Frequently Asked Questions

Legal Services

1. Are there any associations of law firms in Hong Kong under the Hong Kong law?

Under Section 39C of the Legal Practitioners Ordinance, Cap 159, a Hong Kong law firm and one or more foreign law firms may be registered as an Association at the Law Society if the Hong Kong law firm and the foreign law firm or firms intend to have, within two months after the registration, an agreement under which fees, profits, premises, management or employees are shared between the Hong Kong law firm and the foreign law firm or firms.

2. What are the main advantages of forming an association between a Hong Kong law firm’s representative office in the Mainland and a Mainland law firm?

There will be obvious advantage in terms of costs saving and sharing resources. Such an association will also provide a one-stop legal service for clients dealing with cross border business that may require the legal knowledge of both jurisdictions. This should increase the competitive edge of law firms as the co-operation of two firms from two jurisdictions would allow them to provide better and more effective service. The better business connections of the Mainland firm within the association will likely enhance business opportunities for the Hong Kong law firm. The management of such association will be subject to measures to be promulgated by the Ministry of Justice.

3. What would be the main differences between the operation of a partnership and an association?

Solicitors operating under a partnership will practise in such form and share the profits and expenses of the law firm in accordance with the terms of the partnership agreement. Under a partnership arrangement, each partner will be liable to the full extent of his or her partnership for any professional liability incurred by him/her as well as the other partners, or by their employees.

In an association, the professional liability incurred by an individual partner within his/her firm will not affect the liability of the partners of the other law firm of the association. To put
simply, the professional liability of the partners of the respective law firms in an association is separate from each other.

4. **Why should the associations with Mainland firms be limited to Hong Kong firms with representative offices in the Mainland?**

The thinking is that law firms with representative offices in the Mainland, and those intend to set up offices there in future would have accumulated the experience of practising Hong Kong law in the Mainland. They should have acquired the requisite expertise and have established working relationship with their Mainland counterparts. When CEPA has just been brought in place, their expertise would contribute to its implementation. Therefore, they are considered appropriate to be the first batch to experiment this new mode of operation in the Mainland by forming association with the Mainland firms.

5. **Should the arrangement of forming association with Mainland firms be open to all Hong Kong law firms?**

Under the existing terms of CEPA, this is not permitted for the time being. We believe that with more experience in this sort of operation, we could discuss with the Mainland side on widening the scope. The HKSARG will always listen to the views of the profession and reflect them in the future rounds of negotiation. There is the further issue of the management of such associations that will have to be worked out. The HKSARG will discuss with the profession and the Mainland authorities to identify the supportive measures to implement the arrangements.

6. **Under the Mainland law, is it possible for Mainland law firms to employ Hong Kong legal practitioner?**

There is no explicit provision under the Mainland law that prohibits Mainland law firms from employing legal practitioners of Hong Kong. Pursuant to Article 6 of 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*, a Hong Kong law firm that wishes to set up representative office in the Mainland has to obtain the approval of the Ministry of Justice. The same provision also provides that a law firm, other organizations and an individual of Hong Kong and Macao shall not engage in the provision of legal services in the Mainland in the name of a consultancy or otherwise. This
provision could probably be understood as prohibiting Mainland law firms from employing Hong Kong legal practitioners in providing legal services. Under the present Arrangement, it is now explicitly provided that Mainland law firms may employ Hong Kong lawyers.

7. **Whether the representative office of a Hong Kong law firm in the Mainland could employ practising Mainland lawyers?**

Under 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 resident representative office of a Hong Kong law firm cannot employ practising Mainland lawyers. The office may however employ paralegals, but they are not allowed to provide legal services relating to Mainland laws for their clients.

8. **Why would Hong Kong law firms in the Mainland be restricted from employing Mainland lawyers?**

This seems to be consistent with the prohibition that Hong Kong law firms in the Mainland should not practise Mainland law. However, the fact that Mainland law firms will now be allowed to employ HK lawyers means that Hong Kong lawyers, especially the young lawyers, may expand their professional practice in the Mainland and be exposed to a new market.

9. **What would be regarded as “non-litigation matters” in the Mainland?**

We understand that these are matters other than appearing for clients in the Mainland courts.

10. **What requirements should be fulfilled in order to practise law in the Mainland?**

The *Law of the People’s Republic of China on Lawyers* (the *Lawyers Law*) provides that in order to practise law, a person shall acquire the qualification as a lawyer and obtain a practice certificate.

