

HONG KONG

Third Edition



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# **SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA**





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# **SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA**

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PREPARED BY MERITAS LAWYERS IN ASIA

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## SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

This is the third revised edition of *Successful Strategies for Doing Business in Asia* which was first published in 2006. Prepared by lawyers from 12 leading Asian Meritas firms, this book offers practical insights and targets foreign investors and business people who want to pursue opportunities throughout Asia. Each chapter contains general information and guidelines, not legal advice. Do not rely on these materials without first consulting with legal advisors who are familiar with your particular areas of interest.

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The following currency notations are used throughout this book.

RMB	Chinese Renminbi	PHP	Philippine Peso
HKD	Hong Kong Dollar	SGD	Singapore Dollar
INR	Indian Rupee	TWD	New Taiwan Dollar
IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Dong
MYR	Malaysian Ringgit		

*Please be aware that the information on legal, tax and other matters contained in this book is merely descriptive and therefore not exhaustive. As a result of frequent changes in legislation and regulations from country to country, the situations as described throughout this book do not remain the same. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.*

Five years have passed since the worst financial crisis in 70 years erupted. Today many countries and economic regions are still suffering, but there is one bright spot – Asia. Home to 3.8 billion people, Asia continues to take a leading role in driving the world economy back to healthier times. China rebounded quickly to high single-figure annual growth following the 2008-09 downturn, and in 2013-14 is expected to have a rise of 8% in GDP. India too is exhibiting signs of long-term growth potential, as are Singapore, Malaysia and others in Asia.

For 30 years I have worked closely with multinational companies as they explore investment and business opportunities throughout Asia. I have discovered that countries in the Asian region can at the same time appear similar yet be remarkably different. While specific legal systems and local government regulations will vary, there are universal issues in every country that foreign investors will face. This book was designed to provide practical and useful insights into the 12 most common questions that potential investors in Asia need to address:

1. What role does the government play in approving and regulating foreign direct investment?
2. Can foreign investors conduct business in a particular country without a local partner? If so, what corporate structure is most commonly used by foreign investors?
3. How do governments regulate commercial joint ventures between foreign investors and local companies?
4. What laws influence the relationship between local agents and distributors and foreign companies?
5. How does the government regulate proposed merger and acquisition activities by foreign investors? Are there any prohibited areas for foreign investors in the economy (e.g., natural resources, telecommunications or energy)?
6. How do labor statutes regulate the treatment of local employees and expatriate workers?
7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
8. What types of taxes, duties and levies should a foreign investor expect to encounter?
9. How comprehensive are the country's intellectual property laws? Do local courts and tribunals enforce IP laws uniformly regardless of the nationality of the parties?

10. If a commercial dispute arises, do local courts or international arbitration offer a more beneficial forum for dispute resolution for foreign investors?
11. What advice can you offer for how best to negotiate and conduct business in your country?
12. What other practical lessons can you share with those who want to do business in your country?

Leading law firms within the Meritas alliance in Asia have contributed to this book. These firms are comprised of local lawyers who possess extensive experience in advising international clients on how best to conduct business in their respective countries. The law firms were presented with these “Twelve Questions” and invited to write a chapter providing an overview of the laws in their jurisdiction along with timely insights and advice. In a concise manner, the book hopes to provide readers with a clear understanding of the similarities and differences, strengths and weaknesses of countries in the Asian region.

One final thought: For those who are patiently waiting for Asia to become more predictable before pursuing business or investment opportunities, do not wait too long. Most non-Asian multinationals are already there. Those who delay will find themselves missing out on the greatest economic expansion in history. There are risks, certainly, but also great rewards for the savvy – and educated – investor.

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## 1. What role does the government of Hong Kong play in approving and regulating foreign direct investment?

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Hong Kong is always rated as one of the world's freest economies, one of the reasons being that the government has always adopted the approach of nonintervention.

