

Legal Services (18)

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I. Employment by Mainland law firms

1. What are the procedural requirements relevant to the employment of Hong Kong legal practitioners by Mainland law firms?

When CEPA came into operation on 1 January 2004, the *Measures for the Management of Hong Kong Legal Practitioners and Macao Practising Lawyers Employed by Mainland Law Firms as Legal Consultants* also took effect. The *Measures* provide that a Hong Kong legal practitioner who wishes to take up employment in a Mainland law firm as legal consultant must obtain a Hong Kong legal consultant permit in accordance with the provisions of the *Measures*. This procedural requirement has been removed by CEPA Supplement I which took effect on 1 January 2005. Hong Kong legal practitioners providing professional assistance on an individual case basis at the request of Mainland law firms are not required to apply for the Hong Kong legal consultant permit.

II. Association of law firms

2. What are the requirements relevant to Mainland law firms intending to apply for association with Hong Kong law firms?

Under the amended *Measures for the Management of the Associations Formed by Law Firms of the Hong Kong Special Administrative Region and Macao Special Administrative Region with Mainland Law Firms* (issued by the Ministry of Justice which took effect on 1 January 2007), a Hong Kong law firm which has set up a representative office in the Mainland may apply to form association with a Mainland law firm which (i) has

been established for 3 full years; and (ii) has not been subject to any administrative penalty or disciplinary measure for professional misconduct.

The earlier requirement that the Mainland law firm in the association shall have no less than 20 full-time lawyers has been removed under CEPA Supplement III which took effect on 1 January 2007.

Upon the implementation of CEPA Supplement IV on 1 January 2008, a Hong Kong law firm that has set up a representative office in the Mainland may operate in association with one Mainland law firm anywhere in the Mainland. Hence, Hong Kong law firms are no longer limited to forming association with a Mainland law firm situated in a place where the representative office of the Hong Kong law firm is located.

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

Under CEPA Supplement VI which took effect on 1 October 2009, Hong Kong law firms which have set up representative offices in the Mainland may form association with law firms in Guangdong Province if the Mainland law firm has been established for at least a year and one of the lawyers who established the firm has at least 5 years of professional experience. For such an association, the requirement that the Mainland law firm has been established for 3 years has been relaxed.

Pursuant to the “Framework Agreement on Hong Kong/Guangdong Co-operation” 《粵港合作框架協議》, closer cooperation is encouraged among the governments and different sectors in the Guangdong Province and Hong Kong. The above measure should be conducive to promoting closer cooperation between Hong Kong and Guangdong law firms.

**III. Representative offices of Hong Kong law firms
(representative office)**

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

According to the *Measures for the Management of Representative Offices set up by Law Firms of the Hong Kong and Macao Special Administrative Regions in the Mainland* (the “*Management Measures*”), a Hong Kong law firm must satisfy the following specific conditions before they may apply to establish a representative office in the Mainland –

- (1) The law firm is in lawful practice in Hong Kong and has not been punished for any professional misconduct or any violation of the code of practice;
- (2) The representative of the representative office shall be a practising lawyer and a member of a lawyers’ association of Hong Kong and has been in practice for not less than two years outside the Mainland and has never been punished for any criminal offence or any professional misconduct or any violation of the code of practice;
- (3) The chief representative of the representative office shall be in practice for not less than three years outside the Mainland and is a partner in the law firm; and
- (4) The law firm has the genuine need to establish a representative office in the Mainland.

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

The *Management Measures* provide that the resident representative office of a Hong Kong law firm cannot engage in providing any Mainland legal services. The business that can be conducted by a representative office includes –

- (1) providing to its client legal advice regarding Hong Kong law or foreign laws as well as advice on international conventions and international practices;
- (2) accepting instructions to handle legal affairs involving Hong Kong law;
- (3) engaging, on behalf of its Hong Kong clients, a Mainland law firm to handle affairs involving Mainland law;
- (4) providing any legal services through a long term entrustment

- agreement with a Mainland law firm; and
(5) providing information relating to the impact on Mainland legal environment.

6. Whether a representative office in the Mainland is allowed to employ practising Mainland lawyers?

Under the *Management Measures*, the resident representative office of a Hong Kong law firm cannot employ practising Mainland lawyers. The office may employ paralegals, but they are not allowed to provide legal services to their clients.

IV. Minimum stay requirements

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

Following the implementation of CEPA on 1 January 2004, the general requirement that all the representatives working in Hong Kong law firms’ representative offices were to be resided in the Mainland for at least 6 months in a year has been reduced to 2 months. For those representative offices of law firms situated in Shenzhen and Guangzhou, the residence requirement is completely waived.

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

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

With the introduction of the relaxed measures, representatives of Hong Kong law firms in the Mainland will no longer be required to station in the Mainland for a prescribed period of time (depending on the location of the representative offices). They will therefore have greater flexibility in attending to their practices in both jurisdictions according to their professional needs.

V. Lawyer's qualification and the National Judicial Examination (NJE)

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

The *Lawyers Law of the PRC* stipulates that a person who has completed undergraduate education or above in an institution of higher learning in the Mainland and on passing the National Judicial Examination shall be granted the qualification as a lawyer.

According to the *Rules on Entering for the National Judicial Examination for Residents of the Hong Kong and Macao Special Administrative Regions* (the “*NJE Rules*”), Hong Kong permanent residents who are Chinese nationals, upon passing the NJE, may apply for a certificate of legal profession qualification.

