

Hong Kong as an Offshore Financial Centre

BACKGROUND INFORMATION OF HONG KONG

It is well-recognised that Hong Kong is one of the world's leading trading, commercial and financial centres. With its advanced and sophisticated infrastructure, respected legal system, efficient financial market, an open and competitive business environment as well as relatively low tax rates, Hong Kong has successfully attracted investments from around the world.

With a landmass of over 1,000 square kilometers, Hong Kong is situated at the south-eastern tip of China, the heart of rapidly developing East Asia. It has one of the finest deep-water ports which is the second busiest container port in the world. To date, Hong Kong supports an estimated population of 6.92 million.

As the international hub in Asia for travellers and businesses, Hong Kong has visa exemption agreements with over 130 countries. This facilitates freedom and ease of travelling to and from Hong Kong. Skytrax, an independent air transport research organization, has named the Hong Kong International Airport No.1 for seven times in the past eight years. In 2007, Hong Kong International Airport includes about 85 airlines operating some 5,700 flights per week to approximately 155 destinations worldwide.

Hong Kong was ceded to British control in the 19th century. On 1st July 1997, the city reverted to Chinese sovereignty as a Special Administrative Region of the People's Republic of China. The constitution of Hong Kong is known as the "Basic Law". It provides that Hong Kong shall operate under the "one country, two systems" mechanism. Except for foreign and defence matters, Hong Kong shall enjoy "a high degree of autonomy" for at least 50 years in all matters. The proven success of this administration has encouraged a wide variety of international and overseas corporations to do business in Hong Kong and in turn made the city one of the most important financial centres in the international arena.

Hong Kong has a strong economic foundation. Not only has the GDP per capita of Hong Kong exceeded the four big economies in Western Europe (UK, France, Germany, Italy) and Japan in Asia¹, it is also the world's twelfth largest trading entity with the total value of imports and exports exceeding its GDP. Having established extensive trade and investment ties, the territory's autonomous status has also made it the most attractive gateway for investments and resources to flow into the world's fastest growing economy, mainland China, a position which is unrivalled by others.

Chinese and English are the official languages. English is extensively used in the Government and by the legal, professional and business sectors. The highly skilled professionals who speak English, Cantonese and Putonghua are considered invaluable assets by many enterprises in particular those

¹ [CIA World Factbook](#) data update of December 2008 provided by the [CIA](#).

doing business with China and in Asia.

HONG KONG AS A WORLD LEADING FINANCIAL AND TRADING CENTRE

What makes Hong Kong an excellent offshore jurisdiction?

A Truly Free Market

Hong Kong is a truly free market. Built on a policy of free market, low taxation and government non-intervention, Hong Kong is best known for its capitalist economy and its popularity as an offshore centre for businesses and individuals. Indeed, other than being ranked as the world's freest economy in the Index of Economic Freedom for 14 consecutive years, Hong Kong also places first in the Economic Freedom of World Report².

Hong Kong has a free and high flow of inward direct investment and easily available venture capital for business development. In 2008, Hong Kong was named the best performing destination for foreign direct investment ("FDI") globally, and the 7th largest FDI recipient in the world. The free flow of goods, services, capital and information ensure free access to international markets and customers.

A low tax environment

Another advantage of Hong Kong is its uncomplicated and transparent tax structure as well as its low tax environment. It is one of the few respectable jurisdictions in the world that taxes on a "territorial basis". Taxation is generally only imposed on income that arises in or derives from Hong Kong and so income sourced elsewhere, even if remitted to Hong Kong, is treated as tax free. Hong Kong imposes salaries tax, at a progressive rate, at a maximum of 15% and profits tax at the rate of 16.5% on corporate profits. Interest income earned in Hong Kong by corporations other than financial institutions is exempted from profits tax (under the Exemption from Profits Tax (Interest Income) Order 1998, which has been amended by the Inland Revenue (Amendment) Ordinance in 2004) or any other tax. The relevant interest income includes interest income derived from any deposit placed with an authorised institution in Hong Kong. Hong Kong does not impose withholding tax on interest or dividends. Nor does it impose any payroll, turnover, sales, value-added, gift, estate duty or capital gains taxes.