Hong Kong strives to attract more foreign investors to set up their investment vehicles and even regional headquarters here by introducing various policies to minimize the hurdles of foreign investors setting up business in Hong Kong.

Besides some restrictive business such as electricity supply, transportation services, banking and telecommunication business, which require special permits or licenses, foreign investment corporations can carry on business of any nature they desire in Hong Kong through various types of business vehicles without restrictions. Indeed, the restrictions imposed on the restrictive business aforementioned are generally applicable equally to both Hong Kong residents and foreign investors.

To establish companies to conduct unrestricted business activities in Hong Kong, no matter which form of business vehicle is selected, no government approval is required for carrying on business in Hong Kong. The only requisite registration requirement is to file an application to the Business Registration Office of the Inland Revenue Department within one month upon commencement of business and once each year thereafter, to obtain a Business Registration Certificate which will be issued upon payment of HKD2,450. This fee is sometimes reduced or waived by the government as part of the financial assistance given to the Hong Kong business sector.

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## 2. Can foreign investors conduct business in Hong Kong without a local partner? If so, what corporate structure is most commonly used by foreign investors?

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Foreign investors have a wide choice of business vehicles in Hong Kong for conducting business. The most common ones are:

- Private Limited Companies
- Partnerships/Sole Proprietorships
- Branch Offices
- Representative Offices

## **PRIVATE LIMITED COMPANIES**

A foreign company can incorporate a Hong Kong company as its wholly owned subsidiary. The company may be public or private and may be limited by shares or by guarantee. Most companies in Hong Kong are private company limited by shares.

Indeed, an individual of any nationality can also be the sole shareholder and sole director of a private company limited by shares.

The name of the limited company can be in English and/or Chinese. There is no required minimum or maximum of registered capital, and the liability of shareholders is limited to the share capital that they have subscribed.

A limited company in Hong Kong is required to appoint a Hong Kong resident or Hong Kong incorporated company as its company secretary, and to have a Hong Kong address as its registered office.

A limited company is a separate legal entity. The constitution of a limited company in Hong Kong allows it to carry on any type of business it wishes unless, during incorporation of the company, the subscribers choose to limit its scope of business by defining clearly its objectives in its memorandum of association.

## **PARTNERSHIPS / SOLE PROPRIETORSHIPS**

Two or more individuals of any nationality can form a partnership in Hong Kong by submitting an application to the Business Registration Office and thereby obtaining a business registration certificate, after which an unlimited company, the name that is commonly known in Hong Kong, is formed.

Business can be conducted in the name of the partnership, but its partners will be held responsible and liable, without limit, for all the debts and liabilities of the partnership.

The rights and obligations amongst the partners will be governed by the partnership agreement entered into by all the partners, but, as against outsiders, the partners' liabilities are joint and several. Yet, the advantage of a partnership is that it is quick and inexpensive to establish.

An individual person without any partners can also apply to the Hong Kong Business Registration Office for a business registration certificate in order to establish a sole proprietorship and so is able to carry on business in Hong Kong.

## BRANCH OFFICES

An overseas company can register a branch office in the Hong Kong Companies Registry. Upon registration and after obtaining a business registration certificate, the overseas company can carry on business in Hong Kong through the branch office.

A branch office is generally subject to the same rights and liabilities in legal and tax aspects as a company incorporated in Hong Kong, including but not limited to obtaining a business registration certificate annually.

## REPRESENTATIVE OFFICES

An overseas company can set up a representative office in Hong Kong to analyze the Hong Kong market or conduct research for its business planning, but it is prohibited from carrying on business in Hong Kong.

It is easy to set up a representative office in Hong Kong, as no registration requirement is needed. However, the representative office also has to obtain a business registration certificate during its presence in Hong Kong.

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### 3. How does the government of Hong Kong regulate commercial joint ventures between foreign investors and local companies?

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The Hong Kong government generally does not regulate commercial joint ventures or business cooperation between foreign investors and their local partners.

