

LAWYERING ACROSS THE STRAIT: THE PAST, PRESENT, AND FUTURE OF LEGAL SERVICES MARKETS BETWEEN MAINLAND CHINA AND TAIWAN

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Abstract

Recent years have witnessed a rapid increase in communication and economic cooperation between mainland China and Taiwan. Consequently, demand for legal services regarding the other side of the Strait is on the rise, especially the needs of Taiwan for legal services on the mainland side. With the permission of Taiwan residents to sit for the PRC National Judicial Exam and of Taiwan law firms to set up representative offices in mainland China, more and more lawyers from Taiwan have been seeking opportunities in the mainland legal services market. This article gives an introduction of the current situation regarding the legal services market of both sides and proposes that institutional support, cross-strait lawyering cooperation and quality improvement of legal services are desirable in promoting the development of legal services markets across the Strait.

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INTRODUCTION

From January 2012 to November 2012, the trade volume between the mainland and Taiwan was 152.06 billion USD, with a 3.8% year-on-year increase. Among this, the mainland export volume was 32.58 billion with a 0.7% year-on-year increase and the import volume was 119.48 billion with a 4.7% year-on-year increase. By the end of November 2012, mainland had, in total, approved 87,760 Taiwan-invested projects and the volume was up to 56.76 billion.¹ Meanwhile, personnel communication between both sides had been growing steadily, with an average annual increase of 14% from 4.7 million person-times in 2008 to 7.05 million in 2011. During the four years, mutual tours reached 24 million person-times.²

The on-going increase in communication and economic cooperation between both sides has witnessed a gradual growth in demand of cross-strait legal services. As a kind of professional service, legal service is closely related to the territorial and judicial jurisdiction and the actual situation of the states involved. Its development follows the progression of the lawyering business. The favorable cross-strait relations have boosted positive expectations towards the legal services markets on both sides. Following the conclusion of the Economic Cooperation Framework Agreement (ECFA) between the Association for Relations across the Taiwan Straits (ARATS) and the Straits Exchange Foundation (SEF) in June 2010, the aforementioned organizations signed the Cross-Strait Investment Protection and Promotion Agreement in Taipei in August 2012.³ Against this background, there has been growing voices in further opening up the cross-strait legal services markets.⁴ We consider it necessary to review the past and present of the evolution of the cross-strait legal services markets and subsequently explore possibilities for further development.

This article contains five parts. The first part is the introduction to the research background and methodology. The second part examines the history and current situation of the opening-up of one side's legal services market to the other side of the Strait, with a focus on the mainland's policies regarding Taiwan residents sitting the PRC National Judicial Exam (Bar Exam) and

¹ 中华人民共和国商务部网站: 2012 年 1-11 月大陆与台湾贸易、投资情况 [MINISTRY OF COMMERCE OF CHINA: CROSS-STRAIT TRADE AND INVESTMENT STATISTICS FROM JANUARY TO NOVEMBER 2012] (Dec.24, 2012, 4:02PM), <http://www.mofcom.gov.cn/aarticle/tongjiziliao/fuwzn/diaoca/201212/20121208496464.html>.

² 新华社: 四年来两岸双向旅游交流总人数近 2400 万人次 [XINHUA NEWS AGENCY: MUTUAL TOURS ACROSS THE STRAIT HAVE REACHED 24 MILLION PERSON-TIMES FROM 2008 TO 2011] (Aug.8, 2012, 8:10PM), http://www.gov.cn/jrzq/2012-08/08/content_2200647.htm.

³ 中央政府门户网站: 海峡两岸投资保护和促进协议 [PRC CENTRAL GOVERNMENT: CROSS-STRAIT INVESTMENT PROTECTION AND PROMOTION AGREEMENT] (Aug.9, 2012, 4:46PM), http://www.gov.cn/jrzq/2012-08/09/content_2201292.htm.

⁴ Phone interview and email correspondence between the authors and Taiwanese lawyer Ruan Pinjia (阮品嘉).

Taiwan law firms setting up representative offices in the mainland. The third part places the discussion of cross-strait legal services markets development in the context of globalization and regional economic integration. For the purposes of comparison, Hong Kong and Macau are taken into consideration here so as to provide helpful insights. The fourth part lists and analyzes a few possibilities in promoting the opening-up of the cross-strait legal services markets based on the foregoing discussion. The fifth and final part gives a brief conclusion.

