫機制、利益分配機制都有著不同的看法。聯營的模式應進一步

5.2.4 通過與其他服務行業合作開拓市場

會計所與律所，都是現代服務業的重要的支持機構。許多大型項目如國內公司上市都需要上述部門及其他部門的共同參與，而這些項目往往可以給律所以豐厚的回報。香港律師事務所如果能夠與珠三角地區的其他服務行業比如國際知名的“四大”會計師事務所實現橫向合作，將有利與擴展自己的資訊範圍，實現與其他服務行行業資訊共通、資源分享、市場共拓。這種橫向聯合可以在各自的領域為對方介紹客戶，擴大雙方的業務量，而且能滿足客戶的多元化需要，同時還能減低橫向聯合雙方的業務推廣成本。也是一種可行的開拓市場的模式。

5.2.5 形成合適的收費標準

有 33.3%受訪的企業認為香港律所的收費過於昂貴，所以不選擇香港律師事務所。香港律師的收費方式一般是小時計費乘以辦理業務所需要的時間，而珠三角地區律所的計費方式是計件收費或者是風險收費，辦事方法的差異和消費習慣讓一些珠三角地區的企業難以接受。考慮到珠三角地區律所的計費方式已經被該地區客戶廣泛的接受，香港律師事務所如果要在珠三角更有競爭力，需要適應本地的行業習慣，並需要對珠三角地區的客戶的可接受的價格進行分析，制定出合乎本地市場的價格。

5.2.6 積極實現律所本土化

香港律所實施本土化經營取決於客戶的需求，76.2%的被調研企業認為香港律所不太熟悉本地環境是其不選擇香港律所的最大原因，香港律所的本土化，將適應內地法律市場的需要，為香港律師提供內地法律服務贏得更多客戶的選擇。同時，香港律所的本土化能夠在內地樹立自己的品牌形象。得到當地客戶及政府的支持，更加有利於律所的業務的開展。

香港律所的內地本土化，也有助於提升內地的法律服務業的實力。香港律所的本土化，能夠為內地引進更多具備國際化經驗的律師，能夠提升內地的國際業

5.2.2 加強宣傳與推廣，提高香港律所知名度

對代辦處的調查數據表明，分別有 88.9%的受訪者認為香港律師會、77.8%的律所認為香港貿發局、66.7%的律所認為香港商會組織在推廣香港法律服務方面很有作用。³⁸可以看出這三個香港機構在香港律所推廣的過程中起到了非常大的作用，對香港律所集體品牌的樹立非常重要。所以以上機構可以對香港律師服務業做更多的宣傳和推廣，提高香港律所的知名度。

有相當部分受訪者認為內地律協、商會組織、政府對宣傳和推廣香港律所也很有幫助，儘管有相當的實施難度，但在有條件的情況下，這些方式仍然可以作為不錯的選擇。

另外，香港律師事務所自己也可以通過一些珠三角地區律所採用的方式來推銷自己，比如向意向企業寄發自己編輯的宣傳冊、冠名一些體育比賽、在媒體上發表一些案件意見增加自己的曝光度、為高校的活動提供一定的贊助等等方法。這些方法也能在短期內提高律所的知名度。

5.2.3 開拓二線城市市場

在調查中，沒有香港律師事務所的代辦處的城市（東莞、佛山）的律所表現出了對香港律師法律服務的巨大需求。隨著珠三角地區律所實力的不斷增強，在加上北京、上海律所對深圳和廣州法律服務市場的侵入，深圳、廣州的法律服務市場的競爭已經相當激烈。而與此同時，在二線城市，隨著產業的發展，當地經濟實力已經不容小看，而且相當多的民企、港資、外資企業聚集在二線城市，這些企業對法律服務的需求日益增長。香港律師事務所應看到這一趨勢，適時的向二線城市發展業務。

³⁸ 調研問卷中該題為多選題，因此統計結果相加會大於 100%

根據珠江三角洲地區改革發展規劃（2008-2020）將優先發展服務業，金融業、會展業、物流業、資訊服務業、科技服務業、務服務業、外包服務業、文化創意產業、總部經濟和旅遊業都將是未來重點發展的重點服務業³⁷。這些行業發展帶來的業務都是香港律所所擅長和具有優勢的領域，在其中的某些部分，這種優勢是珠三角地區的律所所不能抗衡的，所以未來 10 年，隨著珠三角地區服務業的發展，香港律所將為珠三角地區的服務性企業提供更多的法律服務。

5.1.6 香港律所在某些領域將會有明顯優勢

除了涉港業務及涉外業務外，香港律所在其他的某些領域也有明顯的優勢。調查數據表明，對於稅務籌畫、品牌推廣、知識產權管理及籌畫、個人財富管理的相關法律服務等業務，在珠三角地區屬於新興的業務，律師對這些業務相對接觸較少，而香港律所比珠三角地區律所有更加豐富的案件經驗，且香港律師的專業性和全能性較強，因此在以上業務的優勢非常明顯。由於珠三角地區律師受限於複合背景以及外語等劣勢，短期內無法彌補這種專業技能上的差距，香港律所的這種優勢在一段時期內仍將強勢保持。

5.2 香港律所進入珠三角市場的策略分析

5.2.1 將發展重點放在優勢業務上，兼顧其他業務

目前，珠三角地區的傳統訴訟業務發展已經較為成熟，競爭較為激烈，珠三角地區的律所有自身的優勢，且傳統訴訟業務受到行政部門的收費標準的限制，其收益有限。這些領域對於缺乏珠三角地區本土辦案經驗和人脈，且收費相對較高的香港律所來說，其劣勢還是比較明顯的。所以香港律所應該將自己業務發展重點放在自己具有優勢的業務之上，例如知識產權業務、融資信託業務等。此外，香港律所也可以利用自己全能性和國際化的優勢，在珠三角律所尚少涉及的業務，比如稅務籌畫、個人財富管理的相關法律服務上尋求突破。

³⁷ 珠江三角洲地區改革發展規劃（2008-2020）

55.6%的受訪者認為聯營模式能夠給律所帶來更大的發展空間。反對的聲音相對比較微弱。認為聯營的模式沒有太大的意義的，僅佔全體受訪者的 8.9%。這說明絕大多數受訪律師對聯營模式的態度還是積極接受的。

香港和珠三角地區雙邊律所在聯營問題的意見基本一致，大多數律所都認為聯營會帶來雙贏，都趨向與採取聯營的方式實現雙方的合作。儘管現有的聯營模式也存在許多問題，但隨著雙方在個案協作中不斷的熟悉，隨著香港代辦處在珠三角地區的擴張，隨著珠三角律所開拓外部業務的發展，雙方勢必會採取進一步的交流措施，而聯營這種雙方都比較熟悉且認同的模式仍將是兩地律所合作模式的發展方向。

5.1.4 珠三角地區客戶需求將主要集中在涉港、涉外的非訴業務

從對珠三角地區企業的調查數據上看，有 76.2%的受訪企業在處理香港法律事務時會選擇香港本土的律師事務所。33.3%的受訪企業在處理跨境業務服務(特別是涉港融資、併購)，會選擇香港律所。而在境外法律事務上，42.9%的受訪企業會選擇香港律所。再從香港律師事務所在珠三角地區所獲案件比例的數據來看，珠三角地區客戶對香港律師的法律服務主要集中在非訴業務。

當前，珠三角地區正處在經濟結構轉型和發展方式轉變的關鍵時期。珠三角地區企業到海外投資、對外貿易、資產重組、證券發行、產權轉讓、資本擴張、產業結構調整、專利申請與保護等經營管理活動頻繁。這些經營活動的順利開展，離不開優質高效的法律服務，尤其是非訴類的法律服務。

5.1.5 服務行業將對香港律所的法律服務需求增加

珠三角地區服務業雖然在改革開放以來得到很大發展，但仍存在如下問題：傳統服務業飽和；新興服務業發展不足；服務業缺乏高素質資本、管理、技術；有創意、有市場、高回報的服務；產品開發研究能力薄弱；生產服務業發展程度低；壟斷性服務業競爭力弱。

外國多企業走入珠三角，同時也將鼓勵更多珠三角地區的企業走出去。企業投資的跨國流動肯定會帶來對跨國法律服務的需求。

但由於珠三角地區的律所具有地域性和國際性低的限制，在處理這些業務時候，珠三角地區的律所將需要和外部的律所合作才能滿足這些需要。從數據現實的合作的傾向性來說，珠三角地區的律所會選擇香港律所一起完成大部分案件。

5.1.2 兩地律所短期內仍將保持鬆散的合作模式

調研數據表明，73.1%的珠三角地區律師事務所與香港律師事務所所有過合作。接受調查的香港律師事務所珠三角代辦處與當地律所以“資訊共用”模式合作的是2家，佔樣本28.6%；以“個案協作”模式合作的是6家，佔樣本85.7%；以“聯營”模式合作的有1家，佔樣本14.3%。而同樣的問題，在接受調查的珠三角地區律所那裡得到的答案是：有15.8%的律所以“資訊共用”合作，84.2%的律所則是進行“個案協作”，“聯營”的模式僅佔10.5%，還有10.5%的律所選擇了“其他”。³⁶

從目前粵港律所的合作狀況來看，兩地距離近但合作鬆散，對於深圳、東莞等離香港非常近的地方，一天就可以往返，沒有建立代辦處或者聯營的迫切需要，對於代辦處相對較多的廣州地區，大部分也為鬆散的個案合作。而在未來幾年，由於受業務類型和聯營政策限制，這種局面不會有大的變化。

5.1.3 兩地律所合作的模式的發展方向是聯營

雖然目前，香港與珠三角兩地律所的合作主要是以個案協作為主流，但正是個案的協作，促進了雙方的瞭解，並有意願選擇進一步深入的合作。受訪的珠三角律所中有80%的律所在開拓香港市場的管道中選擇了與香港律所聯營。而香港受訪的律所中64.4%的受訪律師認為與內地律師事務所聯營能夠促進雙方業務的開拓，55.6%的受訪者認為有助於整合香港與內地的法律服務資源。此外，還有

³⁶調研問卷中該題為多選題，因此統計結果相加會大於100%

五、香港律所在珠三角的發展前景與策略分析

5.1 香港律所在珠三角開展業務的前景展望

在接受調查的香港本土的律師事務所中有將近 80%的律所把自己未來兩年業務拓展的重點區域放在了國內。30.4%的港所選擇了珠三角地區，47.8%的港所選擇了內地其他市場。由此可以看出，有相當部分的香港律師事務所有意願開拓珠三角地區市場。而與此同時，珠三角地區企業在眾多的領域需要香港律師的法律服務。總的來說，香港律所在珠三角地區的業務發展前景廣闊。

5.1.1 兩地律所將共同承接國際業務

數據顯示，接受調查的珠三角地區律師事務所中只有 26.9%的律所很少接觸國際業務，有 53.8%的律所的國際業務量在逐年的遞增，另外 19.2%的律所主要業務是國際業務。從這些數據可以看出，大部分珠三角地區律師事務所已經具備了一定的處理國際業務的能力，而且國際業務佔其所有業務的比例在逐漸增加。

另外，珠三角地區的律所還將繼續積極開拓其國際業務。接受調查的廣東律所中有 73.1%的律所表示會積極開拓國際市場，並且部分律所已經在香港開設了分所，積極拓展國際業務。而其中選擇“與香港律師所合作開展業務”選項的律所的比例為 73.1%。上述數據表明，在開拓國際業務方面，大多數珠三角地區律師事務所傾向於選擇香港律師事務所作為自己的合作夥伴，國際業務將成為香港律所與珠三角地區律所開展合作的一個重要的契合點。

珠三角地區在未來 10 年將“積極吸引世界 500 強企業和全球行業龍頭企業投資”，同時也將“鼓勵有條件的企業在國外建立生產基地、行銷中心、研發機構和經貿合作區，開展境外資源合作開發、國際勞務合作、國際工程承包；購併國外掌握關鍵技術的中小企業、研發機構和行銷網路。”³⁵這些政策將吸引更多

³⁵ 《珠三角地區改革開發規劃綱要》

所合作，可以拓展廣東所的業務範圍，開展國際業務網路。並可以通過與香港律所的深入合作，讓更多的珠三角地區的年輕律師接觸國際高端業務，整體上提升珠三角的律師的執業水準。

因此，從客觀的發展機遇和主觀上的合作願景上來看，香港律所和珠三角律所都有深厚的合作基礎。粵港兩地的律所應抓住珠三角經濟轉型的重要機遇，進一步加強溝通與交流，深入探討雙方如何能夠更好地進行合作，發揮各自的優勢，互相配合，緊密協作，實現兩地律所行業的繁榮發展。