Foreign investors can collaborate with Hong Kong partners to conduct projects and business in various forms:

- They can simply enter into a cooperation agreement providing details of how the business is to be conducted through a designated intermediary.
- They can jointly form and own the equity interest in a limited company in the pre-agreed ratio, under which circumstance a shareholders' agreement may be useful to define the rights and obligations of the parties.
- The parties can enter into a partnership agreement to form a partnership to conduct business in Hong Kong.

In each of these cooperation structures, the government will not be involved in the choice of partners, approval of the business operation or model, or the terms of cooperation.



#### **4. What laws influence the relationship between local agents and distributors and foreign companies?**

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Unlike other places throughout Asia, Hong Kong contract law and agency law primarily govern the relationship between local agents and distributors and foreign companies. The government's approval is not required and there are no statutory rules or regulations governing the appointment of agents and distributors, unless the specific business activity is a regulated business such as the import and supply of petroleum or dangerous drugs.

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#### **5. How does the Hong Kong government regulate proposed merger and acquisition activities by foreign investors? Are there any prohibited areas for foreign investors in the economy (e.g., natural resources, telecommunications or energy)?**

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Subject to certain exceptions, it is relatively easy to acquire business and shareholding interest in Hong Kong. Below is a brief introduction to the relevant regulations on merger and acquisition in Hong Kong from the perspective of (i) private company; (ii) listed company; and (iii) regulated company.

##### **PRIVATE COMPANY**

There is minimal regulatory interference concerning the merger and acquisition activities over private companies, except in certain industries which will be discussed in the section headed Regulated Company below.

Generally speaking, merger and acquisition activities over private companies in Hong Kong are subject to contract law and company law. There are no restrictions on foreign ownership or management of private companies in Hong Kong. That means shareholders and directors of private companies may be individuals or business entities of any nationality.

The Companies Ordinance (Cap. 32) applies to all companies formed and registered under that ordinance. The Companies Ordinance sets out the general rules and regulations governing Hong Kong companies and the conduct of their affairs. It also contains a number of specific provisions relating to matters which may have an impact upon mergers and acquisitions, in particular, the prohibition on a company giving financial assistance for the purchase of its own shares.

Stamp duty is payable to the Hong Kong government before the transfer of Hong Kong stock is effective. The current rate is 0.2% on the higher of the amount of the consideration paid and the value of the shares being transferred.

## **LISTED COMPANY**

There is a greater regulatory control over the merger and acquisition activities involving listed companies, including the requirement to comply with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the Listing Rules), the Codes on Takeovers and Mergers and Share Repurchases, and legislation overseeing insider dealing and disclosure of interests.

In particular, the requirement of disclosure of price sensitive information used to be governed by the Listing Rules. Effective 1 January 2013, the Securities and Futures Ordinance (Cap. 571) imposes further requirements on disclosure of inside information (information of similar nature but is newly defined); failure to do so is an offense of the company and its officers punishable by imprisonment and fine.

While the Stock Exchange of Hong Kong Limited is concerned with issues such as transparency, avoidance of conflict of interest and due compliance with the Listing Rules, it does not normally take a substantive role in relation to the contractual provisions of the sale or purchase of shares in listed companies. It does, however, look into the suitability for listing of the subject listed company following the takeover or merger. In addition, the Stock Exchange will also scrutinize reverse takeovers or back-door listings.

When the investors acquire or dispose of the shares in listed companies, the investors shall seek advice from professional lawyers whether there are any compliance issues to note or otherwise to comply with.

## **REGULATED COMPANY**

In Hong Kong, some industries such as telecommunications, banking, securities, and insurance are subject to additional regulation from their respective regulatory bodies. The telecommunications industry will be discussed under this section.

All telecommunication services in Hong Kong are regulated under the Telecommunication Ordinance (Cap. 106) (the TO) and its subsidiary legislation. Under the TO, no person shall establish or maintain any means of telecommunication unless an appropriate license from the Governor in Council or the Telecommunications Authority (TA) is first obtained.