In the writing of this article, public governmental documents, speeches given by governmental officials, relevant law texts and news coverage have been referred to. The authors also conducted extensive interviews with numerous lawyers from both the mainland and Taiwan in Beijing, Shanghai, Wuhan, Xiamen and Hong Kong. Businessmen from Taiwan and certain officials in charge of Taiwan affairs in the mainland were also interviewed.⁵

In this article, the authors use "the Strait" when referring to the Taiwan Strait. "Both sides" and "Cross-strait" refer to mainland China and Taiwan. Mainland China is sometimes referred to as the "PRC" or the mainland and Taiwan as the "Taiwan region."⁶ Regarding governmental departments such as the Ministry of Justice, context is provided so that the reader can discern whether the department in which is that of the Ministry of People's Public of China or of the Republic of China. The authors hope it will not cause unnecessary confusion for readers.

I. THE PAST AND PRESENT OF CROSS-STRAIT LEGAL SERVICES MARKET DEVELOPMENT

A. Mainland China Opens Up its National Judicial Exam (NJE) to Taiwan Residents

The legal profession system has experienced several ups and downs in mainland China since 1949. By 1957, the legal profession had taken shape in China. There were already more than 2,800 fulltime and part-time lawyers, as well as 800 legal advice offices (法律顾问处). However, the following Anti-rightist Movement and Cultural Revolution left a 20-year blank of lawyering in

⁵ However, once the interviewed officials became aware that the interview may be reflected in an article expected to be published overseas – even in an academic journal – they considered the subject to be very sensitive. They strongly requested not to include their names in the article, even not to quote their words directly. They usually said "It's enough that you know what I mean". Though not being able to properly credit those interviewees through direct quotations, their insights and comments are reflected in this article. The authors would like to express deep gratitude for their help.

⁶ The above choices of words are only for the convenience of writing or quotations of relevant law texts and literature, and they do not necessarily reflect the authors' attitude towards political stands such as "One China" or "One China, One Taiwan".

China.⁷ The legal profession has resumed since the Reform and Opening Up in the 1980s and has welcomed its sharp development since the establishment of the Socialist Market Economy in 1992. In 2001, the Ministry of Justice (MoJ), together with the Supreme People's Court and the Supreme People's Procuratorate, passed the Measures for Implementation of the National Judicial Exam (for Trial Implementation) and began to carry out unified exams for candidates of judges, procurators and lawyers, witnessing the official establishment of NJE system.⁸ By the end of 2012, there were approximately 230 thousand lawyers and twenty thousand law firms in the mainland.⁹

As early as 1994, the mainland first permitted residents from Hong Kong, Macau and Taiwan to sit for the NJE,¹⁰ with three Taiwan residents passing the

⁷ Zhang Shanyi (张善燚), *Zhongguo Lüshi Zhidu Zhuanti Yanjiu* (中国律师制度专题研究) [THEMATIC RESEARCH ON THE LAWYERS SYSTEM IN CHINA] 173-174 (2007). See also, Wang Gongyi (王公义), *Lüshi shi Shenme: Xin Zhongguo Lüshiye 60nian Wuge Fazhan Jieduan de Lixing Sikao* (律师是什么——新中国律师业 60 年五个发展阶段的理性思考) [What Is A Lawyer: Thoughts on the Five Development Phases of Lawyering Business in P.R.C over the Past Sixty Years], *Zhongguo Sifa* (中国司法) [JUSTICE OF CHINA], no. 12, 2009.

⁸ The *Judges Law of the People's Republic of China* and *Public Procurators Law of the People's Republic of China* were passed and came into effect in 1995. According to these two statutes, Courts and Procuratorates established the exam system for candidates of judges and procurators. It was stipulated that only those who passed the exam were able to be nominated before the People's Congress for designation as judges and procuratorates. And there had been 11 Bar Exam sessions from 1986 to 2001. These three types of legal profession exams were different from each other in terms of applicants, subject setting and test questions. The law community in the Mainland had long been calling for a unified system of national legal profession qualification. On June 30, 2001 the 22nd session of the Ninth National People's Congress Standing Committee reviewed the Judges Law and the Public Procurators Law and added one article to both laws stipulating that a unified exam system would apply to candidates of judges, procurators and lawyers. On October 31, 2001 the Supreme People's Court and the Supreme People's Procuratorate jointly announced the *Measures for Implementation of the National Judicial Exam (for Trial Implementation)* according to which candidates for judges, procurators and lawyers are required to pass the NJE. The number of successful candidates and admission scores are announced after deliberation among the Ministry of Justice, the Supreme People's Court and the Supreme Procuratorate. All successful candidates would be awarded the Legal Profession Qualification Certificate issued by the Ministry of Justice.

⁹ 法制网: 我国律师人数已近 23 万 [LEGAL DAILY: NUMBER OF LAWYERS IN CHINA IS APPROACHING 230 THOUSAND] (Dec.16, 2012, 3:53PM), http://www.legaldaily.com.cn/index/content/2012-12/16/content_4058446.htm?node=20908.