“通過與國外律師事務所開展國際業務”的律所的比例分別為 73.1%和 46.2%。數據表明，在開拓國際業務時，大多數珠三角地區律師事務所傾向於選擇香港律師事務所作為自己的合作夥伴。

大部分珠三角地區律師事務所已經具備了一定的處理國際業務的能力，而且國際業務佔其所有業務的比例在逐漸增加，而涉外國際業務已經成為一部分國內知名律師事務所的主要業務。國際業務將作為粵港律所開展合作的一個重要的契合點。

(b) 與港所合作有助於珠三角地區的律所提升管理能力

參與調研的廣東律所中有 50%是採用合夥人管理模式，主任負責制的有 23.1%，設立管委會進行管理的有 26.9%，採用比較成熟的公司管理模式的僅有 23.1%。³⁴在律所的營運管理模式上，部分律所並沒有清晰的模式，採用合夥人的管理模式兼用主任負責制。相對來說，部分律所採取管理委員會和公司制的管理模式就相對很清晰。

在我國，很多律師事務所還是由合夥人進行兼職管理。對律師事務所的管理主要憑藉自己的經驗，由於合夥人在從事管理工作的同時，還辦理自己的業務，從而使合夥人投入的精力有限，對管理工作也缺乏科學性。隨著律師事務所的發展，規模的增大，對管理的要求也越來越高。律師事務所管理專業化已成為一些律師事務所的迫切要求。

而業務比較成熟的大所都傾向於選擇管理委員會或者是公司制的管理模式。香港律所在管理模式上比較成熟，成為與內地所合作的其中一個重要的吸引因素。完善的管理體制，可以更好地進行風險控制，是律所進行擴張的必要條件。

(c) 與港所合作有助於珠三角律所提升自身的競爭力

廣東律所有接近六成的律所表示行業競爭激烈，面對激烈的競爭，與香港律

³⁴ 同上

- (五) 協助內地企業赴港或海外成立或收購境外業務 (23.9%)；
- (六) 公司管治構架 (21.7%)；
- (七) 中國委託公證人服務 (21.7%)；
- (八) 品牌推廣，商標與知識產權管理 (21.7%)；
- (九) 內地法律業務的諮詢 (21.7%)；
- (十) 銀行金融業務 (17.4%)；
- (十一) 為客戶辦理香港或者海外公司成立手續 (17.4%)；
- (十二) 法律顧問 (17.4%)；
- (十三) 離婚案件 (17.4%)；
- (十四) 代理在香港的訴訟業務 (15.2%)。

而且(附圖十二)可以看出，香港律所代辦處在珠三角地區處理的業務與廣東律所的主營業務並不衝突，值得注意的是，港所認為的具有優勢的稅務計畫業務，在調研的廣東律所中都沒有相關的業務。因此，在珠三角地區的業務上，兩地的業務具有互補性，可以進行合作，拓展各自的業務範圍。

4.3.2 加強交流，把握合作機遇

(a) 珠三角律所希望借助香港律所走國際化道路

對廣東律所的調研中，珠三角地區律師事務所中只有 26.9%的律所很少接觸國際業務，有 53.8%的律所的國際業務量在逐年的遞增，19.2%的律所稱國際業務是其主要業務。總體的調研結果表明，珠三角律所的國際化程度還比較低，但都清楚意識到國際業務的重要性。88.5%的律所認為，隨著中國企業的不斷“走出去”，對於涉外法律服務需求將進一步擴大；53.8%的律所認為，涉外國際業務將成為律所的業務增長點。可見，國際業務越來越受到珠三角律所的青睞。³³

在開拓國際業務的途徑的選擇上，願意“與香港律師所合作開展業務”和

³³ 同上

賦予廣東省“先行先試”的優惠政策，在國家不斷加大珠三角地區的發展投入的基礎上，兩地律所的合作機會將進一步增多。

(c) 粵港律所的業務的互補性

從目前在珠三角地區開展業務的香港律所的業務分佈來看，主要集中在具有香港特色的優勢業務上。香港律所認為的優勢業務類型是：

- (一) 內地企業以港式合資引進外資業務（50%）；³¹
- (二) 個人財富管理的相關法律服務（47.8%）；
- (三) 利潤轉移，稅務計畫（41.3%）；
- (四) 內地法律業務的諮詢（32.6%）；
- (五) 內地稅款及匯款的清算（30.4%）；
- (六) 遺產承辦（30.4%）；
- (七) 法律顧問（30.4%）；
- (八) 公司管治構架（30.4%）；
- (九) 中國委託公證人服務（30.4%）；
- (十) 協助內地企業赴港或海外成立或收購境外業務（28.3%）；
- (十一) 涉外交易（27%）；
- (十二) 品牌推廣，商標與知識產權管理（26.1%）；
- (十三) 銀行金融業務（19.6%）；
- (十四) 仲裁業務及內地仲裁的執行（19.6%）；
- (十五) 為客戶辦理香港或者海外公司成立手續（19.6%）。

實際上代辦處主要接觸的業務類型有：

- (一) 內地企業以港式合資引進外資業務（43.5%）；³²
- (二) 涉外交易（41.3%）；
- (三) 利潤轉移，稅務計畫（34.8%）；
- (四) 個人財富管理的相關法律服務（34.8%）；

³¹ 調研問卷中該題為多選題，因此統計結果相加會大於 100%

³² 同上

(c) 聯營模式雖然獲得廣泛認可，但在實踐中卻少有實施

在針對現有合作模式進行的調研中，多達 84.2% 的受訪珠三角律所選擇了“個案協作”，15.8% 的律所以“資訊共用”形式進行合作，選擇“聯營”模式，僅佔總數的 10.5%，還有 10.5% 的律所選擇了“其他”。由此可以看出，目前粵港律所合作的主流還是鬆散的個案合作，聯營模式雖然獲得雙方的廣泛認可，在實踐中的推廣卻並不順利。報告的第三章的 3.2 中對出現這樣的局面的具體原因做了詳細分析。

4.3 香港律所與珠三角律所的合作基礎分析

4.3.1 客觀的合作條件具備

(a) 珠三角地區的生活環境得到香港律師的認可

在調研過程中，有 88.9% 的在珠三角地區工作的香港律師認為珠三角具有地理優勢，毗鄰港澳，交通便利。關於本地生活環境評價（滿分為 6 分），各項生活條件的平均評分如（附圖十五）所示：

可以看出，珠三角的生活條件基本上能夠滿足香港律師事務所內地辦事處工作人員的需求。對文化娛樂和餐飲購物評價都不錯，而對於空氣品質普遍表示不滿意。說明珠三角地區在硬體建設方面的努力已得到認可。

(b) 宏觀環境及政策中蘊含合作機會

隨著廣東省的經濟的進一步發展，香港對粵投資的比重不斷加大，珠三角地區的香港法律服務的需求也將不斷增多，由於粵港兩地的所屬法系的不同以及內地的政策的限制，相應的法律服務都會需要兩地的律所的溝通與合作，同時，CEPA

互之間存在合作的基礎和意願。

(d) 香港律師事務所處理內地案件主要是通過臨時或者固定的合作夥伴來完成

通過在處理案件過程中的合作，雙方能夠互相學習。對於香港律師事務所來說，這樣的形式有助於其今後在內地的發展。

63%的香港律師事務所選擇通過轉委託來處理內地的法律事務，這說明香港律師事務所更趨向於在個案中在內地尋找臨時的合作夥伴。這樣做的好處在於，合作的靈活性有利於香港律師事務所在個案中能夠尋找到更加適合的合作夥伴。

有 19.6%的香港律師事務所選擇長期與固定的內地律師事務所合作，這樣做的好處在於雙方熟悉各自的工作習慣，更加容易溝通和協作。

有 15.2%的香港律師事務所選擇在內地設立辦公室來處理內地法律業務。

4.2.2 聯營模式獲得廣泛認可，但在實踐中少有實施

(a) 聯營模式是珠三角律所開拓香港市場的首選

參與調研的 80%的律所在開拓香港市場的管道中選擇了與香港律所聯營。26.7%選擇到香港開分所，20%的律師選擇派遣本地律師到香港執業，20%的律所表示會聘用香港律師開拓香港市場，13.3%的律所表示會與香港律師進行鬆散的合作，6.7%表示會直接把香港案子轉介紹給香港的律所。可以看出，聯營模式依舊是珠三角律所開拓香港市場的首選（附圖十四）。

(b) 聯營模式獲得香港律所的認可

對於香港律所進行的調研表明，聯營模式受到了大多數受訪者的歡迎。64.4%的受訪律師認為與內地律師事務所聯營能夠促進雙方業務的開拓，55.6%的受訪者認為有助於整合香港與內地的法律服務資源。此外，還有 55.6%的受訪者認為聯營模式能夠給律所帶來更大的發展空間。反對的聲音相對比較微弱。認為聯營的模式沒有太大的意義的，僅佔全體受訪者的 8.9%。

4.2 香港律所與珠三角律所的合作現狀

4.2.1 粵港兩地律所之間的接觸頻繁，合作緊密

(a) 粵港兩地律所之間的接觸非常頻繁

調研數據顯示，26 家珠三角地區律所中，有 25 家律所與香港律所有過接觸，比例達到了 96.2%。由此可見，雖然香港律所在內地的業務受到很大限制，但隨著大陸的經濟與全球經濟聯繫日益緊密，加上香港律師事務所自身特有的優勢，粵港律師事務所存在著合作的需求，兩地律師也積極地尋求著交流的機會與途徑。

(b) 兩地律所之間的接觸方式以直接業務往來為主

自 1992 年中國大陸法律服務行業正式對外開放以來，兩地所之間的交流開始緊密。在交往方式中，直奔主題的業務往來佔到了 96.0%，互動活動與私交分別佔到了 40.0%和 64.0%，

內地所擁有本土優勢，尤其具有承擔法律風險的資格與能力；但是香港所利用本來與客戶的熟悉，在資源與服務上擁有相當優勢，優勢互補的需求促成了兩地業務上的來往。

此外，珠三角地區的律所憑藉特有的地理優勢，取得了與香港律師更多私交與互動的機會。兩岸律師通過律師協會、商會等組織舉辦的活動，增進了彼此的瞭解。另外，隨著越來越多的香港律師事務所在珠三角地區設立代辦處，也為合作和交流提供了平臺。

(c) 大多數廣東律師事務所都有與香港律所合作的經歷

調研數據表明，73.1%的珠三角地區律師事務所與香港律師事務所有過合作。大多數的珠三角地區的律師事務所與香港律師事務所有合作的關係，說明相

（c）代辦處面臨的主要困境是政策開放與案源的不足

（一）設立過程中面臨的困境是業務開放問題

在設立代辦處的過程中，有 88.9%的受訪者認為只能提供香港法律服務限制了代辦處拓展內地法律服務的機會，認為內地的法律服務開放程度不足的佔 55.6%，政策上不利於香港律所設立代辦處。也有部分認為內地政策過於複雜，而認為“設立過程清晰，過程順暢不存在困難的”只有一家，說明香港律所在內地開辦代辦處還面臨一些困難，這些問題以政策方面居多。

需要政府方面更多的全面衡量，既要考慮經濟發展的需要，也要考慮企業和社會需求，同時顧及其他因素，儘快出臺相關政策，為 CEPA 的落實及良好實施掃除障礙。這樣也能改變 88.9%的處於虧損、未來三年只希望保持現有規模，55.6%的受訪者不考慮在其他城市開設代辦處的局面。

（二）經營過程中，最主要的問題是案源不足

代辦處的案件主要是以諮詢案件為主，實體案件很少，內地主要是諮詢案件，但實際獲得的諮詢案件數量很少。66.7%的代辦處每月接獲諮詢案件 10 件以下，66.7%的受訪代辦處認為案源不足是障礙，33.3%的代辦處認為對政策不熟悉影響了業務的開展，

運行成本、文化差異及專業知識不同不是大問題，僅有認為 22.2%的代辦處運行成本高是經營中的問題。代辦處在廣深兩地的開支，55.6%的每月開支在 5 萬以下，各有 22.2%的月支出在 6-10 萬和 20 萬以上，初步估算開辦一個 10 人以下的代辦處月開支為 5 萬到 8 萬人民幣。只有 11.1%的代辦處把文化衝突專業知識差異及對港所的認同度、聘用合適的人員看作是經營中的問題。

(b) 業務類型以香港律所的優勢項目為主，涉及其他業務比例較低

公司成立、內地企業境外收購業務、銀行金融業務等是香港律所的優勢所在，也是香港代辦處在珠三角地區開展的比較多的業務（附圖十三）。

國家實施走出去戰略，在香港或者海外成立公司實施該戰略的第一步，內地企業收購境外業務是企業發展的重要環節，既是企業發展壯大和開拓市場的需要，也是提高我國企業競爭力和知名度的客觀需要。