The TO regulates certain mergers and acquisitions involving telecommunications carrier licensees. There is no requirement that merger proponents notify the TA of their intentions prior to consummating their deal. However, the TA can investigate a merger after it is completed and, if the TA concludes that it has or is likely to have the effect of substantially lessening competition and does not have outweighing public benefit, the TA can order that the merger be reversed or that other remedies be implemented to overcome the identified competitive detriment. Merger proponents may however request the formal or informal consent of the TA before proceeding with the merger.

In relation to companies licensed to provide audio broadcasting services, there is a limit on the foreign ownership of such companies up to 49%.

In short, subject to the foregoing and unless specifically restricted by the relevant regulator of the relevant sector, Hong Kong does not impose restrictions which are applicable only to foreign investors in relation to their merger and acquisition activities in Hong Kong.

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## 6. How do labor statutes regulate the treatment of local employees and expatriate workers?

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In 2012, Hong Kong had a population of roughly 7.1 million, of which 3.8 million comprise the total labor force. Unemployment rate is about 3.4%, and underemployment rate is about 1.4%. Local employees and expatriates are treated alike under labor statutes, except the requirement of work visas. Every year the government issues more than 30,000 work/investment visas, and more than 250,000 extensions of stay visas. Long-term expatriates who have lived in Hong Kong for over seven years may apply for permanent residence.

Statutory labor protection is not as comprehensive as one may find in the West. There is no law on standard working hours, although there are ongoing discussions on this issue in the legislature. The statutory minimum wage is HKD28 per hour, which will be revised to HKD30 effective 1 May 2013. There is no collective bargaining right, nor is there any right to involve trade unions in negotiation of employment contracts. Statutory annual leave varies from seven to 14 days, depending on the length of service as set out in legislation. In addition there are 17 statutory “general holidays” (e.g., Christmas, Easter and Buddha’s birthday) and one statutory “rest day” per week (usually but not necessarily Sunday). Most local employers in practice offer a five-day week to office staff, but a

five-and-a-half or six-day week to those in the front line or in the industry and construction sectors. Pregnant employees are entitled to paid maternity leave of 10 weeks (at the statutory minimum rate of 80% of normal wage, although many employers offer to pay in full), and paternity leave is now under consideration. Office hours average approximately 43 to 48 hours per week (including a lunch hour per day), and generally longer in the service, industry and construction sectors.

The law generally requires that employment should not be terminated without due notice (normally one month, although longer periods may be provided in contracts, usually in senior posts) or payment in lieu of notice, except in the case of misconduct that warrants summary dismissal. The law also prohibits an employer from dismissing an employee for her pregnancy, for trade union activities, or during statutory sick leave. An employee who has been employed under a continuous contract for a period of not less than 24 months can make a claim for unreasonable dismissal unless the employer can show a valid reason defined in the legislation (e.g., redundancy or conduct of the employee). However, even if a claim for unreasonable dismissal is established, an order for reinstatement or re-engagement will only be made by the court/tribunal if both the employer and the employee agree to it.

The privacy law in workplace and the statutes against sex, disability, race and family status discrimination are, to a certain extent, modeled on the equivalent English laws in the pre-Equality Act (2010) regime.

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## **7. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?**

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Hong Kong is a renowned financial centre currently with over 150 banks and financial institutions worldwide operating in Hong Kong. The local currency in Hong Kong is Hong Kong dollars (HKD) which is a freely convertible currency. There is no foreign exchange control in Hong Kong. This is entrenched in Article 112 of the Basic Law.

Hong Kong has no restriction on repatriation of funds overseas but there are regulations in place that may apply where it involves large sums of money. This includes the newly enacted Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) (AMLO) which requires remittance agents and money-changers to verify

and keep records of customers' identities and particulars of transactions of HKD8,000 or more or of an equivalent amount in any other currency.

