

Executive Summary

In order to implement the new requirements of the “national opening-up” strategy of the PRC and to promote the transformation and upgrading of various industries by way of developing modern service industries, the State and the local government have since 2001 promulgated a series of laws, regulations and policies to facilitate the establishment of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (“Qianhai”). Taking timely hold of this significant historic opportunity, The Law Society of Hong Kong has set up the Working Party on Qianhai Project (“Working Party”), whose work include: examining how to give full effect to the ascendancy of Hong Kong lawyers; exploring a lawyer profession and regulatory framework which befit the national conditions, which are beneficial to long-term national development and which cater for the developmental needs of Hong Kong lawyers; and putting forward suggestions and recommendations which are conducive to the development of the legal profession in Qianhai.

Based as it is on comprehensive studies of legal professions both in the PRC and beyond, this Research Report comprises three sections. Section One sets out the background to the development of the legal profession in Qianhai, points out that Qianhai is presenting significant historic opportunities for the development of the practice of PRC lawyers, and describes the establishment and objectives of the Working Party. Section Two explains the basis of the development of the legal profession in Qianhai, including policy and legal bases and practical basis. Section Three, which forms the highlight of this Report, provides a detailed analysis of the prospects and strategies of the development of the legal profession in Qianhai, including cooperation in six major areas, namely legal services, regulation of lawyers, applicability of law, law investigation, international legal services and training of lawyers, with a view to strengthening Guangdong-Hong Kong cooperation and promoting harmony between the Mainland and Hong Kong legal systems.

Background to development of the legal profession in Qianhai

- Qianhai is presenting significant historic opportunities for the development of the practice of PRC lawyers
- The Law Society of Hong Kong has timely set up the Working Party to look into the development of the legal profession in Qianhai

Basis of development of the legal profession in Qianhai

- **Policy and legal basis:** Since 2001, the State and the local government have promulgated and launched a series of laws, regulations and policies to facilitate the establishment of Qianhai, including CEPA and the

Regulations on Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen Special Economic Zone, as a means to enhancing cooperation between the lawyers industries in Guangdong and Hong Kong.

- **Practical basis:** The Working Party has sent delegates to London (UK), Dubai (UAE) and Australia to conduct in-depth on-site studies of the legislation on and implementation of mixed practice in those countries and territories. These studies have played an important role in this research project as they have assisted the Working Party in forming conclusions regarding the feasibility and pros and cons of implementing (on a trial basis) the various possible modes of legal practice in Qianhai.

Analysis of prospects and strategies of development of the legal profession in Qianhai

- **Cooperation in legal services**

Association is a mode of cooperation into which Mainland law firms and Hong Kong law firms will develop. Such associations should take the form of close collaboration, i.e. partnerships. A possible strategy is for Mainland law firms and Hong Kong law firms to agree to set up partnership associations in Qianhai, which will provide legal services in their own names and independently assume any legal liability in that respect.

The scope of cooperation should be expanded by allowing partnership associations and their Hong Kong lawyers to provide, in Mainland China, comprehensive legal services involving Hong Kong and foreign jurisdictions.

The relevant judicial and administrative authorities should, having due regard to the practical positions of Hong Kong law firms and lawyers, enact laws and regulations with detailed provisions governing the various aspects of cooperation among lawyers, including the scope of practice of associations, the law applicable to the legal practice of partnership associations, etc.

Bearing in mind the characteristics of such modes of practice as “Legal Disciplinary Practice, or LDP”(legal practice with participation by non-lawyer managers), “Alternative Business Structure, or ABS” (legal practice in the form of open-ended joint ventures), and “Multi-Disciplinary Practice, or MDP” (integrated professional practice), mixed practices can be launched in Qianhai phase-by-phase on a trial basis. The initial phase will feature “one-stop” LDPs with no element of mixed practice, and depending on the progress and outcome, the feasibility of transition to ABS mixed practices will be considered.

To facilitate the implementation of the abovementioned cooperation in Qianhai, the relevant preferential measures should be strengthened, such as giving tax

benefits to associations, relaxing foreign exchange controls, providing lawyers at associations and their vehicles with convenience in customs clearance, etc.

- **Cooperation in regulation of lawyers**

There are considerable differences between the existing regulatory systems in Mainland China and Hong Kong, in respect of both the regulation of law firms and the regulation of lawyers. At the same time, there are similarities between the two systems. These directly provide the basis of and rationale for Mainland-Hong Kong cooperation in the regulation of lawyers.

The Mainland and Hong Kong should jointly establish a “Qianhai Lawyers Association” (QLA) as the regulatory body for lawyer associations. The QLA will be a self-regulated legal body responsible for regulating law firms and lawyers in Qianhai. Such regulation will principally take the form of industry regulation, supplemented by administrative regulation.

- **Cooperation in applicability of law**

There is much room for the application of Hong Kong law in Qianhai. The applicable area of Hong Kong law currently is non-PRC civil and commercial cases involving Hong Kong and Macau. The Working Party suggests that the Shenzhen Municipal People’s Congress can consider making full use of the legislative powers conferred upon it by the National People’s Congress and, pursuant to authority conferred by Article 81 of the *PRC Law on Legislation* and in accordance with the constitutional provisions and the basic principles underlying laws and administrative regulations, enacting modified rules and regulations to expand the scope of application of Hong Kong law in Qianhai. This suggestion is in line with the fundamental principles of PRC law and, to the greatest possible extent, fits into the mode and objectives of development of Qianhai.

The underlying principle is party autonomy, with the doctrine of closest connection being the secondary consideration.

- **Cooperation in law investigation**

Law investigation encompasses both Hong Kong law and foreign law (especially English and American laws) and takes two major forms: (a) establishing an independent institution for law investigation, with Hong Kong lawyers as specialists engaged by courts or arbitration tribunals; (b) Hong Kong lawyers being agents engaged by clients or “officers possessing specialist knowledge”.

- **Cooperation in international legal services**

The competitive edge enjoyed by Hong Kong lawyers in the provision of international legal services should be fully realised. A “WTO and International Legal Services Centre” should be established, pooling together legal experts from Shenzhen and Hong Kong to provide comprehensive and professional legal services (including advisory, agency and research services) in respect of WTO legal issues relevant to the PRC and other international commercial issues. Such services will cater for the ordinary commercial needs of natural and legal persons and also provide the State and relevant organisations with the necessary assistance.

- **Cooperation in training of lawyers**

It is proposed to establish a “Shenzhen-Hong Kong Lawyers Institute” in Qianhai as a base for cooperation in training lawyers. By inviting renowned experts, academics and senior judges, arbitrators and lawyers to give lectures and seminars, and by organizing moots in litigation and arbitration, lawyers’ forums, contests and other activities, the standard and quality of services provided by Mainland and Hong Kong lawyers will further improve, mutual understanding and friendship among lawyers will be strengthened, and level of cooperation among lawyers will be enhanced.

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