

## Establishing a business in Hong Kong

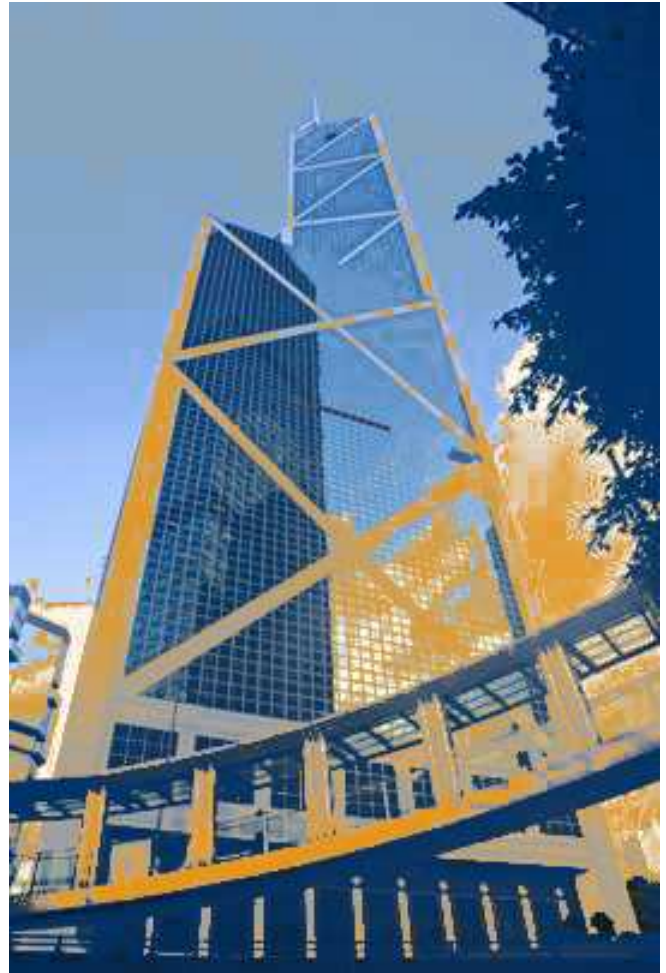
This guide is designed to give brief guidance in general terms on the principal matters to be taken into account when considering the establishment of a business in Hong Kong. The law on these topics is complex, stated as at January 2008 and subject to change. This article, therefore, cannot be a proper substitute for professional advice in specific instances.

### Introduction

Hong Kong has since 1 July 1997 been the Hong Kong Special Administrative Region of the People's Republic of China ("PRC"). Hong Kong has a separate legal system from that of mainland PRC. Much of Hong Kong's law is based on English statutes and common law, although historically both before and after 1 July 1997 Hong Kong and English laws have been diverging.

Hong Kong has few natural resources other than its port and therefore has to depend on imports for nearly all its requirements. As a result Hong Kong enjoys one of the world's leading free market economies and according to government publications was the eleventh largest trading entity in the world in 2006 with modern communications, banking and financial services. There are generally no restrictions on overseas investment in Hong Kong or the free movement of capital.

Following the adoption of open door trade policies by the PRC, Hong Kong and the PRC have become each other's largest trading partners. Moreover, in addition to trade, Hong Kong supplies the PRC with important financial and business services and access to its infrastructure such as the port and airport. Investment by each country in the other is also of increasing importance.



### Foreign Investment Controls and Trade

Hong Kong places no restrictions on the flow of capital into or out of the territory, no general restrictions on foreign ownership of land or assets (other than in very limited industries) and, in general, no restrictions on foreign investment into or through Hong Kong. Dividends from Hong Kong companies can be repatriated to overseas shareholders without tax becoming payable in Hong Kong.

Hong Kong is a free port and most goods may enter and leave without licence or duty being payable. The exceptions include textiles, further details of which are set out below, pharmaceuticals, pesticides, ozone layer depleting substances, strategic commodities such as high technology military products, and rice and meats, which are all subject to licensing on health, safety or security grounds.