In addition, the Hong Kong Monetary Authority and Hong Kong Association of Banks regulate money laundering by incorporating similar customer identification and record keeping requirements of the AMLO into the latest *Guideline for Prevention of Money Laundering and Counter-Terrorist Financing* for financial institutions. The Guideline provides guidance on customer due diligence and record-keeping measures under the AMLO and assists authorized institutions to meet their legal and regulatory obligations.

Loans and trade facilities (including letters of credit) are generally provided by banks in Hong Kong, though licensed money-lenders are also permitted to advance loans to customers subject to the control of the mandatory terms as contained in the Money Lenders Ordinance (Cap. 163). When banks process loan applications, there are no business or nationality restrictions or preferences. Banks in Hong Kong provide loans on commercial principles in accordance with the prevailing market conditions subject to the guidelines (such as guidelines on Corporate Governance and Risk Management Controls) from time to time issued by the Hong Kong Monetary Authority, which is the regulatory authority over banks and other financial institutes in Hong Kong.

The Hong Kong government does not generally provide financial assistance to companies doing business in Hong Kong but it provides assistance to small and medium enterprises (SME) through various funding schemes, such as the SME Loan Guarantee Scheme, SME Export Marketing Fund, SME Training Fund and SME Development Fund.

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## 8. What types of taxes, duties, and levies should a foreign investor in Hong Kong expect to encounter?

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Hong Kong adopts a simple corporate and personal tax system with low tax rates.

### **BUSINESS REGISTRATION**

All companies which carry on business in Hong Kong are required to apply for business registration within one month from the date of commencement of the business, and to display a valid business registration certificate at the place of business. The business registration fee and levy for a one-year certificate is currently HKD450.

## **CAPITAL DUTIES**

When starting a business by a company having a share capital, there used to be a capital duty chargeable on the nominal share capital of the company at the rate of HKD1 for every HKD1,000 or part thereof subject to a maximum amount of capital duty at HKD30,000. With effect from 1 June 2012, such capital duty has been abolished in Hong Kong to encourage investors to set up companies in Hong Kong to raise capital and expand their business.

## **PROFITS TAX**

Profits tax is levied on individuals, partnerships, corporations and bodies of persons carrying on business in respect of assessable profits arising in or derived from Hong Kong. Hong Kong adopts a territorial source principle so that only income which has a source in Hong Kong is taxable. The profits tax rate is the same for foreign and local companies: corporation is 16.5% and unincorporated business is 15%. In general, all business expenses incurred in the production of assessable profits are fully deductible. Allowances or deductions are given to investment in plant and machinery, buildings and structures, and capital expenditure on research and development, refurbishment, etc.

In relation to the double taxation issue, Hong Kong has concluded various double taxation agreements with other jurisdictions including Canada, Japan, the Mainland of China, the United Kingdom, etc.

## **SALARIES TAX**

Salaries tax is charged on all incomes earned by an employee arising in or derived from Hong Kong from any office, employment or pension, subject to deductions and allowances. It is charged at progressive rates, with the current maximum rate at 17% subject to an overriding cap that the tax payable shall not exceed the amount based on the standard rate of 15% on the net total income (i.e., assessable income after deductions but before allowances). For directors of a company resident in Hong Kong, the incomes derived from such office are chargeable to salaries tax irrespective of the number of days stayed in Hong Kong.

## **STAMP DUTY FOR PROPERTIES**

Stamp duty is imposed on acquisition or lease of property. The amount payable for acquisition of property varies according to the amount or value of consideration. Effective 23 February 2013, the maximum rate for acquisition of a residential property where the purchaser is a Hong Kong permanent resident acting on his own behalf who does not own any other

residential property in Hong Kong (the Exempted Case) is 4.25%. The maximum rate for other transactions which do not fall within the Exempted Case is increased to 8.5%. On the other hand, the amount payable for lease varies according to the term of the lease, with the maximum at 1% of the yearly rent.