引進港資作為資本運作的成功方式，是內地與香港加強經貿合作，資源和資本合理配置的體現，改革開放以來取得的成就已經說明瞭其優點，一段時間內，這一做法仍將延續，這一業務仍有較大的市場。

銀行金融方面，香港作為國際金融中心，具有豐富的資本融通經驗和發達的金融業，為內地客戶提供金融服務是輕車熟路。

香港在人才培養和教育方面與國際接軌，因此具有亞洲乃至全球較高的教育水準，香港律所與海外教育機構及政府機構的多年接觸，為移民和留學業務的順利開展奠定了堅實的基礎，豐富的經驗保障了業務的高效。在留學日益成為希望獲得高水準高等教育人士的一種選擇的今天，代辦處能夠在簽證服務上略高一籌。

代辦處從事的業務類型基本是其優勢所在，而其他業務所佔比例較小。如“仲裁業務及內地仲裁的執行”和“個人財產管理的相關法律服務”、“香港過渡貸款，以助內地企業重組引資，並在香港或海外上市”、“公司管治架構”、“品牌推廣、商標與知識產權管理”、“離婚案件”和“內地法律業務的諮詢”佔的比例都只有 10%-20%。

社會在發展和變遷，經濟結構也會有所改變，經濟現象和矛盾也因此在此逐漸變化，對法律服務的需求也不是一成不變的，隨著知識經濟時代的到來，現在較少代辦處開展的業務，比如商標與知識產權管理、品牌推廣等業務的需求將逐步增大。

都沒有提供“子女教育輔助計畫”的福利。

福利方面與香港方面差別不大，基本能解決員工的後顧之憂，但員工的工作狀態並不盡如人意。只有 44.4%的代辦處員工“對工作前景充滿信心，打算長期工作”；僅負責日常運營的行政人員比較穩定。比較年輕並且有機會接觸到實體的法律業務的人員，更傾向於把代辦處作為平臺，伺機尋找更好的發展機會，其流動性則相對較大。

這從側面反映了代辦處不能從事內地的法律事務工作，限制了代辦處的年輕的工作人員的工作前景。不利於代辦處人才的培養和儲備，也不符合 CEPA 的初衷，無益於促進內地和香港法律服務的相互交流和借鑒。

4.2.2 業務來源及業務類型

（a）業務以香港事務為主，個人和企業佔主流

代辦處主要內地業務是處理諮詢案件，代辦處每月接獲諮詢案件 10 件以下的佔 66.7%；10-30 件的佔 33.3%。諮詢案件主要來源於內地的佔 55.6%；來源於企業客戶和個人客戶的佔 77.8%。

代辦處的業務主要來源地區為香港的佔 77.8%；為內地的佔 66.7%；為國外的佔 22.2%。

上述數據表明，大部分代辦處的業務量並不多，從表面上看，代辦處的業務來源中香港和內地業務量相當，但在調研中代辦處律師表示，代辦處處理的絕大部分還是香港業務，即使是內地業務也有涉港因素。

這也表明，香港代辦處在內地發展是平緩的，業務拓展還有很大空間。隨著中國企業走出去戰略的實施，涉外法律和政策諮詢及訴訟案件會大量增加，出於成本和經濟安全的考慮，應逐步減少對國外法律服務的依賴，如何更大限度的利用香港法律服務業多年來積累的國際經驗，很大程度上取決於兩地合作的緊密程度，取決於政策的引導和支援。

四、香港律所在珠三角的發展現狀及合作基礎分析

4.1 香港律所代辦處在珠三角的發展現狀

4.1.1 代辦處規模及人員概況

(a) 代辦處規模較小，安於現狀

受訪代辦處於 1992 年後陸續成立，集中在廣州和深圳兩地，規模都比較小，聘用的員工人數普遍較少，66.7%的代辦處員工數為 5 人以下，75%的代辦處律師人數不足 5 人。

未來三年會維持現有規模和狀況，在人員編制方面沒有大的增加或者減少。多數代辦處人員穩定，規模及業務量越大的代辦處人員流動的情況越明顯。88.9%的受訪代辦處明確表示只希望維持現有狀況，在近一年的代辦處的人員流動情況統計中：沒有人員流入、流出的代辦處佔樣本的 55.6%；流出人數為 2 人的 22.2%；流出人數為 3 人和 4 人的佔 11.1%，流入人數為 3 人的佔 22.2%。

(b) 首席代表主要工作地點不在珠三角

代辦處的首席代表都由律所的合夥人擔任，代辦處的首席代表每月在代辦處的平均時間只有 1 到 5 天，可能是珠三角地區的業務量少，或者是能夠在珠三角直接開展的業務數量少。

(c) 年輕員工對代辦處現有狀況不樂觀

代辦處為員工提供的福利比較好。所有代辦處都“為員工購買國家規定的保險”；提供“帶薪休假”的有 8 家，佔樣本 88.9%；提供“法律培訓教育”的有 4 家，佔樣本 44.4%；提供“商業保險”的有 1 家，佔樣本 11.1%。受訪代辦處

性，目前最好的辦法，莫過於雙管齊下，允許有意向內地發展的律師根據自身的情況，自由選擇內地律所或香港律所駐內地代辦處為其實習地點。

本目的是熟悉內地的法律實務，自然不適合在香港律所中進行。所以目前的規定是：香港法律執業者如欲在大陸執業，除需通過內地司法考試外，尚需在內地律師事務所參加為期 1 年的實習（律師執業經驗少於 5 年者）或參加由內地地方律師協會組織的不少於 1 個月的集中培訓，並經考核合格（律師執業經驗 5 年以上者）。

然而，將香港律師實習的地點限定為內地律所，有不妥之處。

目前，CEPA 協議僅允許已獲得內地律師資格的香港律師在內地律師事務所從事非訴訟法律事務，或以內地律師身份從事涉港婚姻、繼承案件的代理活動。這意味著香港律師即使能夠在內地以律師身份執業，其業務範圍也局限於非訴訟法律事務和涉港婚姻、繼承案件。

另外，香港律師自身的區位和專業優勢，也決定了其在內地發展的方向。對比香港律師事務所與廣東律所從事的業務類型，二者的業務重點有著顯著地不同。廣東律所的主要業務類型為傳統訴訟類業務、房地產業務、公司法律顧問等業務。而香港律所的業務則有著相當多的涉港與涉外因素。

由上述兩點可以得出這樣一個結論：香港律師在內地執業，非訴業務和涉港業務是最佳的選擇。而這部分業務恰恰是內地律所的短板，香港律所的強項。從這個角度來說，如果強令香港律師在內地律所實習，無異於捨近求遠，對其職業發展並無好處。

對於有意在內地執業的香港律師來說，在香港律所實習則無法接觸到內地司法環境，在內地律所實習則不利於職業發展，可以說二者都不是最好的選擇。

（c）港所代辦處的突出優勢

在這種兩難的情況下，香港律所駐內地代辦處為我們提供了第三條出路。首先，代辦處地處內地，與內地的司法機關、律師和客戶都有比較廣泛的接觸，能夠為香港律師瞭解內地提供一個很好的視窗。其次，代辦處的業務類型與香港律所相近似，充分發揮了香港律師的優勢與特色，對於其未來的職業發展大有裨益。

雖然代辦處在安排律師實習方面有其天然優勢，但是考慮到實際情況的複雜

在嚴格把握審查資格的基礎上，適當的考慮上文的建議，面向香港律師的特設考試在操作上是具有可行性的。

3.4.3 取得內地法律職業資格的香港居民實習地點的限制

實習是成為律師的必經之路，基本是世界各國法律界的通例。對一名律師來說，擁有處理實際問題的能力往往比嫻熟掌握法律知識更為重要。一般認為，讓新入行的律師在資深律師的指導下進行數個月乃至數年的實習，能夠增強其實務能力，培養其職業倫理觀念，使之具備為當事人提供專業服務的基本能力。然而，對於有意於內地發展的香港律師來說，實習地點的選擇是一個讓人兩難的問題。

(a) 現有規定

2009 年修改的《取得內地法律職業資格的香港特別行政區和澳門特別行政區居民在內地從事律師職業管理辦法》(以下簡稱《管理辦法》)第六條明確規定：取得內地法律職業資格的香港、澳門居民申請在內地律師事務所執業的，除有《管理辦法》第十一條規定情形外，應當依照律師法、司法部和中華全國律師協會有關申請律師執業人員實習管理的規定，先在內地律師事務所參加為期 1 年的實習。

另外，《管理辦法》第十一條規定：取得內地法律職業資格的香港、澳門居民屬於具有 5 年以上執業經歷的香港法律執業者、澳門律師的，在內地申請律師執業，應當參加由內地地方律師協會組織的不少於 1 個月的集中培訓，並經考核合格。

(b) 實習律所選擇上的兩難

香港與內地分屬不同法系，司法環境有著較大差別。香港律師在內地執業，必須通過一段比較長時間的實習，才能更好的熟悉內地法律實務。由於實習的根

上我們可以借鑒《中國委託公證人(香港)管理辦法》與香港 OLQE (Overseas Lawyers Qualification Examination) 制度的相關規定。例如：

(1) 考核範圍不宜過多涉及與香港律師在內地開展業務無關的內容，而應集中在行業專業知識和必要的公共法律知識上，如國際私法、國際經濟法、民商法、民事訴訟法、仲裁法、法律職業道德與執業責任等科目。

(2) 特設考試的出題權與審批權應統一歸司法部行使。

(三) 通過特設考試人員的執業地點和執業時間的限定

在特設考試及之後的香港律師內地執業的初始階段，出於兩地共贏的考慮，有必要對香港律師的執業地點做出一定的限定，待該模式成熟之後，再逐步向內地其他地區推進。

2010 年國務院通過《前海總體規劃》，規劃明確提出，要“充分發揮經濟特區先行先試的作用，利用粵港兩地比較優勢，進一步深化粵港緊密合作，在前海合作發展現代服務業”。……“積極落實 CEPA 有關安排，先行先試，不斷探索香港服務業與內地合作的新模式。”²⁸ “……大力發展專業服務。適當放寬准入條件”²⁹

因此，在特設考試的初始階段，將通過考試獲得內地執業資格的香港律師的執業地點限定在有“特區中的特區，試驗田中的試驗田”之稱的前海，既有利於相關部門的管理，也有利於香港律師更快的熟悉內地的法律環境。按照規劃的要求，前海港將建設成一個“全國現代服務業的重要基地和具有強大幅射能力的生產性服務業中心³⁰”。這樣一個有所限制但卻具有相當容量的平臺對於進行香港律師執業試點是比較合適的。

另外，為避免獲得內地執業資格的香港律師怠於在內地開展業務，導致特設考試遴選緊缺領域專項人才的目標無法實現，建議對取得內地執業資格但在一定時期內（如十二個月內）未在內地開展業務的律師，做出取消執業資格的處罰。

²⁸ 《前海深港現代服務業合作區總體發展規劃》第三部分（戰略定位）

²⁹ 《前海深港現代服務業合作區總體發展規劃》第五部分（產業佈局）

³⁰ 參見《國務院關於前海深港現代化服務業合作區總體發展規劃的批復》第三章

（一）參加特設考試人員的資格

參加特設考試的人員，應當同時具備以下條件：

- （1）所從事的領域需為內地人才緊缺領域，比如跨國融資活動、國際貿易等領域；
- （2）具備較高的業務水準，有比較豐富的執業經驗；
- （3）熟悉內地法律環境；
- （4）品行良好，在內地與香港沒有不良記錄；
- （5）有在內地開展業務的意願。

另外，在特設考試的初始階段，可以考慮在上述條件的基礎上，做出進一步的限制。例如須具備以下兩個條件：

- （1）具備中國委託公證人（香港）資格；
- （2）已經或者即將在內地建立代辦處或者進行聯營律所、且曾經參與內地法律事務的香港律師。

根據 2002 年頒佈的《中國委託公證人（香港）管理辦法》，符合條件的香港律師可以通過司法部舉辦的特殊考試獲得委託公證人資格，從而證明發生在香港地區的法律行為、有法律意義的事實和文書。證明的使用範圍在內地。目前，已經有 300 多名香港律師獲取了該資格。這些律師大都已在香港地區執業多年，具有豐富的執業經驗，業務類型也較為高端，而在內地香港律所內地代辦處或者聯營律所工作的香港律師已經在一定程度上參與了內地的法律業務，對內地法律環境比較熟悉，具有在內地開展業務的意願，將特設考試參與人員限定於這部分人，將會在吸引優秀律師參與內地法律事務的同時控制進入數量，從而最大程度上避免對內地法律市場造成衝擊。