10. What are the relevant conditions for Hong Kong residents who apply for entering the NJE?

Following the implementation of CEPA and in accordance with the *NJE Rules*, Hong Kong permanent residents who are Chinese nationals are allowed to enter the NJE. The provisions of the *Implementation Measures for National Judicial Examination* jointly promulgated by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Justice (the “*NJE Implementation Measures*”) concerning conditions for application and subjects of examination will similarly apply to Hong Kong residents.

Under the *NJE Implementation Measures*, the national judicial examination shall be arranged and held by the Ministry of Justice. A person who meets the following requirements may apply to sit the examination:

- (1) is of the nationality of the People's Republic of China;
- (2) upholds the *Constitution of the People's Republic of China* and has the right to vote and stand for election;
- (3) has the full capacity for civil conduct;
- (4) having graduated from a law specialty of an institution of higher education or having graduated from a non-law specialty of such institution who possesses the professional knowledge of law; and
- (5) is a person of good character and conduct.

11. What are the details for holding the NJE in Hong Kong?

Pursuant to the liberalization measure of CEPA, the first batch of Hong Kong residents took the NJE in Shenzhen in September 2004. To facilitate Hong Kong candidates to take the NJE, the Department of Justice and the Ministry of Justice signed the *Memorandum of Discussion on matters regarding the organization of Hong Kong residents sitting the National Judicial Examination* on 13 May 2005. Under the Memorandum, examination centres would be set up in Hong Kong and pursuant thereto, the NJE was administered in Hong Kong for the first time in September 2005. Since then, the Hong Kong Examination and Assessment Authority (HKEAA) would arrange the holding of the NJE in September each year when the national examination is being conducted. Details for applying to enter the examination will be announced in July each year and the HKEAA will receive applications on behalf of the Ministry of Justice.

VI. Hong Kong residents practising as Mainland lawyers

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

Article 5 of the *Lawyers Law* provides that a person who intends to apply for the practice of a lawyer shall uphold the Constitution; have passed the NJE and completed a full year's internship at a law firm; and being a person of good character and conduct.

To enable Hong Kong residents to attain the prescribed criteria, various liberalization measures have been adopted. Under CEPA Supplement III which came into effect on 1 January 2007, Hong Kong residents who have acquired Mainland lawyer qualifications are allowed to undertake internship in a branch office of a Mainland law firm set up in Hong Kong in accordance with the *Outline for Practical Training and the Guidelines on Practical Training*.

Subsequently, CEPA Supplement VI which came into effect on 1 October 2009 provides that Hong Kong legal practitioners with 5 years or more practising experience and who have passed the National Judicial Examination will be exempted from the requirement of internship except the one month intensive training organized by the local lawyers association in the Mainland.

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

The exemption should not affect the Hong Kong legal practitioners' standard of practice as Mainland lawyers. Under the liberalized measure, only practitioners who have acquired practising experience for 5 years or more may benefit from the exempted measure, and they must attend a one month intensive training. It is also provided in the *Measures for the Management of Residents of the Hong Kong Special Administrative Region and the Macao Special Administrative Region Having Acquired the Mainland Legal Professional Qualification to Work as Lawyers in the Mainland* (the "Management Measures for HK Residents as Mainland Lawyers") that practitioners must have been accredited for having passed the assessment before they may apply to practise as a Mainland lawyer. These provisions should ensure that they have attained the required standard to practise as Mainland lawyers.

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

Under the *Management Measures for HK Residents as Mainland Lawyers*, a Hong Kong resident who is allowed to practise in the Mainland shall practise in one Mainland law firm only, and shall not simultaneously be employed by a law firm of Hong Kong, Macao, Taiwan Region or a foreign country.

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

15. Under CEPA and relevant Supplements, what legal practices would Hong Kong residents be allowed to engage in as Mainland lawyers?

Under the *Management Measures for HK Residents as Mainland*

Lawyers, Hong Kong residents who are allowed to practise as lawyers in the Mainland shall only handle “non-litigation legal matters”.

Such restriction has been relaxed pursuant to CEPA Supplement III which took effect from 1 January 2007. Hong Kong residents who have acquired Mainland legal professional qualification and held a Mainland lawyer’s practice certificate are allowed to carry out activities as agents in matrimonial or succession cases involving Hong Kong parties in the capacity of Mainland lawyers.

16. How should “matrimonial or succession cases involving Hong Kong parties” be understood?

The Administration is not aware that any particular regulations or judicial interpretations have been promulgated to elaborate such terminology. According to the *Answer by the Supreme People’s Court relating to several questions concerning the adjudication of the cases of economic disputes involving Hong Kong or Macao* promulgated on 19 October 1987, a case should involve Hong Kong if:

- (a) a part is or both parties are compatriots of Hong Kong;
- (b) the subject matter of the economic disputes is in Hong Kong;
- (c) the economic relationship arises, changes or terminates in Hong Kong.

VII. Appointment as litigation agents in the Mainland

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

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

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

Section 2 of Chapter V of the *Civil Procedure Law* provides that a lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the People’s Court may be appointed as the party’s “*agent ad litem*”. The person appointing the *agent* must submit a written appointment to the People’s Court specifying the matter entrusted and the powers conferred. The *Civil Procedure Law* further provides that “*agent ad litem*” shall have the right to investigate and collect evidence and may have access to materials pertaining to the case. The *Lawyers Law* however provides that if a person has not obtained a lawyer’s practice certificate but engages in the business of acting as agent in litigation or defending clients for the purpose of seeking economic benefit, he shall be ordered to cease the illegal practice of law.