11. **Are there any prescribed procedures to acquiring the qualification as a lawyer in the Mainland?**
The *Lawyers Law* stipulates that a person who has completed undergraduate education or above in an institution of higher learning in the Mainland shall be granted the qualification as a lawyer on passing the state uniform judicial examination. The *Lawyers Law* also stipulates that a person who has attained undergraduate legal education or above in an institution of higher learning, and is engaged in professional work such as legal research and teaching, and has a senior professional title or has attained a professional level equivalent thereto may also be granted the qualification as a lawyer upon approval by the Ministry of Justice after evaluation and verification.

12. **What are the requirements for obtaining a lawyer’s practice certificate in the Mainland?**

According to the *Lawyers Law*, a person possesses the qualification as a lawyer, has completed practical training at a Mainland law firm for a full year and being a person of good character and conduct may apply for the grant of a lawyer’s practice certificate.

13. **What are the standards applicable for sitting the state judicial examination, and the procedures for acquiring the lawyer’s qualification?**

According to the provisions of the *Interim 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 state judicial examination for the qualification of legal profession shall be arranged and held by the Ministry of Justice. Persons to be appointed as judges, procurators for the first time and persons who wish to acquire a lawyer’s qualification must pass the examination. Any 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 having the right to vote and stand for election;

3. has the full capacity for civil conduct;

4. meets the qualifications and professional requirements as
stipulated in the Judges Law, the Public Procurators Law and
the Lawyers Law; and

5. is of good character and conduct.

The state judicial examination is held once every year, detailed
schedule of which will be announced each year by the Ministry of
Justice three months prior to the examination. The examination
is in the form of close book examination and the candidates are
required to pass 4 papers. The number of candidates passing the
examination and the passing threshold will be announced by the
Ministry of Justice, after consultation with the Supreme People’s
Court and the Supreme People’s Procuratorate. Candidates who
passed the examination will be awarded the Certificate of Legal
Profession Qualification by the Ministry of Justice.

14. Whether an expatriate who is a “HK Permanent Resident” can
be allowed to sit for the Examination as in the case of a
“Chinese National”?

Yes, if the person has acquired Chinese nationality under the
Nationality Law.

15. What sort of training will be provided during the practical
training phase for persons intending to practise as a lawyer?

Under the Lawyers Law and the Measures for the Administration
of the Lawyer’s Practice Certificate, a person applying for a
lawyer’s practice certificate has to undergo practical training in a
law firm for a full year. The law firm that provides the training
should file the training details at the judicial bureau of his place of
domicile. The person engaged in practical training could assist
qualified lawyers in conducting business, but he shall not engage
in any sole practice. On completion of his training, the law firm
has to provide an assessment of the trainee’s ideological ethics,
professional ability and work attitude.

16. What are the regulations in the Mainland laws concerning the
application for a lawyer’s practice certificate?

Under the Lawyers Law and the Measures for the Administration
of the Lawyer’s Practice Certificate, upon completion of the
practical training, a person could apply for the certificate by
submitting the following documents to the judicial bureau of his
place of domicile: Application for Registration of Lawyer’s Certificate to be completed by the law firm he is presently engaged or he is intended to join, lawyer’s qualification certificate and copy of his certificate of identity. Upon receipt of the application documents, the judicial bureau concerned will make an initial examination and verification of the documents, and report the application to the relevant judicial department (bureau) of the province, autonomous region or municipality directly under the Central Government, before deciding whether to issue a lawyer’s practice certificate to the applicant or otherwise.

17. What are the conditions to set up law firms in partnership in the Mainland? And what are the conditions for becoming a partner of a law firm?

Under the Measures for the Management of Partnership Law Firms, the following conditions have to be met in order to be eligible for setting up a law firm in partnership -

(1) to have its own name, premises and its articles of association;
(2) to have asset of RMB 100,000 or more;
(3) to have three or more partners; and
(4) to have a partnership agreement in writing.

To be eligible for becoming a partner of a Mainland law firm, a person has (a) to possess lawyer qualification and been in practice for three years; and (b) to be of good character and conduct.

18. What are the requirements laid down by the Mainland authorities 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 promulgated by the Ministry of Justice on 13 March 2002, if a Hong Kong law firm satisfies specific conditions and thus obtains the approval of the Ministry of Justice, it shall be allowed to establish a representative office in the Mainland.

A Hong Kong law firm applying for the establishment of a representative office in the Mainland shall satisfy the following
conditions-

(1) The law firm is in lawful practice in Hong Kong and has not been punished for any professional misconduct or any violation of the code of practice;

(2) The representative of the representative office shall be a practising lawyer and a member of 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;

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

19. What kind of legal services can be provided by a resident representative office of a Hong Kong law firm in the Mainland?

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 such office include -

(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 instruction to handle the legal affairs involving Hong Kong law;

(3) engaging, on behalf of its clients of Hong Kong, 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.