（二）特設考試的考核及審批

特設考試並不意味著放開難度，而是在於遴選緊缺領域專項人才，故考試內容應該體現適當的難度，以實現優中選優的目的。對此，在考察內容和考察方式

香港律所同樣面對著內地執業的問題。但相對代辦處來說，港所直接接觸的內地業務量較小，需求自然也沒有那麼強烈。另外，許多香港律所通過與內地律所合作的方式解決這個問題，將涉及內地的業務轉委託，也不失為一條行之有效的道路。所以對香港律所而言，有此項政策最好，沒有也無所謂。

內地律師對該項建議的態度比較曖昧。總的來說，反對的聲音佔了上風。69.2%的受訪者反對為香港律師特設考試，53.8%的受訪者認為香港律師在大陸執業必須通過內地司法考試。而在對該項政策表示支持的42.3%的受訪者中，有11.5%的受訪律師認為應該對該建議的條款做出調整。完全贊同該項建議的，佔所有受訪者的30.8%。贊同和反對方的力量對比相差不大，說明內地法律界對此問題尚未形成一致意見。²⁷

(b) 特設考試的建議

根據調研結果，在珠三角地區法律服務行業中，對於跨國融資活動、公司組建和清算、兼併收購、國際貿易、知識產權保護等律師服務領域，當事人往往需要提供專業知識要求較高的服務，而內地的許多律師由於外語能力、國際視野的局限，面對這些較為高端的業務往往力不從心。而且，隨著中國經濟實力的大幅提升以及發達地區產業結構的轉型，珠三角乃至內地越來越多的有實力的企業需要上述高端法律服務。短時間內內地很難培養出足夠的符合要求的法律服務人員，而香港擁有一定量的此類人才。

因此，運用《律師法》第八條的規定，在嚴格審查的基礎上，允許部分確屬“緊缺領域”的資深香港律師通過有關部門相對靈活的特設考核措施，獲得內地相應領域的法律服務的執業資格，不僅可以在過渡時期緩解目前內地律師高端人才缺乏的狀況，而且可以幫助內地培養緊缺領域的年輕律師。鑒於目前內地法律行業面臨的現實問題，特設考核的實施可以從以下方式進行嘗試。

²⁷ 調研問卷中該題為多選題，因此統計結果相加會大於100%

（a）特設考試的可行性分析

設立針對香港律師的特設考試，可能會面臨以下困難：

（一）現有法律的制約

《律師法》不適用與香港地區，香港律師想要適用《律師法》第八條的規定，通過特設考試取得內地執業資格，首先需要解決法律的適用問題。

另外，《律師法》第八條的規定針對的是“在法律服務人員緊缺領域從事專業工作”的人員。所謂“緊缺領域”的界定也是一個極待解決的問題。

（二）律師行業的態度

在調查中發現，最為支持“允許香港律師通過特設考試獲得職業資格”這一政策得到實施的，是港所代辦處的律師。數據表明，多達 77.8% 的受訪者支持該條款（律師法第 8 條）的規定應該適用於香港律師，33.3% 的受訪律師在認同的基礎上，提出應該做出相應的調整。僅有 11.1% 的受訪者反對該政策。²⁵

而作為主要受益者的香港律師，對該項政策的積極程度反而沒有那麼高，只能說基本持歡迎態度。52.3% 的受訪者支持該條款（律師法第 8 條）的規定應該適用於香港律師，31.8% 的受訪律師認為在使用的基礎上，應該做出相應調整。另有 18.2% 的受訪者反對該政策。²⁶

態度的不同是由各方的立場決定的。代辦處常年接觸各種內地法律業務，對於代辦處而言，在受限於政策，無法聘請內地律師從事法律服務的情況下，培養擁有內地職業資格的香港律師不失為一條曲線救國的道路。然而正如前文所述，內地司法考試對英美法系環境下土生土長的香港律師而言太過陌生，通過這一途徑獲得內地職業資格難度太高。在這種情況下，放寬司法考試的限制，必將使其大為受益。所以代辦處對此項政策最為贊同和擁護。

²⁵ 調研問卷中該題為多選題，因此統計結果相加會大於 100%

²⁶ 同上

調研數據表明，僅有 4.3%的香港律所受訪者表示本所“有律師通過司法考試”，13%的受訪者“曾派人參加考試，但基本沒有通過者”。而在香港律所駐內地代辦處進行的同項調查中，有多達 55.6%的受訪代辦處沒有人員通過內地司法考試。總的來說，香港律師通過內地司法考試的情況很不樂觀(附表五)。

至於沒有通過的理由，有律師表示內地司法考試“太難通過”，且平時工作繁忙，“沒有時間準備”。亦有律師認為其內地合作者已經足以勝任，不需要特別派遣香港律師參考。

雖然面臨諸多困難，許多受訪律師仍表示，會繼續“鼓勵律師參加”，或“派遣助理準備考試”。

3.4.2 特設考試的可行性分析及建議

在調研中，部分受訪者提出希望能夠讓香港律師適用律師法第八條的規定，通過特設考試獲得律師執業資格。

律師法第八條規定，具有高等院校本科以上學歷，在法律服務人員緊缺領域從事專業工作滿十五年，具有高級職稱或者同等專業水準並具有相應的專業法律知識的人員，申請專職律師執業的，經國務院司法行政部門考核合格，准予執業。具體辦法由國務院規定。

這項制度在內地學術界被稱為“特許律師執業制度”。規定這一制度的目的在於彌補司法考試的不足，完善我國的律師執業准入體制。特許律師執業制度針對的資深專家與行業專才，在法律服務緊缺領域從事專業工作滿 15 年，且已經獲得高級職稱或者同等專業水準，其能力事實上已經可以勝任律師工作的要求。另一方面，他們多專注於某些特定領域，難以適應司法考試全面考核的要求，且大多年齡較大，工作繁忙，也不具備準備司考的客觀條件。為了吸收這部分人才，由國務院司法行政部門專設考試，另行考核。

種情況，可能存在以下原因：

(a) 國家需要大量的法律人才以充實法律隊伍

相對於我國龐大的人口基數，目前法律工作者的人數遠遠無法滿足社會需要。適當放寬錄取比例，也是為了適應我國法制化進程的需求。

(b) 司法考試難度降低是國際趨勢

在現代法治國家，通過高難度的司法考試選拔法律人才的方式正在被逐漸淘汰。美國的律師考試第一次考試的通過率就在 75% 左右。而歷來以司法考試通過率低聞名的日本和韓國，受司法人才緊缺的問題所迫，近年來也在積極改革司法考試制度。

日本從 2004 年開始廢止司法考試合格人數限額制度。預計到 2020 年，合格率將從 2000 年的佔應考人數的 3% 左右提高到 70% 至 80%。

而韓國 2007 年 7 月初國會通過了《法學專門大學院法》，該法案規定引進“法律研究生院制度”，必須在完成法學研究生教育後才能投考司法考試，司法考試將與法律研究生院制度並行一段時間，到 2014 年司法考試制度將被完全廢止。

(c) 司法考試已經舉辦多年，逐漸為考生所熟悉，各種教材和補習班也比較齊備，應考難度相應降低

儘管近年來通過率呈上升趨勢，但司法考試的通過難度依然是有目共睹的。一個接受了完整大陸法律教育正規的高等院校法律本科學生，大約需要花費 600 小時的準備時間，才能比較順利的通過這項考試。

事實上，對於大多數有志於法律行業的人來說，司法考試都是一道很難跨越的門檻，連續考了兩三次仍屢敗屢戰者亦非罕見。如果讓接受英美法系教育、常年在英美法系環境下執業的香港律師參加考試，其難度可想而知。

治、人文環境更為熟悉，對內地的法律特點更為瞭解，在內地的人脈關係更為寬廣，如能聘用內地律師，代辦處顯然可以更好地提供法律服務，同時，由於兩地有需求的企業能夠在一個代辦處尋找到自己從內地到香港的全套法律服務，而避免轉委託的麻煩，無疑也能夠為兩地的企業提供更大的便利。根據調研結果，88.9%的代辦處認為允許代辦處聘用內地律師可以便利在珠三角的港資企業辦理內地法律事宜並且推動粵港在珠三角地區更全面的法律服務合作。

3.4 CEPA 對香港律師在內地執業的限制

3.4.1 司法考試是香港律師在內地執業的一道門檻

目前 CEPA 協議對香港律師在內地執業作出了如下規定：

（一）允許已獲得內地律師資格的 15 名香港律師在內地實習並執業，從事非訴訟法律事務。

（二）允許香港永久性居民中的中國公民按照《國家司法考試實施辦法》參加內地統一司法考試，取得內地法律職業資格。

（三）允許第 4 條所列人員取得內地法律職業資格後，按照《中華人民共和國律師法》，在內地律師事務所從事非訴訟法律事務。

雖然在 2006 年簽署的補充協議六中“允許香港大律師以公民身份擔任內地民事訴訟的代理人”，但香港律師如果想以律師身份在內地執業，必須通過內地司法考試。司法考試由此成為香港律師在內地執業的第一道門檻。

國家司法考試是國家統一組織的從事特定法律職業的資格考試。初任法官、初任檢察官、擔任公證員和取得律師資格都必須通過國家司法考試。該考試前身為律師資格考試，自 2002 年後，吸收檢察官考試和法官考試兩類系統內部職業資格考試考核，改為國家統一司法考試，具有高難度和低通過率的特點（附圖十二）。

從整體來說，司法考試的報名人數和通過率呈逐年上升趨勢。之所以出現這

些涉港業務自然得心應手，因此，顧客遇到這些業務，選擇代辦處處理，也是理所應當。

由於代辦處與內地律所的業務交集並不大，所以，無論是內地律所還是代辦處，都認為雙方不會有明顯的競爭。這一點從調研數據上也可以得到證明。在對廣東律所的調研中，36%的受訪者認為該項舉措會給內地的律所行業帶來競爭，大部分律所不認為會帶來競爭，更有 28%的受訪律師則認為，內地的法律市場非常大，不會擔心競爭問題。值得注意的是，在認為不會帶來競爭的受訪者中，規模較大，與香港方面接觸較多的律所佔了絕大多數。

相當多的代辦處將自己的競爭對手主要設為香港律所，認為不會與內地律所產生激烈的競爭。而在對代辦處主要競爭對手的調研中，44.4%的代辦處選擇香港律所，而 22.2%的代辦處選擇了內地律所。這表明由於業務領域及專業程度的原因，代辦處將主要與具有類似業務的香港律所競爭，而並不會對內地律所產生很大的衝擊。

另有 44.4%的代辦處毫不擔心競爭的問題。在對內地市場不是非常瞭解的情況下，香港律所代辦處也清楚自己的定位，相當多的律所還是認為自己的工作不會與內地產生激烈的競爭。

(c) 香港律所駐內地代辦處聘用內地執業律師從事法律服務，可以便利珠三角的港資及內地企業

正根據調研數據，代辦處的業務類型比較新穎，因此，代辦處的設立在便利港資企業處理進入內地市場遇到的法律問題的同時，對珠三角企業開拓香港乃至國際市場都大有裨益。根據目前的情況來看，儘管涉及香港的業務仍然佔據很大比例，但是大部分代辦處的內地業務已經有很大的增長。55.6%的代辦處的業務重點開拓地區為珠三角地區，77.8%的代辦處認為自己為客戶辦理香港或者海外公司成立手續方面具有競爭優勢。

面對日益擴大的兩地企業交流，以及由此引發的對法律服務需求的提升，代辦處對內地執業律師的需求顯得越來越迫切。因為內地律師對內地的經濟、政

放開代辦處聘請內地律師從事法律事務的限制，可能會帶來以下積極影響：

(a) 香港律所駐內地代辦處聘用內地執業律師從事法律服務，可以開闊內地執業律師的視野，加快本土律師國際化的進程

調查結果顯示，香港律所設立內地代辦處後，全部因此獲得了與內地律師更多的合作機會，由於香港律所駐內地代辦處的業務類型具有很強的涉外色彩，這無疑可以極大的促進內地律師的國際化進程。

以數據為例，佔據代辦處最多業務量的業務類型為：²⁴

- (一) 為客戶辦理香港或者海外公司成立手續, 佔 88.9%；
- (二) 委託公證人服務，佔 66.7%；
- (三) 協助內地企業赴港或海外成立或收購境外業務，佔 66.7%；
- (四) 內地企業以港式合資引進外資業務，佔 55.6%。