¹⁰ The Lawyer Qualification Exam (LQE) predated the National Judicial Exam and was replaced by the latter in 2001. The LQE started in 1986 and it was stipulated that one needs to pass the exam to be eligible to practice law. Since then, LQEs were held every two years in 1988, 1990 and 1992. Since 1993, LQEs were held annually. By 2000 there organized 11 LQEs in total.

exam.¹¹ Nevertheless, the first attempt did not last because it did not ensure the status of those lawyers' practicing in the mainland. On April 16, 2008, the Taiwan Affairs Office of the State Council (TAOSC) announced the decision made by the MoJ in its routine press conference that Taiwan residents were allowed to take the NJE in mainland China. Those who passed the exam would be awarded the Legal Profession Qualification Certificate by the MoJ.

On June 4, 2008, the MoJ released the Regulations on Taiwan Residents' Sitting for the National Judicial Exam and officially opened the door for Taiwan residents to take part in the NJE in the mainland. Soon after that, MoJ, together with the Supreme People's Court and the Supreme People's Procuratorate, passed the revised version of the Measures for the Implementation of the National Judicial Examination. It is stipulated in the Regulations that those who intend to sit for the NJE are required to satisfy the following criteria: the applicant needs to 1) own Taiwan resident status; 2) have full legal capacity; 3) have finished university education or above, or has earned a Bachelor degree or above; 4) have never been subjected to criminal punishment out of intentional offense; 5) not possess a second nationality. Taiwan residents who have finished their university education in mainland China are able to apply for the exam. Applicants who have finished university education or have earned degrees in the Taiwan, Hong Kong and Macau regions or abroad are able to register for the exam upon the verification of their degrees by the Ministry of Education Chinese Service Center for Scholarly Exchange.¹² This announcement gained positive responses from Taiwan. It was commented that this had provided new opportunities for legal professionals in Taiwan.¹³

In September 2008, the MoJ issued the Administrative Measures for the Practice of Law in the Mainland by Taiwan Residents Holding the National Legal Profession Qualifications, according to which Taiwan residents who passed the exam are able to practice law in the mainland's law firms. They are allowed to engage in non-litigation services in forms of consultation, advising and representation regarding PRC legal affairs, and acting as representatives in litigations regarding cross-strait marriage and inheritance. It is also possible

¹¹ 新华网: 台湾法律界: 大陆开放司法考试是一大“利好” [XINHUA NEWS: TAIWAN LAWYERING: THE OPENING UP OF JUDICIAL EXAM IN MAINLAND CHINA IS BENEFICIAL] (Apr. 27, 2008, 11:34 AM), http://news.xinhuanet.com/legal/2008-04/27/content_8059484.htm.

¹² Taiwan Jumin Canjia Guojia Sifa Kaoshi Ruogan Guiding (台湾居民参加国家司法考试若干规定) [REGULATIONS ON TAIWAN RESIDENTS' SITTING FOR THE NATIONAL JUDICIAL EXAM] (promulgated by the MoJ, Jun. 4, 2008, effective Jun. 4, 2008) (Central Government) (China), available at http://www.gov.cn/flfg/2008-06/06/content_1008714.htm.

¹³ Zhao Lei & Jiang Sa (赵蕾&江飒), 14nian Hou, Dalu dui Tai Chongkai Sifa Kaoshi Damen (14年后, 大陆对台重开司法考试大门) [Mainland China Reopened the Door of NJE to Taiwan After 14 years], SOUTHERN WEEKLY, Oct. 2, 2008.

for them to gain partnership in the mainland's law firms, subject to certain conditions.¹⁴

Through 2008, there were 818 Taiwan residents living in the mainland, Hong Kong, Macau and Taiwan who registered for the exam, of which 658 took the exam. 37 passed the exam with the passage rate of 5.6%.¹⁵ By 2011, there had been 2,030 Taiwan residents in total who registered for the exam, 140 of whom passed, and more than 20 among those whom obtained the PRC practicing licenses.¹⁶

B. Mainland China Permits Taiwan Law Firms to Set Up Representative Offices in the Mainland

In the first session of the Cross-Strait Forum held on May 17, 2009, the Director of TAOSC Wang Yi announced a pilot project to set up branch offices of Taiwan law firms in Fuzhou City and Xiamen City, allowing Taiwan law firms to engage in cross-strait civil law consultation services. In the same year, the Fujian Provincial Department of Justice released the Measures for Implementation of the Pilot Project on Setting Up Representative Offices of Taiwan Law Firms in Fuzhou and Xiamen, providing conditions of setting up representative offices and the scope of business. It is stipulated that the representative offices and the representatives therein are only able to engage in the following legal services excluding mainland legal affairs: 1) consultation on legal affairs regarding the Taiwan region and other states or regions where it has been approved to practice law, and on relevant commercial treaties and customs; 2) dealing with legal affairs regarding Taiwan region with authorization of the clients or mainland law firms; 3) representing Taiwan clients to authorize mainland law firms to deal with legal affairs regarding mainland China; 4) maintaining long-term clientage with mainland law firms through concluding contracts in dealing with legal affairs. The representative offices are not permitted to employ mainland practicing lawyers. Supporting

