

# **CEPA - Closer Economic Partnership Arrangement - Hong Kong and Mainland:**

## **Legal Issues in Taking Advantage of CEPA**

**Jon Johnson, Partner, Goodmans LLP**

250 Yonge Street, Suite 2400, Toronto, ON M5B 2M6

T: 416.597.4121 E: [jjohnson@goodmans.ca](mailto:jjohnson@goodmans.ca)

**Goodmans**

# What is CEPA?

- CEPA is a trade liberalization agreement
- Practical significance – improved market access to the Mainland from Hong Kong
  - Goods
  - Services

# Improved Access for Goods

- 273 categories of Hong Kong produced goods became duty-free for entry to the Mainland on Jan 1, 2004
  - Ice cream
  - Certain medicines
  - Various make-up products
  - Some chemical products, paints
  - Various textiles and apparel goods
  - Parts for footwear

# Improved Access for Goods (cont.)

- Jewellery
  - Various metal articles
  - Certain equipment – particularly electrical
  - Optical fibre bundles and cables
  - Camera parts, optical appliances and parts
  - Certain clocks, watches and parts
  - Certain toys
- 
- Further liberalization by Jan 1, 2006

# Goods - Qualifications

- Goods must be produced in Hong Kong, though “outward processing” allowed
- Nationality or legal identity of producer irrelevant
- Goods Must Satisfy Rule of Origin
- Origin certified by defined issuing authorities

# Improved Access for Services

- Improved market access to Mainland for various categories of services
- Improved market access applies to Hong Kong companies that can qualify as “Hong Kong Service Suppliers” or “HKSS”
- An HKSS can be wholly foreign owned
- **CEPA Opportunity:** access to Mainland services market through acquiring a Hong Kong company

# Categories of Services

- Legal services
- Accounting auditing and bookkeeping services
- Architectural and engineering services
- Medical and dental services
- Certain real estate services
- Management consulting services
- Certain value-added telecommunications services
- Video distribution, cinema theatre services
- Chinese language motion pictures

## **Categories of Services (cont.)**

- Construction and related engineering services
- Commission agents and wholesale trade services
- Retail distribution services (excluding tobacco)
- Franchising
- Insurance Services
- Banking
- Securities
- Hotels and travel agencies
- Certain transportation and related services

# China WTO Services Commitments

- China acceded to the WTO on Dec 11, 2001, and assumed market access commitments respecting most of these service sectors
- Limitations in China's WTO Commitments
  - Often must be through a Joint Venture
  - Implementation delayed
  - Geographic limitations
  - Financial requirements
  - Combination of foregoing

# Improved Market Access for Services provided by an HKSS

- For services supplied in the Mainland by an HKSS
  - Can often be through wholly-owned entity, such as a Canadian-owned HKSS
  - Implementation immediate
  - Geographic limitations eliminated
  - Financial requirements reduced
- Must always compare CEPA with China WTO commitments

# Architectural and Engineering

- CEPA
  - Through wholly owned operations
- WTO
  - Only in form of joint ventures with majority foreign ownership permitted
  - Wholly-owned permitted within 5 years of accession (i.e. December 11, 2006)
- Conclusion
  - Can expedite access to Mainland through Hong Kong

# Real Estate Services

- CEPA
  - Wholly-owned operations permitted to provide “high standard real estate project services”
- WTO
  - Except for luxury hotels, wholly-owned operations cannot provide provide “high standard real estate project services”
- Conclusion
  - Can broaden market access to Mainland through Hong Kong

# Management Consulting Services

- CEPA
  - Through wholly-owned operations
- WTO
  - Must be through joint venture until December 11, 2007
- Conclusion
  - Can expedite access to Mainland through Hong Kong

# Cinema Theatre Services

- CEPA
  - Joint venture with up to 75% HKSS ownership
- WTO
  - Joint venture with maximum 49% foreign ownership
- Conclusion
  - Can increase degree of ultimate Canadian ownership through Hong Kong

# Construction Services

- CEPA
  - Wholly-owned enterprises permitted
  - Not subject to foreign ownership restrictions applicable to certain projects
- WTO
  - Wholly owned enterprises after December 11, 2004
  - Restricted to certain types of projects
- Conclusion
  - Can broaden scope of Mainland projects through Hong Kong

# Insurance

- CEPA
  - Hong Kong insurance companies can enter Mainland insurance market subject to asset requirements
- WTO
  - Restrictions on form of establishment, geographic area and business scope
- Conclusion
  - Can avoid various restrictions under China's WTO market commitments in this sector

# Banking

- CEPA
  - HK banks can set up branches and subsidiaries subject to asset requirements
- WTO
  - Various geographic limitations phased out by Dec 11, 2006
  - Considerably higher asset requirements
- Conclusion
  - Can expedite relief from geographic limitations and significantly lower asset requirements

# Criteria to be an HKSS

- Incorporated under relevant HK laws
- Have been supplying the services intended to be supplied in Mainland
- At least 3 years of operation (5 years for certain activities, such as banking & insurance)
- Hong Kong premises and at least 50% of staff HK residents
- Paid profits tax

# Documentary Requirements

- Status confirmed by TID (Trade and Industry Department of Hong Kong Special Administrative Region)
- Various documentary requirements to be satisfied

# Conclusion

- CEPA very useful for accessing Mainland Market through Hong Kong
  - Goods – producing goods in Hong Kong eligible for duty free entry
  - Services – supplying services through an HKSS and receiving improved market access