20. **What is the “minimum stay requirement in the Mainland for representatives of HK law firms”?**

   This is a residence requirement for the representatives of Hong Kong law firms’ representative offices in the Mainland. Before the implementation of CEPA, all the representatives who work in those offices have to stay in the Mainland for at least 6 months in a year. Following the implementation of CEPA from 1 January 2004 onward, this requirement will generally be reduced from 6 months to 2 months. For the firms which set up offices in Shenzhen and Guangzhou, the residence requirement is completed lifted. With this new arrangement, it should be more flexible for the representatives who station in Mainland to spend more time in their Hong Kong practice.

21. **What are the reasons to exempt representatives of the representative offices in Shenzhen and Guangzhou from the residence requirement?**

   These two cities are geographically close to Hong Kong and daily commuting is possible and becoming more popular. Besides, they are the only two cities in Guangdong Province where Hong Kong law firms have currently set up offices.

22. **Whether any other cities in Guangdong or the Pearl River Delta are likely to be subject to such exception?**

   This is a matter for future discussions. Where the profession increasingly set up more offices in the other cities and consider their representatives should be subject to more relax residence requirement, the HKSARG will reflect their views to the Mainland authorities for consideration.

**Accounting Services**

23. **What are the arrangements for the accounting sector under CEPA?**
The following two provisions in CEPA are related to the accounting sector -

(a) Hong Kong accountants who have already qualified as Chinese Certified Public Accountants (“CPAs”) and practised in the Mainland (including partnership) are treated on par with Chinese CPAs for the purpose of the requirement for annual residency in the Mainland.

(b) The validity of the “Temporary Auditing Business Permit” applied by Hong Kong accounting firms to conduct temporary auditing services in the Mainland is one year.

24. What exactly does “treated on par with Chinese CPAs” mean regarding the annual residency requirement for Hong Kong accountants?

At present there is no annual residency requirement for Chinese CPAs. The same will apply to Hong Kong accountants who have already qualified as Chinese Certified Public Accountants (“CPAs”) and practiced in the Mainland.

Advertising Services

25. What are the concessions for the advertising sector under the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA)?

Under CEPA, Hong Kong advertising companies will be allowed to set up wholly-owned advertising enterprises in the Mainland as from 1 January 2004. (Under China’s WTO commitments, foreign companies will only be permitted to set up wholly foreign-owned subsidiaries in the advertising services sector by end-2005. In other words, CEPA allows Hong Kong advertising companies to access the Mainland market some two years ahead of their foreign counterparts.)
26. Can a Hong Kong advertising company set up a joint-venture advertising company with majority ownership in the Mainland?

Hong Kong advertising companies can set up wholly-owned advertising enterprises in the Mainland. They can also choose to set up joint-venture advertising companies with majority ownership in the Mainland.

27. What does “advertising services” cover?

The definition of “advertising services” under CEPA is the same as that adopted in Annex 9 of China’s schedule of commitments to the WTO. This includes sale or leasing services of advertising space or time; planning, creating and placement services of advertising; and other advertising services (including outdoor advertising services).

28. Can an individual set up a wholly-owned advertising company in the Mainland or operate there as a private operator?

Under CEPA, Hong Kong service suppliers in the advertising services sector must be a juridical person.

29. Advertising is one of the businesses of my company. Can my company set up a wholly-owned advertising company in the Mainland?

Under CEPA, a Hong Kong company which engages in advertising service (not necessarily as its principal business) will be allowed to set up wholly-owned companies to provide advertising services in the Mainland.

30. Can an advertising business association establish a wholly-owned advertising company in the Mainland?

Any “juridical person” which meets the requirements set out in CEPA Annex 5 will be qualified to establish wholly-owned advertising enterprises in the Mainland. (The specific criteria for determining a “juridical person” are: (i) it is incorporated pursuant to the Companies Ordinance or other relevant ordinances of the Hong Kong Special Administrative Region, and has obtained a valid Business Registration Certificate; and (ii) it is engaged in substantive business operations in Hong Kong, i.e. fulfilling the
requirements on the nature and scope of business, years of operation, profits tax, premises for business and employment of staff as stipulated in paragraph 3 of CEPA Annex 5.)

31. **At present, the Mainland’s requirement on registered capital of advertising companies is too stringent. Does CEPA provide any concession in this regard?**

Like other foreign companies, Hong Kong companies operating in the Mainland have to abide by Mainland legislation and regulations in conducting business activities. According to the Regulations on the Establishment of Foreign-Funded Advertising Enterprises promulgated in November 1994, the registered capital of a foreign investment in the advertising sector should not be lower than US$300,000. In the process of the CEPA consultation, the HKSAR Government has reflected the concern expressed by certain members of the industry over the registered capital requirement to the Mainland. We appreciate the consideration of the Mainland on the development of the Mainland advertising industry in the deliberation on the matter.