¹⁴ Qude Guojia Falü Zhiye Zige de Taiwan Jumin zai Dalu Congshi Lüshi Zhiye Guanli Banfa (取得国家法律职业资格在台湾居民在大陆从事律师职业管理办法) [ADMINISTRATIVE MEASURES FOR THE PRACTICE OF LAW IN THE MAINLAND BY TAIWAN RESIDENTS HOLDING THE NATIONAL LEGAL PROFESSION QUALIFICATIONS] (promulgated by the MoJ, Dec. 21, 2008, effective Jan. 1, 2009) (Central Government) (China), available at http://www.gov.cn/gongbao/content/2009/content_1336364.htm.

¹⁵ 中华人民共和国司法部网站: 37 名台湾居民获法律职业资格证书 [MINISTRY OF JUSTICE OF CHINA: 37 TAIWAN RESIDENTS OBTAINED LEGAL PROFESSION QUALIFICATION] (May 31, 2009, 10:37AM), http://www.moj.gov.cn/sfks/content/2009-05/31/content_1098256.htm?node=8008.

¹⁶ 国务院台办:台湾居民连续四年参加大陆司法考试 [TAIWAN AFFAIRS OFFICE OF THE STATE COUNCIL: TAIWAN RESIDENTS HAVE SIT IN NJE FOR 4 YEARS] (Nov. 16, 2011, 3:47PM), http://www.gov.cn/jrzq/2011-11/16/content_1994900.htm.

or assisting employees are not permitted to provide legal services to clients.¹⁷ So far, there are seven Taiwan law firms that have set up representative offices in Fuzhou and Xiamen.¹⁸

C. The Opening Up of Taiwan Legal Services Market to Mainland China

Before the lifting of the Martial Law in 1987, there were very few lawyers in Taiwan and those lawyers could only perform very limited functions. The authorities used the lawyer disciplinary committee to control the activities of lawyers. The Bar Associations did not enjoy autonomous status. After 1987, especially in 1989, the limitation on the passage rate of the Bar Exam had been relaxed to a large extent and that was when the lawyering business in Taiwan achieved considerable development. Currently, there are separate exams for lawyers and judicial officials in the Taiwan region. The Bar Exam is categorized as a senior examination while the Judicial Official Exam is categorized as a special examination which is equivalent to the senior level. These exams are difficult and the passage rates are low. Therefore, the qualified practitioners are usually very competent. By October 2008, there were 10,639 lawyers in Taiwan, of whom 5899 were practicing law on a day-to-day basis.¹⁹

So far Taiwan has not yet opened up its Bar Exam or Judicial Official Exam to mainland residents, or permitted mainland law firms to set up representative offices in Taiwan. However, since the conclusion of the Economic Cooperation Framework Agreement (ECFA), the cross-strait economic cooperation has reached the level of industrial integration. Taiwan's investments have been expanding in the mainland while the mainland's investments have made their way in Taiwan. As the demand for cross-strait

¹⁷ Taiwan Diqu Lüshi Shiwusuo zai Fuzhou Xiamen Sheli Daibiao Jigou Shidian Gongzuo Shishi Banfa (台湾地区律师事务所在福州厦门设立代表机构试点工作实施办法) [MEASURES FOR IMPLEMENTATION OF THE PILOT PROJECT ON SETTING UP REPRESENTATIVE OFFICES OF TAIWAN LAW FIRMS IN FUZHOU AND XIAMEN] (legalinfo) (China), available at http://www.legalinfo.gov.cn/index/content/2010-09/19/content_2293605.htm?node=7864.

¹⁸ 国台办:台湾律师事务所驻福州、厦门代表处[TAOSC: REPRESENTATIVE OFFICES OF TAIWAN LAW FIRMS STATIONED IN FUZHOU AND XIAMEN] (Oct.30, 2012), http://www.gwytb.gov.cn/guide_rules/service/201210/t20121030_3250630.htm. See also, 福建省司法厅网站:福建省司法厅关于准予台湾地区理律法律事务所在福州市设立代表处决定书[DEPARTMENT OF JUSTICE OF FUJIAN PROVINCE: FUJIAN PROVINCIAL DEPARTMENT OF JUSTICE PERMISSION ON SETTING UP REPRESENTATIVE OFFICE IN FUJIAN CITY BY TAIWAN LILV LAW FIRM] (Dec. 27, 2010, 11:48AM), http://www.fjsf.gov.cn/html/12/23/58605_201012271149.html.