從中不難看出，大部分代辦處的業務都具有涉外背景，這些是香港律師的優勢所在，而正是內地律師的短板。由於目前內地律師幾乎無法在外國執業，在香港執業也有著很大的困難，因此，如果代辦處能夠聘用內地執業律師從事法律服務，就可以讓本土律師在本地接觸到這些前沿業務，從而對內地律師起到很大的鍛煉作用，可以在日益開放的內地法律市場抵禦外國律所的衝擊。

(b) 香港律所駐內地代辦處可以豐富內地法律行業的業務類型，並且不會給內地律所帶來明顯競爭

從代辦處調研數據中的業務類型（附圖十一）中可以清晰的看到，代辦處所從事的業務大都具有鮮明的特點，通過對廣東律所與代辦處的業務類型相比較，廣東律所的主要業務類型為傳統訴訟類業務、房地產業務、公司法律顧問等業務。這些業務重點與代辦處的業務重點有著顯著地不同，可以說，代辦處的業務有著相當多的涉港因素，而由於自身的區位以及國際、專業優勢，代辦處處理這

²⁴調研問卷中該題為多選題，因此統計結果相加會大於 100%。

政機關給予警告，責令限期改正；逾期不改正的，處 1 萬元以下罰款；有違法所得的，處違法所得 1 倍以上 3 倍以下罰款，但罰款最高不得超過 3 萬元。由此可知，聯營組織違反內地法律、法規和規章，香港方可能受到的最嚴重的懲罰為 3 萬元的罰款。

與此同時，內地律所方面還受到《律師法》的規制，最高可能受到吊銷律師事務所執業證書的懲罰。由於 CEPA 協議及配套規章制度中對聯營各方的法律責任沒有明確規定，導致聯營雙方在承擔法律責任上處於不平等的地位。

3.3 禁止代辦處聘請內地律師從事法律事務，限制了代辦處的擴張

香港律所駐內地代辦處已經開設多家，從調研得出的結果來看，代辦處的設立對兩地律師行業的發展均起到了積極作用，但現有規定並沒有針對代辦處有詳細的規定以及扶持措施，某些規定反而在阻礙代辦處的發展。

目前，CEPA 既沒有規定香港律所駐內地代辦處是否可以聘用內地執業律師，也未對聘用的律師在內地的執業範圍做出規定。所以在這一點上，依舊沿用《香港、澳門特別行政區律師事務所駐內地代表機構管理辦法》中的規定。

根據《香港、澳門特別行政區律師事務所駐內地代表機構管理辦法》第十六條，香港律所駐內地代辦處不得聘用內地執業律師，或者聘用的輔助人員從事法律服務，違者由省、自治區、直轄市司法廳（局）給予警告，責令限期改正；情節嚴重的，由省、自治區、直轄市司法廳（局）責令限期停業；逾期仍不改正的，由司法部吊銷其執業執照。“該規定表明國內對於法律服務業的自由化及公開政策仍採取比較謹慎和保守的措施，這與兩地間達到法律服務合作全面自由化的要求相距很遠”。

考慮到律師在律所中的核心作用，目前的相關規定迫使代辦處只能從香港本部派遣律師來內地服務，這無疑增加了代辦處的成本並且對開展業務帶來很大的不便。根據調研結果，雖然代辦處給自己的香港母所帶來了很大的收益，但由於不能聘用內地執業律師，只能充當一個兩地交流的橋樑作用，88.9%的代辦處自身處於虧損狀態，需要母所的支援，這無疑極大的制約了代辦處日常活動的開展，影響了代辦處的進一步發展。

而香港方面，64.4%的受訪律師認為與內地律師事務所聯營能夠促進雙方業務的開拓，55.6%的受訪者認為有助於整合香港與內地的法律服務資源。55.6%的受訪者認為聯營模式能夠給律所帶來更大的發展空間，僅有8.9%的受訪者認為聯營的模式沒有太大的意義。²³

然而由於 CEPA 協議及配套規章制度中對聯營規定的一些不足，可以說在一定程度上阻礙了聯營的發展。綜合調研得到的資訊，受訪者比較關注以下問題：

3.2.1 CEPA 僅允許在內地設立代表機構的香港律師事務所與內地律師事務所聯營

該項規定與司法部於 2003 年 11 月 27 日通過《香港特別行政區和澳門特別行政區律師事務所與內地律師事務所聯營管理辦法》的規定相同，都將“在內地設立代表機構”作為與內地律所聯營的前提條件。目前有 65 家香港律所在內地設有辦事處，僅有 19 家設在廣東。該項規定事實上將絕大多數的香港律所排除在聯營的大門外，尤其不利於中小型律所在內地的發展。

3.2.2 未對聯營組織的風險分擔與利潤分配做出指導性規定

對於內地與香港律師事務所設立聯營組織的利潤與風險的分擔問題，應當在 CEPA 協議或配套規章制度中予以明確。調研中，許多受訪律師表示“在利益的分配上，聯營模式下很難做到雙方都滿意”。亦有律師認為聯營模式“較為鬆散，表面上是聯營合作，實際上很難做到共同管理資源分享”。內地與香港分屬兩大法系，兩地律所的管理模式也有許多區別，需要通過 CEPA 協定對利潤與風險的分擔問題做出指導性規定，以減少雙方的分歧，增加聯營的成功率。

3.2.3 CEPA 協議中對聯營各方的法律責任沒有明確規定

目前對聯營組織的責任，主要沿用《香港特別行政區和澳門特別行政區律師事務所與內地律師事務所聯營管理辦法》和《律師法》的規定。

《聯營管理辦法》第二十三條規定，香港、澳門律師事務所與內地律師事務所聯營，有違反內地法律、法規和規章及本辦法規定的行為的，由省級司法行

²³調研問卷中該題為多選題，因此統計結果相加會大於 100%

三、CEPA 框架下香港與內地律所合作中存在的問題

CEPA (Closer Economic Partnership Arrangement)，即《關於建立更緊密經貿關係的安排》的英文簡稱。包括中央政府與香港特區政府簽署的《內地與香港關於建立更緊密經貿關係的安排》、中央政府與澳門特區政府簽署的《內地與澳門關於建立更緊密經貿關係的安排》。

從 2003 年 6 月 29 日簽訂時起算，迄今為止，CEPA 已經運行了 7 個年頭。隨著六個補充協定的陸續出臺，CEPA 為香港與內地律師的合作創造了越來越寬鬆的環境。然而，由於配套規章制度的不完善，在 CEPA 的框架下，香港與內地律所之間的合作現狀存在諸多不盡人意之處。

3.1 CEPA 的推廣極待加強

從附圖十中，不難發現，除了與 CEPA 協議息息相關的代辦處律師以外，大部分香港律師和內地律師對 CEPA 協議的瞭解都不盡人意，分別僅有 8.7%和 7.7%的受訪者表示對該項協議“非常瞭解”，而選擇“聽說過但不瞭解”的律師高達 32.6%和 23.1%。由此可見，CEPA 的推廣力度極待加強。

3.2 CEPA 及配套規章制度對聯營規定的欠缺，阻礙了聯營的發展

CEPA 規定的聯營模式，其優勢可以說是顯而易見的。首先，聯營可以為內地或香港客戶就跨越內地和香港兩個司法管轄區的業務提供一條龍式的服務，其次，可以擴大聯營雙方的業務範圍。除此之外，聯營所帶來的資訊的共用，管理經驗的交流以及互派人員學習等活動，都能給聯營雙方律所帶來極大的好處。

由於這些原因，無論是廣東律所方面還是香港律所方面，對聯營都持比較歡迎的態度。調研數據表明，廣東律所方面，多達 76%的受訪律師認為與香港律師事務所聯營能夠促進雙方業務的開拓，60%的受訪者認為有助於整合香港與內地的法律服務資源，36%的受訪者認為聯營模式能夠給律所帶來更大的發展空間。

律服務的原因。

(b) 香港律所不太熟悉本地環境，香港律所缺乏人脈

76.2%的被調研企業認為香港律所不太熟悉本地環境是其不選擇香港律所的最大原因。這裡的環境是一個綜合的概念，包括內地的司法環境、生活環境以及內地市場的需求。廣東本土企業不太相信香港律師能獨自處理內地案件，他們認為香港律所想要拓展內地必須更加瞭解內地環境。

38.1%的被調查者認為香港律所缺乏人脈也是其主要劣勢之一。首先，香港與內地的地理及背景差距造成香港律所不可能像內地律所一樣四通八達、左右逢源；其次，香港律所不太注重與行政機關、司法機關以及其他機構的來往互通，而專注於業務上的建樹，雖然這一點被廣泛認同，但受訪者仍懷疑他們的行事方法在內地是否行得通。

(c) 國際化業務網路發達，能提供跨境法律服務

50%的受訪客戶看重香港律所國際化的業務網路，同時有 25%的客戶選擇香港律所是因為其能提供跨境法律服務。

香港律所國際業務網路發達，除了可以為內地企業就涉外合同的起草、涉外知識產權糾紛等業務提供服務以外，對於希望到海外上市的珠三角企業來說，香港證券交易所是首選地點，在內地企業走向世界市場過程中，香港律師可以為其提供香港的上市融資規則以及上市後等規定的法律意見諮詢。

此外，珠三角地區的高外貿依存度決定了對外貿易摩擦的不可避免，涉及反傾銷、反補貼調查，國際貿易爭端的解決、國際知識產權的保護等律師業務將會不斷湧現。熟悉國際貿易規則的香港法律界將會有更多的商機。

(d) 服務周到

在調查中，周到的服務是珠三角企業對香港律所認同度最高之處（75%）。比如在處理法律諮詢上，香港律所的程式步驟更為嚴格，在口頭答覆之後，還會給對方以書面意見並讓其簽收。另外香港律所非常注重保持與客戶的合作關係，總是主動聯繫客戶，讓客戶感覺放心與貼心。

2.3.2 珠三角客戶對香港法律服務的劣勢評價

(a) 收費較貴中小企業難以承受

收費標準是珠三角企業在選擇法律服務時看重的一個標準，72.2%的被訪客戶認為其“很重要”或“比較重要”。在收費標準上，內地律師根據 1997 年頒佈的《律師服務收費管理暫行辦法》採用計件收費和按比例收費兩種收費方式；與此相比，香港律師對一般案件是實行按小時收費制的，其辦案費用由律師與委託人協商。大律師的酬金由轉聘的事務律師與委託人協商，且香港大律師的收費是始終不公開的。33.3%的客戶認為，香港律所收費偏高是其不選擇香港律所法

三角企業向海外投資的過程中，香港律師事務所廣泛的業務聯繫以及對各國相關法律的瞭解，將會為其提供良好的投資法律服務。

另外，與外國律師相比，香港律師更瞭解中國內地法律，因此在涉外商務談判和起草合同等商務活動中，香港律師會起到非常重要的作用。因此，33.3%的被訪客戶希望得到香港律所的這類服務。

2.3 珠三角客戶對香港法律服務的評價

2.3.1 珠三角客戶對香港法律服務的優勢評價

(a) 律師善於溝通

調研結果顯示，珠三角地區的本土企業普遍認可香港律師的溝通技巧，83.3%的受訪者認為香港律師容易溝通，這是基於粵港兩地的語言、文化的深厚的淵源，使得珠三角企業能夠與港所開展良好的業務往來。

(b) 律所專業化程度高

在調查中發現，一半的被訪客戶認為香港律所與內地律師事務所相比，專業化水準較高。在處理有關業務時，雖然國內一些規模的合夥制律師事務所，在處理民事、刑事、行政等訴訟案件外，還涉及包括房地產、金融投資、知識產權保護、內外貿易、公司組建和清算等律師服務領域。但是在實踐中，當事人往往需要提供專業知識要求較高的業務，而內地的多數律所由於外語人才缺乏、業務領域相對狹窄，有時面對跨國業務力不從心。而香港律師熟悉跨國融資活動、公司兼併收購、國際貿易方面的操作，瞭解國外客戶的文化背景、辦事習慣、國際慣例，可以協助內地企業處理高端業務。

(c) 珠三角地區大型企業依賴港所的橋樑作用

香港是世界貿易組織成員和單獨關稅區。其自由貿易制度，低稅收政府以及法律制度，使香港具有重要的世界金融和貿易中心的地位。同時，又成為重要的連接內地與世界各地經貿交往的橋樑。香港還是眾多跨國公司、國際銀團的中國地區總部所在地，是外資企業、港資企業到內地投資和貿易的橋樑，同時也是大量中資企業上市，融資和進行轉口貿易的主要活動地。

香港律所對於珠三角地區的龍頭企業來說，可以辦理的業務更加豐富。而如今，在調研中，大多數企業在處理香港地區的法律事務上，已經傾向於選擇香港律所。由於與珠三角地區的地緣優勢，加上港所代辦處在廣東的設立，使得香港律所處理事務如魚得水，成為廣東律所的首選。