CEPA has facilitated access to the Mainland markets by Hong Kong’s advertising companies. The SMEs in the advertising sector may consider ways such as seeking additional funding injection or collaborating with other companies in order to qualify for the establishment of wholly-owned enterprises in the Mainland. These are, of course, entirely commercial decisions of the enterprises.

32. **I heard that many of the provincial and municipal authorities of the Mainland have ceased issuing advertising licences. Is that really the case?**

We understand that such measure might have been taken by the authorities earlier in an effort to consolidate the sector. The measure is no longer in place.

33. **Will the advertising licence issued by the Mainland provide for the “publishing right” of advertisement?**

CEPA provides concessions on market access for Hong Kong advertising companies. Specific details on issue of advertising licences in the Mainland is a matter for the Mainland authorities.
Management Consulting Services

34. What are the commitments for the management consulting services sector under CEPA?

Under CEPA, Hong Kong suppliers of management consulting services will be allowed to provide service in the Mainland in the form of wholly-owned enterprises as from 1 January 2004. (Under China’s WTO commitments, foreign companies will only be permitted to set up wholly foreign-owned subsidiaries in the management consulting services sector by end-2007. In other words, CEPA allows Hong Kong companies to access the Mainland market some four years ahead of their foreign counterparts.) Besides, the minimum registered capital requirement for Hong Kong service suppliers providing management consulting services in the Mainland is in accordance with the “Companies Law of the People’s Republic of China”.

35. According to CEPA, the minimum registered capital requirement for Hong Kong service suppliers providing management consulting services in the Mainland will follow the “Companies Law of the People’s Republic of China”. What exactly is the level of capital required?

Article 23 of the “Companies Law of the People’s Republic of China” stipulates that the capital requirement for a limited liability company engaging in consulting is RMB100,000.

36. Is the coverage of management consulting services under CEPA narrower than the Central Product Classification (CPC) 865 which China committed to under WTO?

The classifications of the management consulting services set out in CEPA have in fact covered all of the CPC 865 under the United Nations classification, i.e.

- General management consulting services;
- Financial management consulting services;
- Marketing management consulting services;
- Human resources management consulting services;
• Product management consulting services;
• Public relations services; and
• Other management consulting services.

(Note: the UN classification does not contain CPC86507 and CPC86508)

37. **One of the criteria for “service supplier” is that a company should be incorporated or registered in Hong Kong and have engaged in substantive business operations for 3 years or more. My company has been in business operation for 3 years, but it has only engaged in management consulting activities during the recent year. Is my company qualified to enjoy the arrangements under CEPA?**

Hong Kong companies must have engaged in the provision of management consulting services for 3 years or more in order to enjoy the concessions under CEPA to set up wholly-owned operations to provide management consulting services in the Mainland.

38. **I have been providing management consulting services in my personal capacity in Hong Kong for over 3 years. Can I set up a wholly-owned operation or become a private operator in the Mainland?**

The definition of “service supplier” covers “natural person” (meaning a permanent resident of the Hong Kong Special Administrative Region) as well as “juridical person” (meaning any legal entity duly constituted or otherwise organized under applicable laws of the Mainland or Hong Kong). As long as you or your company meets the requirement of “service supplier” under Annex 5 of CEPA, you or your company will be able to supply management consulting services in the form of wholly-owned operations in the Mainland.

39. **Are certification and head-hunting services regarded as management consulting services?**

Under CEPA, “management consulting” covers: general management consulting services; financial management consulting services; marketing management consulting services;
human resources management consulting services; product management consulting services; public relations services; and other management consulting services. Under CEPA, certification and head-hunting services do not belong to management consulting services.

40. Does CEPA provide for any tax exemption or reduction?

CEPA provides concessions on market access and registered capital requirement for management consulting service providers from Hong Kong. It does not cover concessions on tax exemption or reduction.

41. Many management consultants are self-employed, and they use their residential address as their registered business address. Will they be excluded from CEPA simply because they do not have “business premises”?

The definition of “service supplier” under CEPA includes “natural person” (meaning a permanent resident of the Hong Kong Special Administrative Region) and “juridical person” (meaning any legal entity duly constituted or otherwise organized under applicable laws of the Mainland or Hong Kong). In order to qualify as a “juridical person” under CEPA, the Hong Kong service supplier should own or rent premises for business in Hong Kong to engage in substantive business operations. The scale of its business premises should commensurate with the scope of its business. We shall adopt a pragmatic approach in considering each case.