¹⁹ Wei Chien Feng (魏千峰), Taiwan Lüshi Zhidu zhi Guoqu, Xianzai yu Weilai (台湾律师制度之过去、现在与未来) [THE PAST, PRESENT AND FUTURE OF TAIWAN LAWYER SYSTEM], unpublished working paper, on file with the authors.

legal services rises, the opening-up of Taiwan legal services market is expected to be the trend of the near future.²⁰

It is worth noting that the Taiwan Dacheng Law Firm was founded in Taipei in May 2010. It is the first law firm jointly established by a mainland law firm and established by a Taiwanese one, in this case, Dacheng Law Firm and two Taiwan law firms, respectively. The law firm has also set up a cross-strait market department.²¹ This innovation shows that lawyers on both sides have been seeking possibilities for cooperation.

II. THE IMPACT OF GLOBALIZATION AND REGIONALIZATION ON THE LEGAL SERVICES MARKETS ACROSS THE STRAIT

A. Opportunities and Challenges Facing the Mainland Legal Services Market Under the WTO Framework

During the wave of economic globalization, mainland China, Hong Kong, Macau, and the Taiwan regions have all joined the WTO. Service trade has become more and more important in a country's economic development across the globe. According to the Services Sector Classification List, legal service is a sub-category of the Professional Services under the Business Services Category and is regulated by the General Agreement on Trade in Services (GATS).

Having experienced the reform and opening-up for more than 30 years, the legal system has been improved in mainland China and has formed a multi-layered legal services market led by lawyering services. As early as 1992, the mainland has initiated pilots projects where foreign and Hong Kong law firms had set up representative offices, marking the opening-up of legal services to the outside. In 2001, the PRC joined the WTO and pledged to open up its legal services market.²² By the end of 2011, there were more than 200

²⁰ Phone interview and email correspondence between the authors and Taiwanese lawyer Ruan Pinjia (阮品嘉).

²¹ Interview with lawyer Hu Weixing(胡卫星), Dacheng Law Firm (大成律师事务所), in Beijing (Jan. 17, 2013).

²² In the PRC Accession Protocol Annex 9 "The Schedule of Specific Commitments on the Services List of Article II of the MFN Exemptions", China has made following commitments in regard to legal services (excluding Chinese law practice): 1) No limitations on market access; 2) Foreign law firms can provide legal services only in the form of representative offices in Beijing, Shanghai, Guangzhou, Shenzhen, Haikou, Dalian, Qingdao, Ningbo, Yantai, Tianjin, Suzhou, Xiamen, Zhuhai, Hangzhou, Fuzhou, Wuhan, Chengdu, Shenyang and Kunming only; 3) Representative offices can engage in profit-making activities; 4) Representative offices in China shall be no less than the number established upon the date of accession. A foreign law firm can only establish one representative office in China; 5). The above-mentioned geographic and quantitative limitations will be eliminated within one year after China's accession to the WTO; 6) No limitations on national treatment. All representatives shall be resident

representative offices of foreign law firms approved to practice law in China. Meanwhile, many large domestic law firms have started to expand their business overseas, setting up branch offices in countries such as the United States, Germany, Japan, Canada and the Netherlands and carrying out various forms of international communication and cooperation with their counterparts all over the world. Joining the WTO means the further opening-up of the domestic legal services market and more intense competition. At the same time, it also provides new opportunities and builds up new platforms for the legal services business in China to become smoothly and fully integrated into the international market. On one hand, it promotes the external economic communication and cooperation and stimulates the demand for legal services at home and abroad, which is helpful in expanding the scope and enriching the content of legal services. On the other hand, it pushes forward the multi-dimensional and multi-layered opening-up of the service industry in China and accelerates the internationalization of China's domestic market. This has placed pressure on domestic lawyering services market while arousing its vitality. As a consequence, the practitioners are motivated to learn from their international counterparts so as to work towards scaling up and professionalization, and to enhance the overall quality and competitiveness of the industry.

B. The Opening-Up of Legal Services Markets among Mainland China, Hong Kong and Macau

Though mainland China, Hong Kong, and Macau are all WTO members, they belong to one country and have close relations in every aspect. Mainland China signed a Closer Economic Partnership Arrangement (CEPA) with Hong Kong and Macau on September 23, 2003 and October 17, 2003, respectively, which have provided a direct legal basis for economic relations between mainland China and the two special administrative regions.

It can be seen that mainland China has offered more preferential measures to Hong Kong regarding legal services business under the Accession Protocol and CEPA with Hong Kong than under the general arrangements in the Protocol.²³ Besides, MoJ has signed a conference memorandum with relevant

in China no less than six months each year; 7). The representative office shall not employ Chinese nationals who are registered lawyers outside of China.