Hong Kong is a contracting party to the General Agreement on Tariffs and Trade. Hong Kong is also a member of the World Trade Organization, the Customs Cooperation Council and the Asia Pacific Economic Cooperation. Furthermore, Hong Kong concluded the Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") in 2003, which is the first free trade agreement with mainland PRC. It opens up potentially huge markets for Hong Kong goods and services in mainland PRC and enhances the already close economic cooperation and integration between mainland PRC and Hong Kong. On the other hand, CEPA also enables Hong Kong to serve as a "springboard" for mainland PRC enterprises to reach out to the global market and accelerates mainland PRC's full integration with the world economy. Foreign investors are also welcome to establish businesses in Hong Kong to make use of the CEPA benefits and join hands in tapping the vast opportunities of the mainland PRC market. CEPA mainly covers three broad areas, namely trade in goods, trade in services and trade and investment facilitation.

The lack of restrictions upon operating a business in Hong Kong together with the incentives of its low tax regime, geographical position and communications links and its relatively sophisticated business environment allows the Hong Kong Government to avoid having to offer incentives or subsidies for any new business or investments to the same extent as some other countries. However, the Hong Kong Export Credit Insurance Corporation exists to provide insurance protection for Hong Kong exporters against non-payment risks arising from commercial and political events (although on a self funding basis) and the Hong Kong Trade Department Council organises various activities to assist Hong Kong trade.



## Business Entities

### Companies

The most common form of business entity in Hong Kong is a limited liability company, the vast majority of which are private and limited by shares. A private company is one which is prevented, by its constitution from having more than 50 registered holders of its shares (subject to certain exemptions for employees), restricts the right to transfer such shares and is prohibited from offering its shares or debentures to the public. It is also possible to have companies with unlimited liability and companies which are limited by guarantee but these are rare and, accordingly, not considered in this article.

There are certain statutory formalities with which a company must comply and which are largely contained in the Hong Kong Companies Ordinance. Compliance with these formalities is usually administered by the Hong Kong Companies Registry. Documents filed at the Companies Registry are in general open to public inspection. Public companies, being those whose shares or other securities are listed on the Stock Exchange of Hong Kong Limited, are subject to additional requirements and obligations primarily designed to ensure full disclosure of relevant information to shareholders and investors.

### Companies: Incorporation

Incorporation of a Hong Kong private company is relatively simple and takes approximately four working days from the date of filing certain prescribed documents including the company's proposed constitution.

A company's constitution is set out in its Memorandum and Articles of Association (as is the case in the United Kingdom) which respectively set out, inter alia, the objects of its business and the internal rules and regulations governing the conduct of the company. These documents must currently be prepared and filed in the English language. A company name cannot be reserved in advance but the list of existing registered names at the Companies Registry can be checked before seeking registration. Where a company has been registered with a name which is the same as or too similar to a name already appearing in the Registrar of Companies' index of names, the Registrar may within 12 months of the date of first registration direct the company to change its name. A company can be incorporated with an English name only, a Chinese name only or both an English name and a Chinese name. Notwithstanding the above, it is more common for a company to be adopted "off the shelf" and for the required changes to be made to its name and Memorandum and Articles of Association at that time. This process can be almost immediate (although, if the name of the shelf company as already incorporated needs to be changed, the official Certificate of Incorporation on Change of Name will take approximately 4 working days to obtain) and the company will usually be ready to trade. Many professional advisers in Hong Kong keep stocks of these companies available.

## Companies: Share Capital

In common with many other jurisdictions, a Hong Kong company has a separate legal identity and the liability of its shareholders is limited to the monetary amount which they have agreed to contribute as share capital. There is no minimum or maximum amount of share capital although capital duty is payable on the creation of authorised share capital at the rate of 0.1 per cent of its nominal value, subject to a maximum limit of HK\$30,000.

A company's share capital can be denominated in any currency. A company can have one or more shareholder and any such shareholder may hold the beneficial interest in its shares for another person whose identity need not be disclosed subject, however, in the case of a listed company, to the disclosure requirements of the Securities and Futures Ordinance. Shareholders can be natural persons or corporations of any nationality, domicile or residence. Bearer shares may not be created.

A record of the registered shareholders' names, addresses and shareholdings must be filed at the Companies Registry annually and entered in the company's register of members, the latter constituting evidence of legal ownership of shares.

Shares must have a stated par value and may be issued either as ordinary equity shares or as shares with special rights which are usually set out in the Articles of Association such as preferred or deferred rights to income or capital. The law allows a company to buy back its shares or give financial assistance for the purchase of its shares in certain limited circumstances.