With a view to prevent speculative activities in the residential property market, any residential property acquired on or after 20 November 2010, either by an individual or a company (regardless of where it is incorporated), and resold within 24 months (if the property was acquired between 20 November 2010 and 26 October 2012) or 36 months (if the property was acquired on or after 27 October 2012), will be subject to a Special Stamp Duty. Depending on the length of period the subject property was held by the intended seller, the rates applicable to properties acquired between 20 November 2010 and 26 October 2012 are 15%, 10% or 5%, and the rates applicable to properties acquired on or after 27 October 2012 are 20%, 15% and 10%.

The Hong Kong government introduced a Buyer's Stamp Duty, effective 27 October 2012, chargeable on any residential property acquired by any person (including a company incorporated) except a Hong Kong permanent resident acting on his own behalf at a flat rate of 15% on top of the existing stamp duty and the special stamp duty, if applicable.

## **STAMP DUTY FOR SHARES**

Stamp duty is also imposed on transfer of shares of companies incorporated in Hong Kong; the rate is currently 0.2% of the consideration. However, stamp duty is charged on the market value of a transaction if this is greater than the actual consideration. Consideration includes debts waived and assigned. Therefore, the audited accounts of the company may be checked for the net asset value.

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## **9. How comprehensive are the intellectual property laws of Hong Kong? Do local courts and tribunals enforce IP laws uniformly regardless of the nationality of the parties?**

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The Hong Kong government has always taken protection of intellectual property rights seriously.

The intellectual property laws are extremely comprehensive. Hong Kong joined the WTO in 1995 as a founding member. The intellectual property laws comply with the WTO standards. In order to fulfill its obligations

under various international agreements and maintain its status as a first-class international trade centre, Hong Kong has developed statutes to cover trademarks, trade description, copyright, registered designs and patents. Under the common law, actions against passing off and disclosure of confidential information are also available to intellectual property owners.

The Intellectual Property Department is responsible for advising the government on policies and legislation in relation to the protection of intellectual property and promoting the intellectual property protection through public education. It operates the registries for trademarks, patents and registered designs.

The law empowers the customs to investigate suspected infringing activities and enforce the criminal aspects of infringement of trademarks, copyrights and false trade description. Pursuant to the WTO-TRIPS Agreement, the customs assists the intellectual property right owner to combat infringing activities through cross-border enforcement measures.

Hong Kong laws do not distinguish between the rights available to local and foreign entities. Both the registries and the judiciary are highly regarded for their fair treatment to all parties regardless of their nationalities.

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## **10. If a commercial dispute arises, do local courts or international arbitration offer a more beneficial forum for dispute resolution to foreign investors?**

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Both local courts and arbitration are equally objective and reliable. The Hong Kong judiciary is independent from the executive and the legislature, and is generally regarded as so, even in politically sensitive cases. All judges are appointed by an independent statutory body and most are recruited from among eminent practicing lawyers. Judges have security of tenure until retirement. They enjoy a large measure of protection against civil liability in respect of acts performed while sitting in that capacity and their conduct cannot be questioned by the legislature. Although Hong Kong is now part of China, Hong Kong has its own Court of Final Appeal to hear all civil and criminal cases. This final court is usually made up of the Chief Justice, three permanent judges and either one nonpermanent Hong Kong judge or one judge from another common law jurisdiction. The panel of nonpermanent judges is comprised of world-renowned judges such as former Lord Chief Justice of England and former Chief Justice of Australia. The court procedures are modeled on the English counterparts.



The arbitration system in Hong Kong is entirely open. The law recognizes both institutional and noninstitutional arbitration (ad hoc arbitration). There is no restriction whatsoever on the nationality or qualification of arbitrators in noninstitutional arbitration, and therefore parties are free to select any arbitrator from any part of the world by mutual consent. In case of disagreement, they may ask the Hong Kong International Arbitration Centre (an independent nongovernmental body) or any other appointing authorities (e.g., ICC) to appoint one. Hong Kong is a signatory of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Other forms of ADR in specialized disputes (e.g., construction and admiralty) have been commonly used for decades, and are recently becoming more common in general commercial disputes.