²³ Annex 4 of the Hong Kong CEPA and the subsequent supplements have made the following concrete pledges regarding the legal services (CPC86i) market access: 1) To allow Hong Kong law firms (offices) that have set up representative offices in the Mainland to operate in association with Mainland law firms, except in the form of partnership. Hong Kong lawyers participating in such association cannot handle matters of Mainland law. 2) To allow Mainland law firms to employ Hong Kong legal practitioners. Such practitioners who are employed by Mainland law firms must not handle matters of Mainland law. 3) To allow the 15 Hong Kong lawyers who have already acquired Mainland lawyer qualifications to intern and practice non-litigation legal work in the Mainland. 4) To allow Hong Kong permanent residents with Chinese

departments of the Hong Kong and Macau governments in 2004, respectively, allowing Chinese citizens from Hong Kong and Macau to sit for the NJE. This policy has gained strong support from the government departments in the above two regions and the residents therein as well. Through 2004, there were 522 persons who applied to sit for the NJE, with 460 from Hong Kong and 62

citizenship to sit for the legal qualifying examination in the Mainland and acquire Mainland legal professional qualification in accordance with the "State Judicial Examination Implementation Measures". 5) To allow those who have acquired Mainland legal professional qualification under item 4 above to engage in non-litigation legal work in Mainland law firms in accordance with the "Law of the People's Republic of China on Lawyers". 6) The minimum residency requirement is waived for all Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms (offices) located in Shenzhen and Guangzhou. For the Hong Kong representatives stationed in the Mainland representative offices of Hong Kong law firms (offices) located in places other than Shenzhen and Guangzhou, their minimum residency requirement is two months each year. 7) Hong Kong lawyers providing professional assistance at the request of Mainland law firms on the basis of individual cases will not be required to apply for a Hong Kong legal consultant permit. 8) To allow a Hong Kong law firm (office) that has set up a representative office in the Mainland to operate in association with one Mainland law firm situated in the province, autonomous region or municipality where its representative office is situated. 9) A Hong Kong resident who is allowed to practice in the Mainland will practice in one Mainland law firm only, and will not simultaneously be employed by the representative office set up by a law firm of a foreign country in China, or the representative office set up by a law firm of Hong Kong or Macao in the Mainland. 10) To waive the requirement on the number of full-time lawyers employed by Mainland law firms that operate in association with Hong Kong law firms (offices). 11) To waive the residency requirement in the Mainland for representatives stationed in representative offices of Hong Kong law firms (offices) in the Mainland. 12) To allow Hong Kong residents who have acquired Mainland lawyer qualifications or legal professional qualifications and hold a Mainland lawyer's practice certificate to engage in activities as agents in matrimonial and succession cases relating to Hong Kong in the capacity of Mainland lawyers. 13) To allow Hong Kong barristers to act as agents in civil litigation cases in the Mainland in the capacity of citizens. 14) To allow Hong Kong residents who have acquired Mainland lawyer qualifications or legal professional qualifications to undergo 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* as required in the Mainland. 15) To allow a Hong Kong law firm (office) that has set up a representative office in the Mainland to operate in association with one Mainland law firm. There is no geographic restriction on the Mainland law firm in association. 16) To allow Hong Kong legal practitioners who have at least 5 years' experience in legal practice and who have passed the National Judicial Examination to undergo the intensive training offered by lawyers associations in the Mainland that lasts for at least one month in accordance with the "Law of the People's Republic of China on Lawyers" and the provisions of the "Rules on Management of Internship for Application for Legal Practice (Provisional)" drawn up by the All-China Lawyers Association. Upon completion of the training and passing the assessment, they can apply to practice as lawyers in the Mainland. 17) To allow Hong Kong law firms which have set up representative offices in the Mainland to operate in association with Mainland law firms in Guangdong Province which have been established for one year or more and at least one of the persons who established the firm must have been in legal practice for five years or more.

from Macau. Those who pass the exam will be able to practice law in mainland China according to CEPA regulations, which allows legal services providers from Hong Kong and Macau to enter into the mainland market in advance of the opening-up timetable prescribed in the WTO pledges. Soon afterwards, the MoJ promulgated and amended administrative rules to regulate relevant issues. The rules included Provisions on Hong Kong and Macao Permanent Residents' Sitting for the National Judicial Exam, Measures for the Administration of Legal Practice in the Mainland by Hong Kong and Macau Residents Holding the Legal Profession Qualification of the Mainland, Measures for the Administration of the Representative Offices of Hong Kong and Macau Law Firms Stationed in Mainland China and Measures for the Administration of Associations Formed by Law Firms of the Hong Kong or Macao and Mainland Law Firms.