(一) 訴訟、仲裁業務

調研結果顯示，訴訟仲裁業務的需求量相加達到了 85.7%。可見，儘管香港律師目前在內地的訴訟中還不享有律師的訴訟權利，但當案件涉及香港有關法律時，當事人則更需要香港律師的服務。

(二) 金融證券服務

香港是珠三角企業在境外上市較為集中的地區，珠三角許多股份公司均在香港上市。但由於歷史原因，香港股市的上市規則與內地有所差別，為更好地符合香港的上市規則，珠三角企業需要香港律師的法律服務。在訪問中，需要香港律所提供此項服務的樣本達到 33.3%。

(三) 涉外業務

由於香港律師多年積累了大量在國際市場開展投資業務的經驗與知識，在珠

臨的矛盾主要是企業與員工之間的勞資關係矛盾以及企業與客戶之間的矛盾。這一類型的企業，需要律師為他們處理的業務有：解決與員工的勞動糾紛，包括調解與訴訟；協助公司建立完善規章管理制度；對因履行合同出現的糾紛進行處理；提醒企業注意在生產、經營方面的合法性，幫助企業走上健康發展的道路。

然而對於小型企業而言，在法務方面的支出十分有限，經常面臨的普通訴訟業務他們還是更青睞內地律師本土化的服務。一來本土律師對內地的法律較為熟悉，並且對內地法院檢察院、公安機關、稅務機關、工商行政管理機關的工作程式與工作方法較為瞭解，二來本土律所的收費較香港律所低廉。調研的珠三角小型企業，與香港律所的接觸十分有限。

(b) 中型企業非訴訟法律服務需求增多

對於腳跟相對站穩的中型企業來說，企業積累了相對充裕的原始資本，進入穩健發展階段並開始擴張。這一類型的企業往往重視研發，規劃品牌，有國外客戶。非訴訟業務在企業日常法務活動中的比例增大，會涉及資產重組、證券發行、產權轉讓、資本擴張、產業結構調整等經營管理活動，圍繞這些經濟活動，將產生相關新的律師實務，需要大批優秀律師提供的法律服務。這類企業有的擁有自己的法律顧問，企業遇到各種大大小小的涉法事件都會諮詢法律顧問解決。

在調研中發現，珠三角地區個人和企業對律師的需要和依賴程度越來越高。更多的企業需要律師提供法律諮詢、出具法律意見書以及各種大型項目合同的簽訂等非訴訟法律服務。

根據調研結果顯示，珠三角地區企業對香港律所提供非訴業務的需求量很大，主要集中在：

- (一) 稅務 (42.9%)；
- (二) 金融證券服務 (33.3%)；
- (三) 房地產 (23.8%)。

（三）媒體的宣傳存在很大空白

值得注意的是，香港律所通過網路媒體、行業報刊、電視媒體這些傳媒途徑被結識的比例為零。這說明香港律所在內地的行銷策略和手段還有欠缺。內地律所會注意向企業寄發自己辦的雜誌或者通過贊助一些體育賽事來拉近與企業間的聯繫，並通過對一些案件的發表意見增加自己的曝光度，這些方法也是香港律所可以借鑒的。

2.2.4 珠三角地區企業對香港法律服務的需求分析

對於珠三角地區的企業來說，由於與香港的地緣關係以及自身對國際市場的高依存度，對香港法律服務的需求也是與日俱增的。

在調研中，絕大部分的客戶都是中小企業及個人客戶，需求度最高的法律服務依次為：

- （一）仲裁業務（47.6%）；²²
- （二）稅務（42.9%）；
- （三）訴訟業務（38.1%）；
- （四）法律顧問（33.3%）；
- （五）公司業務（33.3%）；
- （六）金融證券服務（33.3%）；
- （七）涉外業務（33.3%）；
- （八）房地產（23.8%）。

（a）小型企業與香港律所接觸極少

前文提到，珠三角地區的中小型企業是廣東經濟發展的主力軍。而其中的小型企業大多處於初創階段和成長階段。由於投入小、用人少，機構簡單，企業面

²²調研問卷中該題為多選題，因此統計結果相加會大於 100%

2.2.3 珠三角客戶與香港律所的接觸情況

(a) 大部分本土企業與港所“絕緣”

在調查客戶中，有 23.8% 的受訪者與香港律所有過接觸，且僅有一家與港所接觸頻繁，其餘客戶與港所的接觸次數累計不足 5 次（很少）。

鑒於香港與珠三角地區的緊密的地緣關係，接觸量匱乏說明香港律所在廣東企業尤其是廣東中小型企業的心目中並非首選。

近年來，隨著政策的開放，香港律所已經逐步滲透進入中國的法律服務市場，然而他們首先搶佔的是大量與境外資本相關的高端市場的非訴訟業務，投入中國企業的海外投資、併購、上市及海外投資、併購、上市以及海外反傾銷訴訟等高端專業性業務的爭奪。然而對於本土的中小型企業而言，經常面臨的普通訴訟業務他們還是更青睞內地律師本土化的服務。再加上香港律師在內地執業上的諸多限制，也造成了大部分本土企業與港所“絕緣”。

(b) 珠三角客戶與香港律所的接觸途徑

（一）會議交流作為推介香港法律服務的重要平臺

在與香港律所存在接觸的客戶中，通過會議交流結識香港律所的，佔到了總數的 60%，說明兩地間的交流互動是港所拓展業務的良好平臺。在對港所的調查中，香港律師們也紛紛表示樂於參與內地律協、商會等組織的各項會議以及交流活動，借此機會為自己贏得更大的商機。

（二）口口相傳推廣香港法律服務

另外，20% 的客戶分別通過熟人介紹和電話與對方建立了聯繫。對於中國這樣一個重視人脈和口碑的社會，建立一個人際關係網和口口相傳的好名聲是香港律所必須為之付諸努力的。

2.2 珠三角地區對香港法律服務的需求

2.2.1 珠三角地區的法律需求狀況

近十年，隨著珠三角地區經濟的發展，法院受理案件的數量正在逐步上升，以廣州市為例，民商事案件的增速明顯，刑事與行政案件保持在一個穩定的區間。（附圖九）

在珠三角地區的高增長的經濟帶動下，民商事方面的法律需求勢必會繼續保持增長。

2.2.2 珠三角客戶解決法律問題的選擇

(a) 優先求助法律顧問

遇到法律問題如何解決這一問題，被調研的珠三角客戶中有 47.6% 會求助於公司的法律顧問；33.3% 的企業會聘請律師事務所專業律師來處理；僅有 28.6% 的企業有專門的法務部門；還有 23.8% 的企業僅是諮詢相關的律師事務所。²¹

做出上述選擇的主要原因如下：

- （一）內地大多數企業在法務方面的支出還十分有限，他們傾向與聘請一個常年的公司法律顧問或者與某些律所建立法律服務關係，
- （二）珠三角企業缺乏法律風險預警能力。大部分中小型企業往往傾向於在糾紛發生後進行補救。

(b) 設有專門法務部門的企業不到三成

在調研的珠三角的客戶中，通過自身的法務部門來處理法律事務的比例僅為 28.6%，說明絕大部分的珠三角中小企業並沒有專門的法務部門，珠三角的企業的法律事務主要是通過相關的律師事務所來處理，珠三角的律所行業市場潛力很大。

²¹ 調研問卷中該題為多選題，因此統計結果相加會大於 100%。

2007 年，珠三角地區的外貿依存度是 182% ，與香港的外貿依存度大致接近，遠遠高於長三角地區和臺灣地區的外貿依存度。一直以來，廣交會都是廣東省中小企業發展的風向標，而中小企業出口 40% 的目標市場為美國。當金融危機爆發後，珠三角地區也因此受到嚴重的衝擊。²⁰

在調研樣本的選取上，我們按照珠三角企業的規模分佈、行業分佈進行了篩選，其中製造業佔總樣本的 33.3%，金融、保險、證券業和房地產業均佔到 11.8%，國內及進出口貿易業、交通運輸、港口、機場業、科研、教育、文體、體育事業、旅遊、餐飲、休閒娛樂業、商務服務業以及其他分別佔到 5.9%。並且從年收入情況來看，38.1% 的客戶年收入在 500 萬以下，而年收入在 1000 萬以下的客戶佔到了樣本的一半以上（52.4%）。

2.1.2 珠三角企業的發展趨勢

經過金融危機後的反思，未來一段時期，廣東將實施以轉變經濟發展方式為核心的產業升級戰略，將珠三角低水準勞動密集型產業轉移到粵東、西兩翼和粵北山區，騰出珠三角有限而寶貴的土地等資源發展更先進的製造業和現代服務業。這也就意味著：隨著珠三角地區商業模式的創新，一批主業突出、核心競爭力強的大企業大集團將會湧現，龍頭企業要創建成為全國乃至國際知名品牌，必然採取收購、兼併、控股、聯合等方式，整合眾多中小企業，同時向海外投資、融資、上市、併購、擴張。在此過程中，諸多高端法律事務的辦理成為國內、香港乃至海外律所爭奪的中心。

與此同時，在珠三角地區發展的新階段，希望借助香港服務業的優勢，加快轉變經濟發展方式，發展現代服務業。《規劃綱要》中珠三角已定立目標，把服務業佔本地生產總值的比重，由 2008 年的約 47.3% 增至 2020 年的超過 60%。在珠三角製造業正值產業升級轉型的關鍵時期，香港應發揮在專業服務業（包括法律、金融、會計和保險等）的優勢，為珠三角企業提供生產性服務，並協助企業轉型升級、開拓內銷市場。

²⁰ 資料來自《廣東省統計年鑒 2009》

二、珠三角地區的法律服務需求

2.1 珠三角企業的發展現狀

2.1.1 珠三角地區的企業概況

(a) 企業規模以中小型為主

據統計，廣東規模以上中小企業 3.718 萬家，佔全省工業企業的比重超過 99%；資產合計達 2.3737 萬億元，佔全省工業企業的比重超過 70%；從業人員佔 80%左右；外貿出口佔全國的 68.53%，輕工、紡織、服裝、玩具、五金等方面的出口產品幾乎全部是中小企業提供的。同時在全國成長型中小企業中，有 14.7% 是廣東企業，總數居全國之首，這個數比中西部 14 個省市的還要多。¹⁸近 30 年來，珠三角中小企業的發展在整個廣東省的經濟發展中起著舉足輕重的帶動作用。

(b) 製造業發達

珠三角已經初步成為全球性消費商品製造業基地，建立了數以萬計的工廠，組成具有一定競爭力的消費品製造體系。如東莞生產的電腦主機板、掃描器、顯像管、微型馬達等，已佔到全球市場份額的 15%—40%，深圳的鐘錶佔到全球市場的四成以上。¹⁹

(c) 企業外向型特徵明顯

改革開放以來，廣東積極發展外向型經濟，珠三角地區的外貿依存度較高。

¹⁸ 資料來自《2007 廣東省成長型中小工業企業評價研究報告》

¹⁹ 《中小企業評論》2004 年第 6 期

務業與內地合作的新模式。”¹⁴ “……大力發展專業服務。適當放寬准入條件……支援香港服務提供者在前海以獨資、合資、合作等多種形式設立專業服務機構，提供個性化和高端專業服務……適度發展會計和法律服務。……積極探索兩地從業人員的資格互認……”¹⁵

在《前海總體規劃》設計和提出過程中，國務院及廣東省政府多次表達了對前海示範區服務業先行先試的支持。國務院在二零一零年八月二十五日對《前海總體規劃》的批復中指出：“要進一步發揮經濟特區先行先試的作用，以前海現代服務業的開放發展為契機，積極探索促進現代服務業發展的體制機制，為全國現代服務業的創新發展提供新經驗。……要進一步健全民主法制，充分利用全國人大授予的經濟特區立法權，為前海現代服務業的發展創造優良的法治環境。”

¹⁶國家發改委在二零一零年十月十日的通知中指出：“……我委將牽頭組建由國務院有關部門、香港特別行政區、廣東省、深圳市等各方參加的協調機制，在相關政策實施、項目安排、體制機制創新等方面給予積極支援。”¹⁷