## Companies: Directors and Secretary

A public company must have at least two directors while a private company must have at least one director. A corporate body may not be a director of a public company or a private company which is a member of a group of companies of which a Hong Kong listed company is a member. The name, identification information and residential address, along with other details of each director must be filed at the Companies Registry.

The board of directors are responsible for the management of a company although they may delegate certain functions, for example, to a managing director or committee. Unless powers are delegated by the board to individual directors, a director does not have any power on his own to commit the company in any way. Directors have fiduciary duties to act in good faith in the best interests of a company and statutory duties to declare to the board their interests in contracts or proposed contracts with the company.

Directors' powers are exercised through meetings of the board of directors. Meetings need not be held in Hong Kong and provision can be made in the Articles of Association permitting the directors to pass resolutions in writing and for telephonic board meetings to be held.

A company must also have a secretary who must be either a company incorporated in Hong Kong or registered in Hong Kong as a non-Hong Kong company (although listed companies are not permitted to have a corporate secretary) or an individual resident in Hong Kong.

A director may also act as the secretary of the company, but only if there is more than one director of the company. Professional firms frequently provide directors and secretarial services for overseas clients.

## Companies: Shareholders

All of the powers of a company which are not reserved to the directors are exercisable by the shareholders in general meetings which do not have to be held in Hong Kong.

Usually resolutions of the shareholders are passed by a simple majority (known as an ordinary resolution) but certain matters may need approval by special resolution. A special resolution requires the approval of more than three quarters of the shareholders at a general meeting. Matters specified by statute to require a special resolution include amending the Memorandum and the Articles of Association. Other such matters may be specified in the Articles of Association themselves.

The Companies Ordinance provides that shareholder resolutions can be passed without a meeting if all of the shareholders entitled to vote at general meetings agree in writing to such resolutions being passed.

## Companies: Accounts and Records

A company is required by statute to keep books of account which must give a true and fair view of its state of affairs and explain its transactions together with registers containing details of its members (i.e. shareholders) and debenture holders (e.g. holders of notes or bonds issued by the company), its directors and secretary and certain security interests created by it and minute books containing minutes of its directors' and shareholders' meetings. All of these except the minute books and the books of account are open to public inspection.

A company must also produce annual audited accounts which must be approved by the company at an annual meeting of its shareholders held not later than nine months after the end of each financial year and submitted to the Hong Kong Government's Inland Revenue Department. In the case of a private company these accounts are not required to be made public but non-private companies must file their accounts at the Companies Registry which is open to the public.

However, all companies are required to file annual returns at the Companies Registry which show particulars of their authorised and issued share capital, shareholders, directors and secured indebtedness as at the date of the return, which, in the case of a private company, should be within 42 days of the anniversary of its date of incorporation and, in all other cases, within 42 days after the company's annual general meeting.

## Companies: Dividends

A company can pay dividends out of its profits available for this purpose which are its accumulated realised profits less its accumulated realised losses. Dividends in specie are also possible.



## Other Business Entities

The other possible entities available to businessmen in Hong Kong are sole proprietorships, partnerships, or setting up a registered branch office or a non trading representative office.

### Sole Proprietorship

In order to carry on business as a sole proprietor it is simply necessary to obtain a business registration certificate (see below). As a sole proprietorship cannot exist as a separate legal entity, all of the liabilities of the business will fall personally on the sole proprietor.

## Partnership

The only formality which is required to carry on business as a partnership is a business registration certificate (see below). A partnership will be governed by its partnership agreement and, to the extent that it is not excluded, by the Partnership Ordinance.

The maximum number of partners is limited to 20 except in the case of certain professional partnerships such as lawyers and accountants.

However, a partnership does not constitute a separate legal entity and accordingly, does not exist apart from through its individual partners who are personally responsible for all of its debts and other liabilities. The partners are, subject to the terms of the partnership agreement (if any) or the Partnership Ordinance, equally entitled to the partnership's rights and assets. It is possible to have a limited partnership under the Limited Partnership Ordinance where liability is limited for some partners but these are rare in practice.