C. Legal Services in Mainland-Hong Kong CEPA: Any Hint for ECFA?

There are a few remarkable points regarding the legal services access mechanism in the annexes and supplements of the Mainland-Hong Kong CEP. First, it allows mainland and Hong Kong law firms to operate in association and provides legal cooperation modes. Second, it allows mainland law firms to employ Hong Kong legal practitioners. Third, it allows Hong Kong residents who have acquired mainland lawyering qualifications or legal profession qualifications and hold practicing licenses to engage in activities as agents in matrimonial and succession cases relating to Hong Kong in the capacity of mainland lawyers and allows Hong Kong barristers to act as agents in civil litigation in mainland China in the capacity of citizen representatives. Lastly, it allows Hong Kong law firms which have set up representative offices in the mainland to operate in association with mainland law firms in Guangdong Province, which have been established for one year or more and at least one of the founding members of the firm must have been in legal practice for five years or more. All these points do not exist in the regulations regarding the opening-up of cross-strait legal services markets.

Encouraged by the above policies, 62 representative offices of Hong Kong law firms had gone through the 2011 annual review by 2012 and have been approved to practice law in the mainland providing legal services relating to Hong Kong and abroad.²⁴ As part of the service trade, legal services have not yet been officially opened up under the Mainland-Taiwan ECFA mechanism. However, we believe that CEPA would provide guidance to the development of ECFA. It is expected that ultimately, the legal services markets across the strait and in all the four regions will become further integrated.

²⁴ 关于 219 家外国律所驻华代表机构通过 2011 年度检验获准在中国境内执业的公告 [ANNOUNCEMENT OF 219 REPRESENTATIVE OFFICES OF FOREIGN LAW FIRMS PASSING 2011 ANNUAL REQUALIFICATION AND GETTING APPROVED IN PRACTICING LAW IN CHINA] (Oct.15, 2012 9:20AM), http://www.moj.gov.cn/lsgzgzzds/content/2012-10/15/content_3902857_26.htm.

III. POSSIBILITIES IN DEEPENING THE OPENING-UP OF CROSS-STRAIT LEGAL SERVICES MARKETS

A. Exchange and Cooperation among Lawyers

Though across the water from each other, the legal systems of mainland China and Taiwan have shared origins and have succeeded the traditional Chinese historical culture. There clearly exists the basis for mutual learning and joint development.

Bar associations on both sides have been keeping friendly communications and actively seeking possibilities of lawyering cooperation across the strait alone or together,²⁵ for example, through organizing the Strait Lawyer Forums. However, these communications have not yet been institutionalized and routinized. The organization of bar associations from both sides taking measures to strengthen the cross-strait lawyer communications will further promote the sharing of lawyer resources across the strait and achieve complementary advantages. This will positively affect the exchanges in cross-strait service trade and communications among compatriots on both sides.

There has not yet been a comprehensive and normalized system of judicial assistance established between mainland China and Taiwan due to historical and political reasons. Legal documents such as The PRC Supreme People's Court Provisions on the People's Courts' Recognition of Civil Judgments Delivered by Relevant Courts in Taiwan Region, the Provisions on the Recognition of Civil Judgments Delivered by Relevant Courts in Taiwan Region and the recent Supplementary Provisions, and the Act on Relations between the People of Taiwan Region and Mainland China have solved the problem in recognizing part of the civil and commercial judgments. However, the problems of investigation and evidence collection in civil, commercial, and criminal cases have been left unsolved. Legislation is needed on both sides to break through the limits of the current system.

B. Exploring New Lawyering Cooperation Modes

As mentioned above, mainland lawyers are not allowed to practice law in Taiwan yet, though it has been put on the agenda: the Taiwan MoJ convened all bar association members to discuss mainland law firms' practice in Taiwan in August 2010. It is believed that Taiwan will not officially open up its legal services market to mainland China in the foreseeable future.²⁶ Regarding the

²⁵ For a recent example please see 中華民國律師公會全國聯合會: 研商兩岸法律服務業相關問題座談會 [REPUBLIC OF CHINA BAR ASSOCIATION: CONVERSAZIONE ON ISSUES OF CROSS-STRAIT LEGAL SERVICES] (Sept. 11, 2012), http://www.twba.org.tw/News_detail.asp?N_id=707.

²⁶ Interview with lawyer Hu Weixing (胡卫星), Dacheng Law Firm (大成律师事务所), in Beijing (Jan. 17, 2013).

practice of Taiwan lawyers in mainland China, there are mainly three possible modes of cooperation: first, Taiwan lawyers getting employed by or working as partners in mainland law firms; second, Taiwan law firms setting up representative offices in the mainland; third, Taiwan law firms establishing an association with mainland law firms. According to the current situation, the first does not seem to be promising. By 2011, of the 140 Taiwan residents who passed the NJE, only 16 of them chose to practice in the mainland. Reasons may include the high costs in terms of time and finance in travelling across the strait and worries of corruption and the lack of transparency in the operation of law in mainland China.²⁷ Under the second mode, currently Taiwan law firms are only allowed to establish representative offices in Fuzhou City and Xiamen City in Fujian Province. There are seven representative offices in the above two cities now but “none of them is in actual operation”.²⁸ Double restrictions on location and business scope have made them unable to undertake large projects.