Convention and Exhibition Services

42. Under CEPA, what preferential treatment will be enjoyed by the convention and exhibition sector?

Under CEPA, Hong Kong service suppliers will be allowed to supply convention and exhibition services in the Mainland on a wholly-owned basis. The exhibition services will not cover exhibitions held outside the country or the territory.

At present, under the WTO framework, foreign companies are allowed to provide convention and exhibition services in the Mainland only on a joint venture basis. Under CEPA, Hong Kong companies will be given preferential treatment, thus gaining
an edge over their foreign counterparts.

43. How to define the nature and scope of business of a Hong Kong company applicant in the convention and exhibition sector?

Hong Kong service suppliers have to be engaged in business related to the supply of convention and exhibition services in Hong Kong. We will adopt a practical approach to examine in detail the specific circumstances of each individual applicant for reaching an objective decision.

44. Will a Mainland subsidiary be considered as engaging in business of the same nature as that the company engages in Hong Kong and within the scope of actual operation of the Hong Kong company if the Hong Kong company and its Mainland subsidiary focus on different parts of the convention and exhibition services?

This depends on the factual circumstances. Overall speaking, we would like to deal with the issue in a practical way so that more Hong Kong companies may benefit. However, if a Hong Kong company and its Mainland subsidiary focus on entirely different parts of the sector, it may be difficult to prove that the Hong Kong company concerned has substantive operations in that part.

45. Will a company be regarded as owning or renting business premises if it is an occupant only (i.e. not a party to the lease/tenancy agreement or no lease/tenancy agreement between the company and the owner of the premises)?

The requirements of CEPA aim to exclude companies without actual business premises, such as mailbox companies. There should not be any problem if an applicant company can prove that it carries out substantive business operations in a business premises in Hong Kong and the business premises is commensurate with its scope and scale of business.

46. What are the procedures for applying for an exhibition licence in the Mainland by a wholly-owned company? Would the licence be applicable in all parts of the Mainland, or restricted to local cities only?
The Mainland authority will work out and announce the concrete details for making such applications in the Mainland by Hong Kong companies.

47. Will the wholly-owned subsidiary receive the National treatment, such as enjoying the rates for local companies when renting exhibition venues and engaging other services under the dual pricing system?

The major preferential treatment of CEPA is the opening up of the Mainland market for Hong Kong companies to supply convention and exhibition services on a wholly-owned basis. The areas involved in the National treatment are too broad and complicated to be covered by CEPA for the time being. We will reflect the concerns of the sector to the Mainland authorities.

48. How can the intellectual property rights of the wholly-owned subsidiaries in the area of company names, show names and logos be protected?

We have reflected the requests of Hong Kong companies for better protection of intellectual property rights to the Mainland authorities concerned.

**Telecommunications Services**

49. What is the scope of the five value-added services (VAS)?

The classification of the five VAS is based on the Telecommunications Services Classification Catalogue 《電信業務分類目錄》 of the Mainland. You are advised to download a copy of the Catalogue from the website of the Ministry of Information Industry (MII) for details of the scope of each VAS: [http://www.mii.gov.cn/Mii/hyzw/bz/2003-061001.htm](http://www.mii.gov.cn/Mii/hyzw/bz/2003-061001.htm).

50. If I wish to provide the five VAS, what steps do I need to take before I can acquire the necessary permit or licence in the Mainland?

To benefit from CEPA, you will first need certification from the Hong Kong Government that you qualify as a “Hong Kong service supplier” according to the criteria set out in Annex 5 to the CEPA
agreement. The Trade and Industry Department (TID) will be the one-stop point to handle applications for certification from all service sectors, including the telecoms sector. Please refer to Notice No 1/2003 issued by the TID for the procedure to apply for the “Certificate of Hong Kong Service Supplier” (the certificate).

After you have obtained the certificate from the TID, you may then apply to the Mainland authorities for the entitlements under CEPA. Please refer to paragraph 7 of Annex 5 of the CEPA agreement for the general procedure involved in applying to the Mainland authorities. In respect of the more specific information on permit / licence application for the provision of telecoms services in the Mainland, please refer to the website of MII: http://www.mii.gov.cn/mii/zcfg/bl19.htm.

51. To qualify as “Hong Kong service supplier”, we must have three years substantive experience in the operation of the five VAS in Hong Kong. Does it mean that we need to have three years of substantive experience in all five VAS before the certificate will be issued?