## Branch and Representative Offices

If a non-Hong Kong corporation intends to set up a branch office in Hong Kong then it will need to register as a non-Hong Kong company under the Companies Ordinance and obtain a business registration certificate for such office. Registration must be made either before or within one month after setting up the branch office and consists of filing various documents at the Companies Registry including copies of the non-Hong Kong company's constitutional documents, a list of its directors and secretary and particulars of its representative in Hong Kong who must be authorised to accept service of legal process on behalf of the non-Hong Kong company. The non-Hong Kong company must file a notification of any changes in its filed details when they change and file once in each calendar year within 42 days after the anniversary of its first registration date an annual return stating all the relevant details as at such anniversary or a certificate of no change certifying that there has been no change in its filed particulars other than any which have already been notified.

The Registrar of Companies may require a non-Hong Kong company to use an alternative trading name in Hong Kong if its name is similar to that of a company which is already incorporated or registered in Hong Kong or if its name is likely to be misleading.

A non-Hong Kong company will be required to file its accounts at the Companies Registry in Hong Kong unless the non-Hong Kong company is not required under the laws of its place of its incorporation or any other place or any regulatory authority to publish its accounts or make them available for public inspection.

Accounts may usually be filed in the same format as those required by an overseas company's place of incorporation or any other place or any regulatory authority.

The taxation of the profits of a branch office is basically the same as that applicable to a subsidiary and it will be required to file annual tax returns with the Inland Revenue Department although Hong Kong law does not require a separate audit of a branch office. However, given the relationship with the non-Hong Kong company, the profits assessment of a branch office may, if the branch office does not keep accounts or the accounts do not reflect the true profits derived from Hong Kong, be assessed either as that proportion of the non-Hong Kong company's (or its group's) overall assessable profits as is equal to the proportion of its total turnover derived from Hong Kong or, if this is also impractical, simply by taking a "fair" percentage of the branch office's total turnover in Hong Kong.

The disadvantage of a branch office is that, whilst it requires compliance with formalities which are nearly as onerous as those applicable to a Hong Kong subsidiary, it does not have the benefit of the limited liability of a subsidiary. However, the decision to establish a branch office or a subsidiary usually depends upon which is more effective for taxation purposes under the tax regime applicable to the non-Hong Kong company. Leaving tax considerations aside, a branch office is more advantageous in that it can be shut down without the procedural difficulties of liquidating a subsidiary and there may also be advantages for the non-Hong Kong company in being able to use its name and credit facilities directly in Hong Kong rather than acting through its subsidiary which would be a separate legal entity.

A representative office may be opened by any non-Hong Kong corporation. In order to avoid having to register the non-Hong Kong corporation under the Companies Ordinance as a non-Hong Kong company, a representative office must not transact any business which creates legal relationships in Hong Kong. A true representative office will not generate profits which are taxable in Hong Kong and therefore it may submit nil tax returns to the Inland Revenue Department which may eventually exempt it from having to submit tax returns at all. If the office qualifies as a representative office, which in practice may be difficult to achieve, the only required formality is a business registration certificate.

## Business Registration

Under the provisions of the Business Registration Ordinance any person carrying on a business in Hong Kong is required to register within one month of commencing business. A business registration certificate will then be issued upon payment of a fee. This certificate must be renewed annually and displayed at the principal place of business in Hong Kong. Every other place of business of the same entity must display a valid branch registration certificate. The annual registration fee and levy is currently HK\$2,450 for a principal office and HK\$523 for every other office. (Note: the 2008/09 business registration fee of HK\$2,000 and branch registration fee of HK\$73 have been waived.)

The Business Registration Office is a division of the Hong Kong Government's Inland Revenue Department.

## Regulatory Authorisations

Certain business sectors are regulated by their relative regulatory authorities, requiring businesses in such sectors to obtain authorisation from such authorities.



These business sectors include banking, securities, futures, insurance, legal and auditing.

This guide does not seek to cover such business sector-specific regulatory requirements, but we can advise on such issues if needed.

## Appointing an Agent

Agency law in Hong Kong is substantially the same as English agency law. If a person who does not himself carry on a business in Hong Kong appoints an agent to carry on a business on his behalf, he will nevertheless be regarded as carrying on business in Hong Kong for regulatory and taxation purposes. Special taxation rules are applicable in the case of an agent who sells on a consignment basis. In general, tax planning in agency situations should be considered in advance taking into account both the tax regime applicable in Hong Kong and that applicable to the non-Hong Kong principal. Unlike the situation in Europe, an agent has no statutory right to claim compensation on termination of the agency arrangements.