¹⁴ 《前海深港現代服務業合作區總體發展規劃》第三部分（戰略定位）

¹⁵ 《前海深港現代服務業合作區總體發展規劃》第五部分（產業佈局）

¹⁶ 《國務院關於前海深港現代服務業合作區總體發展規劃的批復》

¹⁷ 《國家發展改革委關於印發前海深港現代服務業合作區總體發展規劃的通知》

劃的依據。

在《深圳總體規劃》裡，對深圳城市發展總目標中，明確提及“……3·依託華南，立足珠江三角洲，加強深港合作，共同構建世界級都市區。”⁹

在具體的區域協作政策中，則對上述內容明確表述為：“提高城市國際化水準 1·進一步擴大服務領域開放，引進國際金融、會計審計、法律服務、管理諮詢、市場行銷等國際化專業服務機構進入深圳，吸引教育、醫療等的國際知名機構來深投資合作，鼓勵和支持國內外大企業集團在深設立總部，提高城市的國際化水準和競爭力，發揮對區域的輻射帶動作用。¹⁰……加強深港合作…… 3·加強與香港在支柱產業發展方面的合作。依託深圳對內地的聯繫優勢和香港對國際的聯繫優勢，進一步擴大雙方在高新技術產業、現代物流業和高端服務業等領域的合作，大力發展總部經濟，率先推動深圳服務業領域對港、澳地區的開放，促進港澳服務業在深圳先行先試，不斷提升深圳的國際影響力。¹¹”

1.4.4 《前海深港現代服務業合作區總體發展規劃》對法律服務業的影響

2010 年國務院通過《前海深港現代服務業合作區總體發展規劃》（下稱《前海總體規劃》），力求進一步深化粵港緊密合作，共同推進現代服務業的創新發展，並最終實現把前海打造成爲粵港現代服務業創新合作示範區的戰略目標。

在《前海總體規劃》的總體思路中，明確提出“充分發揮經濟特區先行先試的作用，利用粵港兩地比較優勢，進一步深化粵港緊密合作，在前海合作發展現代服務業，……爲我國構建對外開放新格局、建立更加開放經濟體系作出有益的探索，爲全國轉變發展方式、實現科學發展發揮示範帶動作用。”¹²

在《前海總體規劃》的具體內容中，對上述內容作出了詳細規劃：“前海可充分利用經濟特區立法權，進行先行先試和制度創新，營造適合服務業開放發展的法律環境。”¹³……“積極落實 CEPA 有關安排，先行先試，不斷探索香港服

⁹ 《深圳市城市總體規劃（2010—2020）》13 條

¹⁰ 《深圳市城市總體規劃（2010—2020）》21 條

¹¹ 《深圳市城市總體規劃（2010—2020）》22 條

¹² 《前海深港現代服務業合作區總體發展規劃》

¹³ 《前海深港現代服務業合作區總體發展規劃》第二部分（合作環境）

制，成立法律問題協商與合作專家小組，處理涉及雙方合作的法律事務問題，按需要就加強雙方各領域合作提出立法建議。三、支援兩地法律專業服務機構開展律師諮詢業務，推動律師、公證、司法鑒定領域的交流與合作。⁶

1.4.2 《珠江三角洲地區改革發展規劃綱要（2008-2020）》對法律服務業的影響

2008 年國務院通過《珠江三角洲地區改革發展規劃綱要（2008-2020）》（下稱《規劃綱要》），作為指導珠三角地區當前和今後一個時期改革發展的行動綱領和編制相關規劃的依據。

《規劃綱要》中關於珠江三角洲戰略定位的問題時提到，珠三角要“堅持‘一國兩制’方針，推進與港澳緊密合作、融合發展，共同打造亞太地區最具活力和國際競爭力的城市群……發展與香港國際金融中心相配套的現代服務業體系，建設與港澳地區錯位發展的國際航運、物流、貿易、會展、旅遊和創新中心……”。⁷ 粵港在《規劃綱要》中作為一個密不可分的戰略地區而陳述，可見粵港合作在未來粵港發展上的重要性。

《規劃綱要》中用了很大的篇幅敘述粵港合作的要求。《規劃綱要》第十一條第（二）款中提到要推進與港澳更緊密合作。《規劃綱要》把粵港緊密合作目標細化到四個方面，包括：推進重大基礎設施對接、加強產業合作、共建優質生活圈和創新合作方式。其中在加強產業合作方面，《規劃綱要》提到“加大開展銀行、證券、保險、評估、會計、法律、教育、醫療等領域從業資格互認工作力度，為服務業的發展創造條件。”⁸ 這表明粵港產業合作中，法律服務業是重點合作的產業之一。

1.4.3 《深圳市城市總體規劃（2010—2020）》對法律服務業的影響

2010 年國務院通過《深圳市城市總體規劃（2010—2020）》（下稱《深圳總體規劃》），作為指導深圳當前和今後一個時期改革發展的行動綱領和編制相關規

⁶ 《粵港合作框架協議》（2010 年 4 月 8 日簽訂）第五章

⁷ 《珠江三角洲地區改革發展規劃綱要（2008-2020）》第二章第（二）條第三、四項

⁸ 《珠江三角洲地區改革發展規劃綱要（2008-2020）》第十一章第（二）條第二項

香港律所進入珠三角地區，將帶來跟多的國際業務，加速珠三角地區律所的國際化進程。

(e) 粵港律所面臨更多的合作機會

隨著香港對粵投資的比重不斷加大，珠三角地區的香港法律服務的需求也將不斷增多，由於粵港兩地的所屬法系的不同以及內地政策的限制，相應的法律服務都會需要兩地律所的溝通與合作，同時，香港的法律服務業先進的經驗也將進一步幫助珠三角律所提升自身的競爭力。

1.4 粵港合作與珠三角法律服務業

1.4.1 粵港合作對珠三角法律服務業的影響

2003 年中國內地與香港、澳門簽訂 CEPA (Closer Economic Partnership Arrangement)，即《關於建立更緊密經貿關係的安排》，並於 2004 年實施。該安排的基本目標是：逐步取消貨物貿易的關稅和非關稅壁壘，逐步實現服務貿易自由化，促進貿易投資便利化，提高內地與香港、澳門之間的經貿合作水準。粵港在實施該安排上，再一次加強了雙方的合作並取得長足的發展。

在 CEPA 框架下，粵港一直都進行著探索，而於 2010 年 4 月 8 日簽訂的《粵港合作框架協議》，就是雙方一次十分有益的嘗試，進一步加強粵港合作的制度基礎。《粵港合作框架協議》中關於法律服務業合作的約定包括：落實 CEPA 及服務業對港開放在廣東先行先試政策措施，支援香港服務提供者依照相關規定到廣東開辦會計、法律、管理諮詢、仲介服務等專業服務機構。積極爭取國家支持，進一步擴大開放領域、降低准入門檻、簡化審批程式。⁵ 在法律事務合作。一、建立法律法規文本交流制度，提供投資貿易操作程式和規則指引。建立溝通機制，就涉及雙方合作項目的立法建議相互通報及諮詢。二、建立法律事務協調機

⁵ 《粵港合作框架協議》（2010 年 4 月 8 日簽訂）第三章第四條第一款

長；

（二）而香港的每年增加的律師人數則保持在 400 人左右，處於小幅度的穩定增長階段；

（三）由此可以看出，珠三角地區的法律服務需求處於快速成長期，需要更多的法律服務人員，而香港的法律服務已經處於成熟穩定階段。

（c）珠三角律所地域性明顯

（一）珠三角的律所立足於珠三角地區：

（1）全國規模前十的大所中，各個律所都有著 6 間以上的分所，而珠三角的規模前十的律所，絕大部分都沒有分所，並且都在珠三角地區；

（2）從珠三角的規模最大的十所律所中可以看出，珠三角的國際化程度都很低，國際業務網路都很有限；

（3）全國規模較大的律所的業務擴張能力都很強，大部分都是以開分所的形式進行業務的擴張，都以規模化經營。而珠三角的律所的擴張能力相對較弱，進兩年的規模並沒有明顯的擴大，主要還是立足於珠三角地區。

（二）珠三角的律所同北京、上海的律所相比（附表四），存在較大差距。珠三角律所可以借助與港所合作的機會，優化自身的業務類型，提升珠三角律所在全國的競爭力。

（d）珠三角地區法律服務的國際化程度低

國外律所代表處主要分佈在北京與上海，根據 2010 年的最新統計，國外律所的代表處，北京地區有 74 家，上海地區有 105 家，廣州地區有 4 家，其他地區有 5 家（附圖八）。

這一方面說明了珠三角地區的國際業務的相對缺乏，另一方面也有可能是因為珠三角毗鄰香港，很多國際律師事務所在香港都有辦公室，可以直接通過香港的辦公室處理珠三角的實務。

1.3.2 珠三角律所的設立情況

- (a) 總體上來說，珠三角律所的成立數量屬於上升期（附圖五）；
 - (b) 從廣東省、廣州、深圳的律所成立分佈圖中可以看出，律所的成立有三個高峰期，第一個峰值出現 1994 年左右，第二個峰值在 2000 年左右，在經過了金融危機之後，2009 年又出現了新的高峰期；
 - (c) 珠三角的二線城市，東莞在進入 2000 年以後，律所的成立數目明顯處於上升階段，佛山在經過了 2001 年的律所成立高峰之後，正處於緩慢的上升期；
- 從各城市的律所成立的增長率。可以直觀地分析出目前珠三角地區的律所行業整體市場是處於成長期。處於成長期的珠三角律所行業，法律服務需求不斷增多，蘊含著機遇，需要發展珠三角業務的香港律所應快速進入市場，尋求業務開展的可能，佔領一定的市場份額。

1.3.3 珠三角律師情況分析

(a) 珠三角律師集中於廣深地區

廣東省的主要法律服務集中度很高（附圖六）：

- （一）2009 年，廣州的律師人數繼續保持較快增長，並且突破了 6000 人，成為北京、上海之後的第三大法律服務市場；
- （二）珠三角地區的律師主要集中在廣州、深圳兩大城市，約佔廣東省律師總人數的 75%；
- （三）隨著珠三角一體化進程的加快，珠三角二線城市佛山、東莞的執業律師數量增長較快。

(b) 珠三角律師的人數持續快速增長

廣東省律師與香港律師的增長情況對比（附圖七）：

- （一）在進入 2000 之後，廣東省的律師人數在十年之間，得到了急速的增

1.2.3 珠三角企業對外直接投資活躍

實施“走出去戰略”，充分利用國際金融危機帶來的有利機遇，支援企業開展跨國併購，培育本土跨國公司，加快境外資源合作開發，建立安全穩定的境外資源供應基地。推進境外經貿合作區的建設，引導企業集群式投資。鼓勵企業積極承攬國外高技術工程建設項目。廣東企業從 2003 年以來，對外投資數額逐年加大，在外設立企業的數量也逐年增多（附表二）。廣東企業的境外投資範圍已遍佈港澳、東南亞、中東、非洲、南美等 80 多個國家和地區，以華為、中興、TCL、格力等（附表三）為代表的企業成為“走出去”的主力軍。近年來廣東省對外投資的主要形式有：

- （一）境外資源開發合作；
- （二）自主行銷網路建設；
- （三）跨國併購；
- （四）對外承包工程。

CEPA 的實施明確了廣東發展成為世界上最重要的製造業基地之一，香港發展成為世界上最重要的以現代物流業和金融業為主的服務業中心。粵港合作進入穩步持續、務實推進的新階段，逐步向現代服務業、先進製造業和高新技術產業集中。珠三角產業升級，粵港的深入合作，都需要相應的法律服務業來支持，珠三角的律所行業將孕育更大的機會。

1.3 珠三角的律所行業成長迅速，粵港律所合作機會大

1.3.1 珠三角律所分佈情況

珠三角主要城市（廣州、深圳、佛山、東莞等）的律所數量佔整個廣東省律所總量的將近 70%，而廣深兩地的律所數量接近廣東省的一半。珠三角地區依靠其經濟地位和地理位置的優勢，成為廣東省律所的聚集地（附圖四）。

1.2.2 廣東省外商實際投資的資金超過六成來自香港

(a) 香港實際投資穩步增長

香港地區是廣東省最主要的外商直接投資來源地（附圖三）。

2009 年來自香港的實際外資金額 118.8 億美元，增長 12.6%，佔全省實際外資的 60.8%；但來自香港的合同外資降幅較大，合同外資金額為 125.0 億美元，下降 47.1%，佔全省合同外資的 71.2%比上年下降 12.2%。

2008 年，香港在廣東投資保持較快增長，新設投資項目 5245 個，合同外資 239.0 億美元，金額比上年增長 10.3%；實際投資 105.4 億美元，增長 27.0%。合同外資和實際外資佔同期全省同類指標總量的比重分別為 83.4%和 55.0%⁴。

(b) 英屬維京群島的投資呈下降趨勢

英屬維京群島作為離岸金融中心，是廣東省重要的外資來源地。在 2007 年之後，2008 年和 2009 年對粵的實際投資有所減少。這一方面是基于金融危機的影響，另一方面是隨著粵港合作的深入，更多的投資者選擇香港作為資金的集散地。