When you submit your application for certification of “Hong Kong service supplier” status to the TID, you are only required to submit proofs in respect of the VAS that you have substantive experience in for consideration (for details of the documents required as proofs, please refer to Notice No 1/2003 issued by the TID for the procedure to apply for the certificate). Upon satisfaction that the qualification criteria are met, the TID will issue the certificate to you. The certificate will state that you are qualified as “Hong Kong service supplier” in respect of VAS. When applying to the Mainland authorities to provide the VAS in Mainland, you should submit all the documents and information submitted to TID together with the certificate issued by TID.

52. What information do I need to supply to TID when applying for the certificate?

There are two main types of documents that you will need to submit. One relates to the company’s corporate details in general, and the other relates to telecoms specific information on the nature and scope of telecoms services provided in Hong Kong.

Of the five VAS according to the Mainland’s classification, “store and forward services” 存儲轉發類業務 and “Internet access
services” 因特網接入服務業務 are subject to telecoms licensing in Hong Kong. For proofs of provision of these services in Hong Kong, you are required to provide a copy of the relevant telecommunications licence issued by the Telecommunications Authority (TA) for reference, in addition to documents such as supply contracts and service contracts to show that you have actually been engaged in the services for at least three years.

In respect of the other three VAS, namely “Internet data centre services” 因特網數據中心業務, “call centre services” 呼叫中心業務 and “content services” 信息服務業務, they are not subject to telecoms licensing in Hong Kong. For proofs of provision of these three services in Hong Kong, you are required to provide documents such as supply contracts and service contracts to show that you have actually been engaged in the services for at least three years.

For details of the procedure of application and information required, please refer to Notice No 1/2003 issued by the TID.

53. Once I am qualified as a “Hong Kong service supplier”, am I entitled to provide all five VAS in the Mainland? Do I need to apply for separate licences from the Mainland authorities for this purpose?

The certificate issued by the TID only certifies that you meet the qualification criteria for “Hong Kong service supplier” entitled to benefit from CEPA. You are still required to apply for the necessary licence or permit from the Mainland authorities for the provision of the VAS. The rules on application for permits/licences for provision of telecoms services in the Mainland will apply (including the number of types of VAS allowed in individual licences). Please refer to the website of the Ministry of Information Industry for details: http://www.mii.gov.cn/mii/zcfg/bl19.htm.

Audio visual

54. It is not clear if the exemption of quotas for HK films means HK film companies will be able to enter the Mainland market on a ‘profit-sharing’ basis.
HK films will be exempt from the current quotas; whether or not the films can be distributed on a profit sharing basis will be a commercial decision between the HK film company and the Mainland distributor, based on the marketability of the film in question.

55. **In relation to the “Chinese language motion pictures produced in Hong Kong”, how is the definition of “major film personnel category” derived? What is the aim?**

The “major film personnel category” includes the major positions of film personnel in producing a film. The list of positions has been arrived at after consulting the views of the Hong Kong film industry. We believe this provision would ensure that both Hong Kong films and Hong Kong film workers would benefit from the Arrangement.

56. **What is the rationale for introducing the provision on the ownership of the copyright of a film in the definition of “Chinese language motion pictures produced in Hong Kong”?**

CEPA provides that in order to qualify as a Chinese language motion pictures produced in Hong Kong, the concerned Hong Kong film company(ies) should own at least 75% of the copyright of the film. We believe that this would ensure that Hong Kong film companies would benefit from the Arrangement. It will also serve to attract foreign investment in the production of Hong Kong films.

57. **What will be the benefit for the provision to allow the distribution in the Mainland films jointly produced by Hong Kong and the Mainland, with versions dubbed in languages of other Chinese races or dialects translated from the Putonghua versions?**

China is a large country. In addition to Putonghua, people in different parts of the Mainland could use languages of other Chinese races or dialects in their daily business. If jointly produced films are permitted to be dubbed in such languages and dialects for distribution in the Mainland, this would facilitate the penetration of these films in the Mainland market.
Distribution Services

58. Will the Mainland authorities amend existing laws and regulations on distribution services in order to provide the preferential treatment of CEPA to Hong Kong service suppliers? What are the details of the new regulations? When will they be announced?

Starting from 1 January 2004, Hong Kong service suppliers are allowed to provide distribution services in the Mainland with the preferential treatment provided by the CEPA. Since they are regarded as foreign investors, the Mainland’s general rules and regulations currently in force for foreign-invested enterprises should be followed. At present, there are specific regulations for foreign-invested enterprises of wholesale, retail and external trading businesses. These regulations cover equity share limitation (currently only equity/contractual joint venture is allowed), geographic restriction and entry thresholds. The Mainland is amending these regulations to incorporate the preferential treatment provided to Hong Kong service suppliers under the CEPA, including allowing wholly foreign ownership, relaxing geographical restriction and lowering entry thresholds. We understand from the Mainland side that amendments to these regulations will be announced shortly. The Trade and Industry Department will promulgate them to the trade widely as soon as they are available.