## Employment

Employment law in Hong Kong is primarily contained in the Employment Ordinance which, in the absence of any agreement to the contrary, will imply certain terms of employment. The restriction of any right, benefit or protection conferred by the Ordinance is void.

The Employment Ordinance governs any "contract of employment", being any agreement, oral or written, whereby one person agrees to employ another and that other agrees to serve his employer as an employee. Accordingly, as under English law, a distinction is drawn between contracts of service (which create an employment relationship) and contracts for services (which do not).

The Ordinance contains provisions ensuring that all employees who are in continuous employment are entitled to rest days, statutory holidays, paid annual leave and other entitlements. It also safeguards the employees' rights to the payment of wages and, subject to certain qualification requirements, to end of year payments, paid sick leave, paid maternity leave and to payments upon termination of employment, particularly by way of redundancy (called severance payments) and after a long period of service.

The Ordinance grants qualified employees certain protection against unreasonable dismissal under the Ordinance, an employee is, prima facie, deemed to have been dismissed unreasonably if the employer intends through the dismissal to extinguish or reduce any right, benefit or protection conferred by the Ordinance, unless the employer can show that the dismissal is within one of the grounds prescribed by the Ordinance. The Ordinance allows both an employer and an employee to terminate an employment either on notice or on making a payment in lieu of notice equal to the amount of remuneration referable to the notice period.

General common law principles also apply to employment relationships, including employee duties of fidelity and confidentiality and the limited enforceability of post-termination restrictions on competition and solicitation by employees.

## Mandatory Provident Fund (MPF)

The MPF system came into force on 1 December 2000 and implements the Mandatory Provident Fund Schemes Ordinance of 1995 (as amended) to provide a formal system of retirement protection for members of the workforce. Except in relation to limited classes of people, participation in an MPF scheme is mandatory for members of a workforce aged 18 to 65 years old and all self employed people aged 65 or under. Part time workers who have been employed for 60 days or over subject to an employment contract are also required to participate in an MPF scheme.

MPF schemes are privately managed and fall under three categories, (1) a master trust scheme which applies to the relevant employees of more than one employer, self employed workers and workers with accrued benefits transferred from other schemes, (2) an employer-sponsored scheme which applies to the relevant employees of a single employer and its associated companies and (3) an industry scheme which applies to employees of industries with high labour mobility.

In general terms the mandatory contributions made each month are calculated on the basis of 10 per cent of an employee's relevant income, with both the employer and employee paying 5 per cent each, subject to a statutory limit of HK\$1,000 per party (although each party may also make voluntary contributions in excess of this amount). In the case of self employed workers, a contribution of 5 per cent of their relevant income must be made, either monthly or yearly.

## Work Permits and Illegal Immigrants

Prior to arriving in Hong Kong to take up employment, all persons not holding a Hong Kong permanent identity card must obtain a work permit, i.e. an entry visa which allows employment. To obtain such permit, supporting documents provided by the employer, or sponsor, must be provided and sent to the nearest Chinese diplomatic and consular missions in their place of domicile. If the application is successful the entry visa/permit will be issued to the worker through his sponsor or the relevant Chinese diplomatic or consular mission or the Immigration section of the Office of the Government of the Hong Kong SAR in Beijing as appropriate.

The employer or sponsor must submit a copy of his/her Hong Kong identity card or a copy of the Business Registration Certificate/Certificate of Incorporation if a company is acting as sponsor.

An individual who takes up employment after arriving in Hong Kong must change his status from visitor to employee by applying to the Immigration Department. An alternative to obtaining a work permit before coming to Hong Kong is therefore to enter Hong Kong under a visitor visa (which can, for visitors from most countries, be obtained on arrival) and then to change visa status.

Any person intending to stay in Hong Kong in excess of 180 days must register with the Commissioner of Registration within 30 days of arrival under the provisions of the Registration of Persons Ordinance and will be issued with a Hong Kong identity card. Identity cards or, in the case of a visitor, a passport or other identification, should be carried at all times.

Employers are prohibited from employing persons with no valid proof of identity under the terms of the Immigration Ordinance which also requires all employees at work places to produce proof of identity on request and employers to maintain records of all their employees. This is administered by the Labour Inspectorate which is empowered to enter places of employment for the purposes of inspection.