If the parties intend to bring the Hong Kong award to any other part of the Greater China Region for enforcement, arbitration will be the preferred choice; otherwise both local courts and arbitration are equally reliable and efficient.

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## 11. What advice can you offer for how best to negotiate and conduct business in Hong Kong?

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As one of the major international financial centers, Hong Kong, like other business centers, has a world-class business infrastructure and very sophisticated legal regime. Therefore, foreign investors planning to enter into the Hong Kong market should familiarize themselves with the legal requirements of different businesses.

Before engaging lawyers to help, as a starting point, investors can seek some preliminary advice from government departments such as the Invest Hong Kong and quasi-government institutions such as Hong Kong Trade Development Council. Their major role is to assist foreign investors entering into Hong Kong as well as Hong Kong businessmen going out.

These institutions can give investors some preliminary advice on the way to start their business in Hong Kong and some basic knowledge on Hong Kong's business environment, so that foreign investors will know how to go further to engage professionals in Hong Kong to help them implement their business plans.

## 12. What other practical lessons can you share with those who want to do business in Hong Kong?

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A lot of international investors find that the ideal way to enter into the China market is by first making use of Hong Kong's management experience and business infrastructure to manage and control the PRC operation. Therefore, they would plan to set up companies in Hong Kong which will be used as an investment vehicle to start or expand their business in China.

Using Hong Kong as a platform to do business in China can bring a lot of benefits to the foreign investors. For instance, it will be more flexible to structure the shareholding of the Hong Kong company which holds the PRC company, as the transfer of shares in Hong Kong company does not need any governmental approval while transfer of equity interest in a foreign investment enterprise in China may need the approval of the local office of commission of commerce. Naturally it is easier for foreign investors to exit their investment in China by selling the parent company's shares in Hong Kong.

As the Chinese market is relatively restrictive in some areas of business, if an investor fails to engage experienced professionals to advise on business model and structure of the business in both Hong Kong and PRC markets, such investor may suffer the loss of time and money for restructuring the whole plan.

As an example, in order to set up a foreign investment enterprise in China, the applicant (an offshore company which can be incorporated in Hong Kong, BVI or other offshore regions) has to submit a notarial corporate certificate which contains corporate information of the applicant. A notarial corporate certificate (for use in China) cannot be issued for a company incorporated in British Virgin Islands. Therefore corporate information of the BVI company can be notarized (for use in China) only by way of a declaration to be made by its director. Such declaration of corporate information may not be accepted for setting up foreign investment enterprises in some localities in China. Yet, such notarial corporate certificate can easily be issued for a company incorporated in Hong Kong.

## **GALLANT Y.T. HO & CO.**

Our firm was established in 1977 and is one of the largest local firms in Hong Kong, with 180 staff of whom over 40 are legally qualified to practice in Hong Kong. We offer comprehensive legal services to individual and corporate clients alike, covering various aspects of commercial, corporate and property-related activities ranging from banking finance, joint venture to project finance, mergers and acquisitions to listing of “B” share in China and “H” share in Hong Kong.

Apart from banking, real estate and litigation work, which has always been the backbone of our services, we are particularly noted for our cross-border legal services between Hong Kong and China. Our China practice began as early as 1979 and work includes joint ventures, mergers and acquisitions, project financing, “B” and “H” share listing, trademark and patent registration, arbitration and dispute resolution.

In providing such cross-border services, all of our lawyers are conversant in both Chinese and English languages and this will ensure greater accuracy in documentation and efficiency in delivering our services in a cost-effective manner.

With China playing an ever increasing role in global economic development, Hong Kong has become a springboard for foreign enterprises to invest in China as well as Chinese enterprises using Hong Kong as a base for raising funds and international expansion. With over 30 years’ experience in cross-border work, we are in a privileged position to serve as a bridge in this two-way traffic.

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