(c) 日本等發達國家對粵投資勢頭良好

近年來，廣東地區吸收日本等發達國家的實際投資資金保持較快增長，其中 2009 年日本實際投資 6.3 億美元，增長 19.8%。

⁴ 2010 年《廣東外經貿發展報告》

負增長，但實際投資都保持著正增長。

(二) 實際投資的持續增長，表明廣東省的投資環境不斷的完善，即便是處於全球性的金融危機階段，仍有大量外資進入廣東省，進入珠三角地區（附表一）。

(b) 珠三角地區是廣東省吸收外資的重點地區

在 2009 年，珠三角地區共簽訂外商投資項目 3974 個，合同外資 148.3 億美元，下降 41.7%，佔全省合同投資總額的 84.5%，比上年降低 4.3%；實際投資 175.1 億美元，增長 3.3%，佔全省實際外資的 89.6%，比去年提高 1.2 個百分點。

(c) 珠三角地區服務業成為吸引外資的重要新的增長點

近年來，廣東出臺多項政策措施加快發展服務業，積極貫徹落實 CEPA 和服務業對港澳開放在廣東省先行先試各項措施，外商投資服務業保持穩步增長。2003 年以來，廣東服務業吸收外資增勢迅速，有力促進了全省外資規模持續較快增長和投資結構優化，提升了利用外資的品質和水準，2003—2008 年，廣東服務業累計吸收外資項目 18790 個，合同外資 504.8 億美元，實際外資 258.9 億美元。

2009 年服務業新批辦外商投資項目 2403 個；合同吸收外資 68.7 億美元，下降 45.3%，佔全省合同外資總額的 39.1%；實際吸收外資 75.8 億美元，增長 6.3%，佔全省實際外資總額的 39.1%，是全省實際吸收外資實現正增長的主要因素。³ 珠三角的服務業中具體的增長較快的行業有：

- (一) 金融業；
- (二) 資訊傳輸、電腦服務和軟體業；
- (三) 批發和零售業；
- (四) 房地產業。

³ 2010 年《廣東外經貿發展報告》

一、珠三角地區的宏觀環境

1.1 珠三角地區²的經濟保持持續增長

1.1.1 廣東省的 GDP 增長勢頭良好

從廣東省 GDP 統計圖（附圖一）可以看出，從 05 年到 07 年廣東省的 GDP 增長率均超過 14%，而在經過 08 年的全球金融危機之後，廣東省的 GDP 增速有所減緩，但仍然以超過 9% 的速度增長。2009 年，廣東省的 GDP 達到 3.9 萬億，佔全國 GDP 總量比重 1/10。廣東省經濟增長形勢依然大好。

1.1.2 珠三角地區是廣東省的經濟支柱

- （a）2007 年到 2009 年珠三角地區主要城市的 GDP 總和佔廣東省總 GDP 的比重分別為 78.53%、78.08% 和 79.98%，由此可見珠三角地區在廣東省的重要地位。
- （b）珠三角城市中，從 GDP 的總量來看，廣州、深圳作為第一梯度，佛山、東莞作為第二梯度，其他城市作為第三梯度（附圖二）。
- （c）珠三角各個城市的經濟增長都保持持續快速增長。

1.2 珠三角地區投資活躍，粵港合作商機無限

1.2.1 珠三角地區吸收外資情況

（a）廣東省吸收外商的實際投資在金融危機階段仍保持增長勢頭

- （一）2003 年以來，廣東省吸收外商的實際投資每年都在增長，雖然受金融危機的影響，08 年與 09 年的外商投資項目與合同外資都出現了較大幅度的

²本報告的珠三角地區指珠江沿岸廣州、深圳、佛山、珠海、東莞、中山、惠州、江門、肇慶 9 個城市組成的區域

（四）珠三角的企業及個人客戶對法律服務的需求狀況，以及對香港法律服務的認知和需求。

在調研的基礎上，形成《香港律所在珠江三角洲地區業務發展》報告，其主要研究的內容有：

（一）香港律師事務所未來三年在珠江三角洲地區的發展前景；

（二）就香港法律服務業拓展內地市場提供前瞻性的策略，當中包括CEPA進一步開放措施的可行性；

（三）香港律師事務所開拓內地法律服務市場的實際操作情況；

（四）研究珠三角地區企業以及個人客戶對香港法律服務（包括跨境法律服務）的需求。

前言

自《內地與香港關於建立更緊密經貿關係的安排》(CEPA)於2003年落實以來，香港律師事務所可在內地設立代表機構並與一個內地律師事務所聯營，聯營的內地律師事務所將無地域限制。由2009年10月1日起，已在內地設立代表機構的香港律師事務所，可與成立時間滿 1 年及以上並至少有 1 名設立人具有 5 年(含5年)以上執業經驗的廣東省的內地律師事務所聯營。截至2010年2月，香港共有65家律師事務所在中國內地14個不同城市設有代表處，其中有16家設於廣州，深圳則有3家；而與內地律師事務所聯營之香港律師事務所則有 6 家。

自CEPA落實容許香港法律服務業進入內地法律服務市場以來，確實深化了兩地律師的協作，並促成兩地律師事務所聯營；然而開放措施實行多年所見，香港律師事務所在內地市場的發展是「起步早、發展慢」。

在此背景之下，香港律師會內地法律事務委員會委託中山大學法學院現進行一項調研活動，調研對象¹包括：

- (一) 廣東省設有代表處的香港律師事務所。
- (二) 廣東省珠三角地區的律師事務所。
- (三) 香港本土的律師事務所。
- (四) 珠三角的企業及個人客戶。

調研的內容主要包括：

(一) 在廣東省設有代表處之香港律師事務所的基本經營情況、主要業務範圍、主要客源、與廣東省律師事務所的業務合作狀況、以及在內地發展業務時所面對的困難；

(二) 廣東省律師事務所與香港律師事務所業務合作機遇、以及可透過何種方式與香港律師事務所合作。

(三) 香港本土律所對於珠三角地區的法律市場的瞭解情況，以及開拓珠三角法律服務市場的意願。

¹ 參與調研的香港律所代辦處有 9 家，珠三角地區律所有 26 家，香港本土律師事務所 46 家，珠三角的企業及個人客戶 21 家

並得到客戶的認可。

- 港所在珠三角地區開拓業務，應積極實現港所在珠三角地區的本土化，並且可以通過與其他相關的服務行業合作開展業務，掌握更多的資源，獲得更多客戶。
- 港所進入珠三角地區，應考慮市場的細分，開拓發展珠三角地區二線城市的業務。而在收費標準上，應該與珠三角地區接軌，形成有競爭力的服務價格。

CEPA 相關法律服務協定的實施及改進

- 絕大多數的粵港兩地律師對 CEPA 相關法律服務協定都不瞭解，CEPA 的推廣力度極待加強。
- CEPA 及配套規章制度對聯營規定的欠缺，阻礙了聯營的發展。
- 通過 CEPA 中“先行先試”的政策，允許香港律所聘用內地律師從事內地法律事務，不會給珠三角律所行業帶來明顯競爭，有助於珠三角律所的發展，能幫助珠三角的企業更好地“走出去”。

香港律所在珠三角地區的發展現狀及兩地律所的合作基礎

- 香港律所在珠三角的代辦處普遍規模較小，短期內仍將保持現有規模；同時，受限於現有的政策，代辦處無法深入拓展內地業務，且面臨內地案源不足以及人才招聘等方面的難題。
- 粵港兩地律所接觸頻繁，合作方式以鬆散的直接業務往來為主。但兩地律所的深入合作仍處於摸索階段，雙方都認同聯營模式的優勢，但在實踐中少有實施。
- 粵港兩地的律所存在深厚的合作基礎，珠三角律所與港所合作，有助於提升其行業競爭力，並有助於推動珠三角地區法律服務的國際化。

香港律師事務所在珠三角地區的發展前景及策略分析

- 珠三角律所行業處於成長階段，存在與港所合作的意願，兩地律所可以在國際業務開展深入合作。
- 短時間內，粵港兩地的律所仍然以鬆散的合作模式為主，但聯營的模式得到雙方的認可，緊密的聯營合作是兩地律所合作的下一階段。
- 隨著珠三角地區經濟結構轉型，服務業成為重點發展行業，港所在相關的配套法律服務上佔有絕對優勢，通過開展這些業務，港所的優勢將逐步體現，

區的宏觀環境以及珠三角地區的律所行業；第二部分挖掘珠三角地區客戶對香港法律服務的需求，並回饋珠三角地區客戶對香港律所的評價；第三部分總結 CEPA 中有關法律服務方面協定的具體實施情況，並探討如何進一步在 CEPA 框架下促進粵港律所的合作；第四部分概述了香港律所在珠三角地區的業務開展情況，並對粵港律所的合作基礎進行了分析；最後一部分，報告展望香港律所在珠三角地區的發展前景，並提出有關開拓珠三角地區的業務策略。

珠三角地區的投資環境及律所行業情況

- 廣東省的經濟保持持續增長，吸收外商的實際投資在金融危機階段仍保持增長勢頭，實際投資有六成來自香港地區。
- 珠三角地區是廣東省的經濟支柱，隨著香港對粵投資的增加，珠三角地區的對外投資的進一步活躍以及珠三角企業的不斷“走出去”，粵港律所面臨更多的合作機會。
- 珠三角地區律所行業進入快速成長階段，律所及律師人數都快速增加，但珠三角地區的律所仍面臨著競爭力不強，國際化程度低的困境。

珠三角地區對香港法律的需求及評價

- 珠三角地區的總體法律服務需求不斷增大。珠三角地區以中小型企業為主，隨著珠三角地區的經濟轉型以及企業的成長並向外擴張，香港律所擁有數量龐大的潛在客戶群。並且，現階段珠三角地區的大型企業在“走出去”過程中，借助香港律所的橋樑作用，不斷取得成功。
- 香港律所在珠三角地區提供法律服務具有服務周到、善於溝通、能夠提供跨區域的專業化業務等優勢，得到了珠三角客戶的好評。
- 同時，香港律所也面臨著收費標準與珠三角地區的收費標準對接問題，超過七成的中小型企業都將收費標準作為選擇法律服務時的重要因素之一。缺乏對珠三角地區環境的認識及人脈的欠缺也阻礙了香港律所的業務拓展。

行政摘要

2003 年中國內地與香港簽訂 CEPA (Closer Economic Partnership Arrangement) 協議，即《關於建立更緊密經貿關係的安排》，並於 2004 年實施。其中，有關法律服務合作的規定，為兩地的律師的合作奠定了基礎。CEPA 簽訂實施以來，雙方在主體文件的基礎上，又簽訂了 6 個補充協議，不斷推進內地與香港的法律服務合作，在補充協定六中落實廣東省“先行先試”的政策，進一步放寬了對與港所聯營的廣東省律所的限制。

2008 年國務院通過《珠江三角洲地區改革發展規劃綱要（2008-2020）》（《規劃綱要》），《規劃綱要》中強調推進與港澳緊密合作、融合發展，共同打造亞太地區最具活力和國際競爭力的城市群，發展與香港國際金融中心相配套的現代服務業體系。《規劃綱要》還提到要“加大開展銀行、證券、保險、評估、會計、法律、教育、醫療等領域從業資格互認工作力度，為服務業的發展創造條件。”這表明粵港產業合作中，服務業是重點合作的產業之一，同時法律服務業面臨著更多的合作機遇。

2010 年，粵港合作進入新的發展階段。2010 年 4 月簽訂的《粵港合作框架協議》，進一步加強粵港合作的制度基礎，落實 CEPA 及服務業對港開放的“先行先試”政策措施，支持香港服務提供者依照相關規定到廣東開辦會計、法律、管理諮詢、仲介服務等專業服務機構。積極爭取國家支持，進一步擴大開放領域、降低准入門檻、簡化審批程式。

2010 年是實施《國民經濟和社會發展第十一個五年規劃》（《十一五規劃》）的最後一年，國內各地區行業都在制定《國民經濟和社會發展第十二個五年規劃》（《十二五規劃》），為未來五年的地區及行業發展做出規劃。

在珠三角發展的新階段，我們對珠三角地區的律所行業以及香港律所在珠三角地區的發展現狀進行調研，探索香港律所在珠三角的經濟轉型中的地位與角色，提出有益於香港律所在珠三角地區開展業務的參考建議。

在對珠三角律所、香港本土律所、香港律所的代辦處以及珠三角地區的客戶調研所取得的數據的基礎上，調研報告包含五部分內容，第一部分介紹珠三角地

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香港律師事務所在珠江三角洲地區 業務發展

研究報告



THE
LAW SOCIETY
OF HONG KONG
香港律師會



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