## Competition and Product Liability

Except in the case of telecommunications services, Hong Kong currently has no restrictions upon anti competitive practices or monopolies such as those found in the United States or the European Union, although the Government plans to introduce a competition law.

Apart from common law and contractual remedies, protections for the consumer also exist under the Sale of Goods Ordinance, which is based on the UK Sale of Goods Act, and under the Control of Exemption Clauses Ordinance in respect of clauses in contracts purporting to exclude the liability of a contracting party except to the extent that such clauses are reasonable. The Unconscionable Contracts Ordinance also provides consumer protection.

## Personal Data Privacy

The Personal Data (Privacy) Ordinance imposes obligations on collectors of information about living individuals (i.e. "personal data"), such as employers as regards employees and businesses as regards their customers, including obligations to keep it safe, allow access to it, use it only for purposes for which it is collected and not transfer it outside Hong Kong. A business should issue a personal data privacy statement to its customers and employees.

## Taxation

### Introduction

The general taxation regime in Hong Kong is set out in the Inland Revenue Ordinance ("IRO") and consists of three primary taxes, i.e. profits tax, salaries tax and property tax.



In general, a liability to taxation will not arise unless the relevant category of income arises or is derived from within Hong Kong which, in broad terms, means that the operations undertaken to derive the income are performed in Hong Kong. A person with income chargeable to tax must file a return of that income after the end of each tax year. There are general anti avoidance provisions which are outside the scope of this guide.

Profits or income arising in or derived from Hong Kong will, subject to certain very limited reliefs, generally be subject to Hong Kong taxation whether or not tax is also payable outside Hong Kong, as Hong Kong has relatively few double taxation treaties.

### Profits Tax

Profits tax is payable by every person or company carrying on a trade, profession or business in Hong Kong on assessable profits derived from or arising in Hong Kong from such activity. All expenditure incurred in the production of the assessable profits may be deducted from the gross income including such things as capital allowances and depreciation on industrial buildings and plant and machinery although interest expenses on a loan from an overseas parent to its Hong Kong subsidiary are generally not deductible unless the loan was for the purposes of purchasing certain capital assets or trading stock or either company is a financial institution. Subject to certain anti avoidance provisions, losses can, to the extent that they are not set off in the year of assessment in which they arose, be carried forward indefinitely but there are no provisions for transferring the benefit of losses between group companies.

For the tax year 2007/8, profits tax is chargeable at the rate of 17.5 per cent for corporations and 16 per cent for partnerships and sole proprietors.

## Salaries Tax

Salaries tax is payable by every person on their income (including bonuses, allowances, leave pay and generally any perquisite convertible into cash) arising from any office or employment in Hong Kong. This excludes income from services provided entirely outside Hong Kong. Employees whose visits to Hong Kong do not exceed 60 days in any tax year are not taxable in Hong Kong although directors of Hong Kong companies will be taxable upon fees received from the company even if they are wholly non resident. Residential accommodation is sometimes provided as part of an expatriate's remuneration package and the value of that benefit for the purposes of determining salaries tax liability is generally deemed to be 10% of the total income paid by the employer regardless of the cost of the accommodation.

It should be noted that salaries tax at progressive tax rates or, at the higher remuneration levels, a flat rate of 16 per cent (for the tax year 2007/8) is payable by every individual in respect of his income arising in or derived from Hong Kong from any office or employment (subject to exceptions in the above paragraph).

## Property Tax

Any person who owns buildings or land in Hong Kong is liable to property tax on the gross rent received in respect of such land and buildings less an allowance of 20 per cent of the rent passing for repairs and maintenance. A company may apply for an exemption in which case such income is brought into its profits tax assessment unless the company itself occupies the relevant premises for the purposes of producing its profits.

The property tax rate for the 2007/8 tax year is 16 per cent.

## Other Taxes

There is no tax on capital gains (save to the extent that they can be assessed to profits tax if the relevant asset can be categorised as trading stock), inter vivos capital transfers, gifts, interest or the price of goods or services, except where profits tax or salaries tax is chargeable. In addition, there is no tax on the payment of dividends by a company to its shareholders whether the shareholders are residents in Hong Kong or not. Estate duty was abolished effective February 2006.