59. What will be the detailed application and approval procedures for Hong Kong service suppliers to set up distribution enterprises in the Mainland under CEPA? Will there be any restriction on the scope of business and the setting up of branch offices?

At present, there are Mainland regulations for foreign-invested enterprises operating wholesale, retail and external trading in the form of equity/contractual joint ventures. The regulations cover equity share limitation, geographic restriction and entry thresholds. These regulations also stipulate the detailed application and approval procedures and the permitted scope of business. Under CEPA, Hong Kong service suppliers will be allowed to set up wholly-owned enterprises and equity/contractual joint ventures for operation of wholesale, retail and external trading businesses. The scope of business allowed for these
enterprises would be set out in the relevant regulations in future. We understand that the application and approval procedures would be similar to those currently in force, and the details would be announced shortly. The Trade and Industry Department will promulgate them to the trade widely as soon as they are available.

If a Hong Kong investor is currently running a joint venture distribution business with a Mainland partner, and wants to convert the joint venture into a wholly-owned enterprise upon the implementation of the CEPA, he may do so by acquiring the shares of the Mainland partner. If he wants to set up a wholly-owned enterprise with independent juridical person status, he has to follow the procedures for establishing a new enterprise.

The relevant provisions of the Mainland’s Company Law should be observed if a distribution enterprise or a trading company established under CEPA wants to expand business by setting up branches. For setting up a “branch office” that does not have independent juridical person status, there is no need to go through the approval procedures for establishing a new enterprise. However, if a “subsidiary company” with independent juridical person status is to be set up, the same procedures for establishing a new company have to be followed.

60. According to the CEPA, certain entry requirements, such as sales value, asset value and registered capital, have to be fulfilled for Hong Kong service suppliers to set up enterprises for operation of wholesale, retail and external trading in the Mainland. Is there any guideline on how to calculate and declare sales and asset value in the process?

We are consulting the Mainland authorities on the details, and will disseminate the information to the trade in due course.

61. The CEPA stipulates that the distribution services of certain products provided by Hong Kong service suppliers remain subject to the Mainland’s commitments under the WTO. What is the exact coverage of these product categories? If the Mainland promulgates new regulations in the future on these products and the market entry requirements therein differ from those in the CEPA, which one should we follow?

We are gathering detailed information from the Mainland authorities on the exact coverage of the concerned product
categories and will disseminate the information to the trade in due course. The Mainland has committed to gradually lowering the entry thresholds of various services sectors. If new entry thresholds are promulgated by the Mainland and they are more favourable than those in the CEPA, the new requirements should be adopted in processing applications from Hong Kong service suppliers.

62. The CEPA provides that the regulation on franchising will be promulgated separately. What are the details of the regulation? When will it be promulgated?

According to China’s WTO accession commitments, the Mainland will permit foreign investment for franchising by end of 2004. At present, there is no regulation in this area. The Mainland is formulating new regulation for franchising applicable to Hong Kong service suppliers. As far as we understand, the Mainland will announce the regulation shortly. The Trade and Industry Department will disseminate the regulation to the trade widely as soon as we receive it.

63. Hong Kong residents will be allowed to set up individually owned retail stores in Guangdong province. What are the detailed rules and procedures?

The Mainland is formulating new regulation for Hong Kong residents to operate individually owned retail stores in Guangdong province. The regulation will provide for the operation of an individually owned retail store by a natural person in a single location. It should not be operated in the form of an enterprise. National treatment will be granted. As far as we understand from the Mainland side, the new regulation will be announced shortly. The Trade and Industry Department will disseminate it to the trade widely once available.

64. How is the preferential treatment for the distribution sector under the CEPA compared with the China’s WTO accession commitments?

- Hong Kong service suppliers are allowed to set up foreign wholly-owned enterprises for distribution services one year earlier than all other foreign investors.

- Hong Kong service suppliers are allowed to provide retail
services in all cities at prefectural level in the Mainland (and cities at the county level in Guangdong province) one year earlier than all other foreign investors.

- The market entry thresholds for the wholesale, retail and external trading companies to be set up by Hong Kong investors are substantially lower than those for all other foreign investors.

- There is no commitment in respect of individually owned retail stores in China’s WTO accession protocol.