At present, lawyers are optimistic about the third mode. The L&L-Leaven Attorneys at Law, opened at the end of October 2012, is backed by Taiwan Lee and Li Attorneys at Law. As the largest law firm in Taiwan, Lee and Li chose to cooperate with Shanghai Leaven Attorneys-at-Law in 2009.²⁹ The main strategy was to recommend mainland lawyers to Taiwan businessmen through Leaven. In 2012, Lee and Li adjusted its alliance strategy and helped establish the L&L-Leaven Law firm by promoting Leaven’s accession with Shanghai Jingheng Law Firm. The focus of the new firm is to serve Taiwan enterprises. Dacheng Taiwan Law Firm, for instance, is called “a legal services organization established in Taiwan through unique mode of cooperation between lawyers across the strait”. It is operated as a branch of Beijing Dacheng Law Firm, using uniformed logo, enforcing uniformed client service standards and partners participating in the senior partner meetings. Dacheng Taiwan Law Firm can also enter into the integrated information management system in the Dacheng global legal services network to share resources.³⁰ The above explorative modes are innovative “association modes” by making flexible adaptations in circumstances where lacks of institutional arrangements.

²⁷ Interview with anonymous Taiwanese lawyer, in Shanghai (July 20, 2012); and interview with Helan Su, a Taiwanese lawyer who practices in the U.S., in Wuhan (Nov. 16, 2012). See also, Zhao Yihai, Xuli and Liu Zhibing (赵一海, 徐丽&刘治兵), Ji Dong Falü, You Dong Zhengzhi: Taiji Lüshi Tiyan Dalu Fazhi (既懂法律, 又懂政治: 台籍律师体验大陆法治) [*Knowing Law and Politics as well: Taiwan Lawyer Experiencing Mainland Rule of Law*], SOUTHERN WEEKLY, Nov.18, 2011.

²⁸ 中国新闻网: 台湾律师事务所进军大陆 打联盟牌服务投资台商[CHINA NEWS: TAIWAN LAW FIRM ENTERS THE MAINLAND USING ALLIANCE STRATEGY TO SERVE TAIWAN INVESTORS] (Dec.10, 2012, 10:28AM), <http://www.chinanews.com/tw/2012/12-10/4394951.shtml>.

²⁹ Ibid.

³⁰ 法制网: 两岸律师合作: 仍缺制度准备 [LEGAL DAILY: CROSS-STRAIT LAWYERING COOPERATION STILL LACKS INSTITUTIONAL PREPARATIONS], http://www.legaldaily.com.cn/zmbm/content/2011-03/17/content_2519171.htm?node=20350 (last visited Feb.3, 2013).

CONCLUSION

As the economic interactions across the strait become more frequent and active, and facing the new situations resulting from the economic globalization and regional economic integration, it has been increasingly urgent for both sides to realize the routinization, institutionalization, and liberalization of their legal services markets. The opening-up of the legal services markets becomes more and more important. This can be achieved through constructing lawyering cooperation institutions, developing corresponding regulations in facilitating the cooperation, exploring innovative cooperation modes and the like.

It is also worth noting that the current opening-up of the legal services markets across the strait mainly focuses on promoting investment and trade. The main areas of practice for lawyers in this regard are economy and trade, intellectual property, marriage and inheritance. On August 9, 2012, the Association for Relations across the Taiwan Straits (ARATS) and the Straits Exchange Foundation (SEF) announced the Common Understanding between ARATS and SEF on Personal Freedom and Security in the Cross-strait Investment Protection and Promotion Agreement, where issues such as civil freedom, family visits and access to lawyers were raised for the first time.³¹ Much has to be done in the fields of civil rights and political rights for lawyers across the strait. In particular, the role of Taiwan lawyers in promoting the development of rule of law is worth consideration by mainland lawyers.³² It is hoped that the opening of legal services market across the strait and exchanges between lawyers therein can boost stronger motivation and prospect in the development of rule of law across the strait, especially in the mainland.

³¹ 中央政府门户网站:两岸投资者及相关人员人身自由与安保加强达成共识[CENTRAL GOVERNMENT: COMMON UNDERSTANDING ON PERSONAL FREEDOM AND SECURITY OF INVESTORS ACROSS THE STRAIT AND RELEVANT PERSONNEL] (Aug.9, 2012, 3:27PM), http://www.gov.cn/jrzq/2012-08/09/content_2201221.htm.

³² Interview with Attorney Wei Chien Feng (魏千峰), a part-time associate professor in law, Soochow University, in Hong Kong (Dec. 9, 2012).