## Stamp Duty

Stamp duty is payable on documents assigning land or fixtures to land in Hong Kong on an ad valorem basis up to the maximum rate of 3.75 per cent of the higher of the value of the land or fixtures and the price paid on the assignment subject to such price exceeding HK\$6,720,000. Stamp duty is also payable on transfer documentation in respect of Hong Kong equity or debt securities at the rate of 0.2 per cent of the value of the shares or the price paid, whichever is higher.

Other taxes include rates on land and buildings; royalties taxes; hotel services taxes; duties on soft drinks, cosmetics, perfumes, tobacco, alcohol and hydrocarbon oils; and capital duty at the rate of 0.1 per cent (subject to a maximum of HK\$30,000) on the creation of authorised share capital and any premium paid on the issue of shares.

## Administration

Tax is administered by the Inland Revenue Department of the Hong Kong Government and all taxpayers are required to file prescribed returns on the basis of which the Inland Revenue Department will raise individual assessments.

Employers are required to notify the Inland Revenue in writing if an employee is to be dismissed one month prior to dismissal and, in the case of an employee leaving Hong Kong, to withhold any payments due in the last month before departure. However, an employer is not liable for the tax of an employee who defaults on payment. Any person who has an unpaid tax liability may be prevented from leaving Hong Kong.

## Intellectual Property

Hong Kong has a well developed statutory and common law legal system designed to protect intellectual property rights. These are for historical reasons based primarily on those applicable in the United Kingdom with local variations. Subject to exception for simple invention for which short-term patent may be registered directly in Hong Kong, all patents must first be applied for in the EC (designating the United Kingdom), the United Kingdom or the PRC and then extended to Hong Kong. Designs as well as trade and service marks may be registered directly in Hong Kong respectively under the Registered Designs Ordinance and the Trademark Ordinance. All the above-mentioned registrations in Hong Kong are administered by the Intellectual Property Department of the Hong Kong Government. Copyright requires no registration in Hong Kong and is currently governed by the Copyright Ordinance.

The Trade Descriptions Ordinance and the Copyright Ordinance also impose criminal sanctions on infringers of trademark rights or copyrights. These are generally enforced by the Customs and Excise Department.

## Accounting Standards

Accounting standards in Hong Kong are prescribed both by statute in terms of company accounts and by Statements of Standard Accounting Practice and Accounting Guidelines which are issued by the Council of the Hong Kong Institute of Certified Public Accountants ("HKCPA") and with which their members are expected to comply. In addition, companies incorporated outside Hong Kong with a primary listing on the Hong Kong Stock Exchange are required by the Exchange to conform to accounting standards applicable to Hong Kong.

It is expressly stated by the HKCPA that compliance with their accounting standards will in most cases automatically ensure compliance with the International Accounting Standards issued by the International Accounting Standards Committee.

## Dispute Resolution

The court system in Hong Kong is largely based on the United Kingdom model, but with some divergence since 1997, and accordingly proceedings are generally originated in the High Court of Hong Kong and appeals are to the Hong Kong Court of Appeal. Final appeal is to the Court of Final Appeal in both civil and criminal matters. The Appeal Committee is made up of the Chief Justice, three permanent judges and one non permanent Hong Kong judge or one judge from another common law jurisdiction.

A viable alternative to the court system in Hong Kong is arbitration or alternative dispute resolution. Hong Kong is recognised as being one of the leading centres of arbitration in the region.

## Insolvency

### Companies

The law governing corporate insolvency is contained in the winding up provisions of the Companies Ordinance.

A company is insolvent if it is unable to meet its debts as they fall due. If (1) the company fails to satisfy a statutory demand for a sum exceeding \$10,000 within 21 days; (2) execution levied by a judgment creditor is returned unsatisfied; or (3) it is otherwise proved to the court that the company is unable to pay its debts, taking into account its contingent and prospective liabilities, then that company is deemed to have been proved to be insolvent.

In most cases the principle of limited liability means that neither the shareholders nor the directors of a company will face personal liability. However, in the context of a winding up, a director found to have been dishonest or fraudulent may face unlimited personal liability and possibly criminal proceedings.

## Bankruptcy

A failure by an individual to be able to pay his debts as they fall due is known as bankruptcy and is governed by the Bankruptcy Ordinance. This applies to individuals, partners and sole traders. In a partnership the Partnership Ordinance provides that the partnership dissolves on the bankruptcy of any partner. A bankruptcy order may be presented against any partner in respect of debts owed by the partnership, each partner having unlimited liability for the debts of his firm.