**Transport Services**

**65. What is the coverage of “Western Region of the Mainland”?**

Western Region of the Mainland include: Chongqing Municipality, Sichuan Province, Guizhou Province, Yunnan Province, the Tibet Autonomous Region, Shaanxi Province, Gansu Province, Qinghai Province, the Ningxia Hui Autonomous Region, the Xinjiang Uygur Autonomous Region, the Inner Mongolia Autonomous Region, the Guangxi Zhuang Autonomous Region; the Xianxi Tujia-Miao Autonomous Prefecture of Hunan Province, the Enshi Tujia-Miao Autonomous Prefecture of Hubei Province and the Yanbian Korean Autonomous Prefecture of Jilin Province.

**66. Why is it that for the transport sector, only the Western regions of the Mainland, but not the other regions, are opened to companies wholly owned by HK investors?**

The CEPA agreement was reached after constructive discussions between both sides. The provision is intended to provide more business opportunities and room for development for HK transport companies on the one hand, and it takes into account the situation in the Mainland on the other hand.

**67. Is there a timetable on the opening up of the other regions of the Mainland for the road passenger transport service sector?**

CEPA provides a good opening for HK transport companies. We shall first focus on the successful implementation of CEPA on 1 January 2004.
Banking

68. To which Mainland authorities should Hong Kong banks submit their applications under the CEPA arrangements?

Applications from Hong Kong banks for setting up branches on the Mainland should be submitted to the CBRC office which is responsible for supervisory matters of the city in which the branch is going to be established.

69. How long would it take for the Mainland authorities to approve applications submitted by Hong Kong banks under the CEPA arrangements?

CBRC has undertaken to process applications from Hong Kong banks expeditiously. However, the exact time required will depend on the complexity of each case.

Insurance

70. Clarification in respect of specific provisions, such as how to calculate the assets held by groups formed by Hong Kong insurance companies?

Also, where can a person obtain information on details such as how to apply for sitting in the Mainland’s qualifying examination?

OCI are discussing the implementation details with the China Insurance Regulatory Commission. It aims to complete the discussion within October, and thereafter would inform the relevant stakeholders such as the professional and industry bodies.

71. Will CEPA lead to large number of Mainland practitioners coming to Hong Kong and thereby affecting the employment opportunities of the local practitioners?

The insurance market in Hong Kong has all along been an open market. At present, any foreign companies or practitioners, including those from the Mainland, may operate or practise in
Hong Kong, provided that they meet the relevant prudential/professional qualifications\(^1\). The new arrangements would not affect the job opportunities for local practitioners. Instead, it would become easier for them to practise in the Mainland.

72. **Will CEPA lead to the recognition of Mainland insurance qualifications?**

Hong Kong is an international financial centre. Individual regulators and professional bodies will take into account the relevant factors in considering whether a professional qualification should be accepted. For example, whether the relevant qualification is widely recognized in other advanced economies. This is in line with the practice of other professions such as the accounting profession. As far as the insurance sector is concerned, OCI together with the professional bodies will review from time to time issues relating to the recognition of non-local professional qualifications.

**Securities**

73. **What is Mainland’s commitment under CEPA concerning securities and futures professionals?**

Mainland has committed to simplify the relevant procedures for Hong Kong professionals applying in the Mainland for securities and futures industry qualifications with effect from 1 January 2004.

74. **How is Hong Kong professionals defined?**

Hong Kong professionals mean permanent residents of Hong Kong who are holding a licence granted by the Securities and Futures Commission (“SFC”) of Hong Kong.

75. **What are the details of local professionals applying for qualification to practise in the Mainland?**

\(^1\) Saved for any immigration control measures.
CEPA will be effective on 1 Jan 2004. The China Securities Regulatory Commission and Securities and Futures Commission ("SFC") of Hong Kong are in close cooperation to devise implementation details within the established regulatory framework. It is expected that announcement will be made before the end of this year.

At the same time, Hong Kong Securities Institute and the Securities Association of China and China Futures Association will discuss cooperation on examination and eligibility qualification.

76. **Is there any arrangement for allowing Hong Kong securities firms to provide services in the Mainland?**

CEPA does not include provisions for Hong Kong securities firms to provide services in the Mainland.

77. **Will the SFC also recognise Mainland’s qualifications to facilitate Mainland’s securities professionals to enter the Hong Kong market?**

The SFC already has established policies and procedures in licensing industry practitioners from other jurisdictions to carry out regulated activities in Hong Kong. The policies and procedures apply to both Mainland and overseas practitioners. Non-Hong Kong practitioners would be granted licence if they were able to satisfy the competence and other requirements of Hong Kong. Currently, we do not anticipate major problems for Mainland practitioners to enter the Hong Kong market, as many of them would be able to satisfy our basic requirements.