The benign tax regime encourages entrepreneurial activity and contributes to a favourable business environment which attracts business and investment. It is especially attractive for those who wish to have efficient tax planning, in particular for those companies which operate in a jurisdiction where profits tax imposed is higher than that of Hong Kong. Funds of investment companies set up in Hong Kong can be invested or deposited throughout the world and whilst generally returns or interest payable in respect of these funds will be subject to taxation of the applicable jurisdiction, funds placed in Hong Kong in bonds or as bank deposits is tax-free without any withholding tax. Therefore, Hong Kong incorporated company is a useful tax planning tool. Nevertheless, it is important to note that every person chargeable to tax as agent shall retain sufficient funds out of the assets coming into

² The Economic Freedom of the World Network is devoted to promoting economic freedom around the world. The network has member institutes in over 70 nations. It produces an annual Economic Freedom of the World Report which uses 42 variables to measure economic freedom in 141 nations.

his possession or control to settle the tax liability of his principal.

Hong Kong also offers relief from double taxation. There are international tax treaties which provide protection to taxpayers against double taxation, thereby encouraging the free flow of international trade, international investment and international transfer of technology. In addition, these treaties prevent discrimination of a territory's business interests abroad and contain provisions for mutual exchange of information. In Hong Kong, for instance, various double tax relief agreements have been entered into in respect of shipping and airline income.

A Well-developed Legal System

Hong Kong has an effective and efficient legal and regulatory framework which nurtures competitiveness and is of an international standard. The respected rule of law and freedom of press are indispensable elements to the recognition of Hong Kong as a world-class financial and offshore centre. Hong Kong's well-established legal system contributes to its strong reputation as a famous offshore centre. Its trusted legal system is based upon English Common Law and supplemented by locally enacted Ordinances. The judicial system which is firmly based on the impartial rule of law operates on the principle of the independence of the judiciary from the executive and legislative branches of government, making Hong Kong a successful and continual attraction as business centre.

An Efficient and Transparent Government

Not only is the Hong Kong government highly regarded for its efficiency, transparency and fairness, it is also ready to support investors and business operators by providing information and links for doing business in Hong Kong. The Hong Kong Trade Development Centre ("HKTDC") (<http://www.hktdc.com/>) is the principal governmental organization, providing a platform which connects over 100,000 suppliers from China, Hong Kong and other parts of Asia and attracts over 660,000 worldwide buyers. Another supporting body is InvestHK (www.investhk.gov.hk) which promotes inward investment by assisting corporations to look for investment opportunities in Hong Kong.

A Strong and Mature Banking System

Hong Kong excels in its leading role in the international central banking and financial stage. The city has one of the highest concentrations of banking institutions in the world. 68 of the largest 100 banks in the world have operations in Hong Kong. As at November 2008, there were 145 licensed banks, 28 restricted licensed banks and 29 deposit-taking companies in business³. These 202 authorised institutions operate a comprehensive network of some 1,300 local branches. To name a few, the Hong Kong and Shanghai Banking Corporation (HSBC), BNP Paribas, Deutsche Bank, ING Bank, JP Morgan, Societe Generale, Royal Bank of Scotland, National Australia Bank, UBS AG, State Bank of India and Credit Suisse. In addition, there are 73 [local representative offices](#) of overseas banks in Hong Kong. These banking and financial institutions provide a vast diversity of banking and financial services in Hong Kong and South East Asia.

³ Hong Kong maintains a three-tier system of deposit-taking institutions, namely, licensed banks, restricted licence banks, [deposit-taking companies](#). They are collectively known as authorised institutions.

Moreover, Hong Kong is an active member of many international organizations therefore ensuring that the banking and financial services are constantly kept in line with international standards. Hong Kong is a member of the [Asian Development Bank \(ADB\)](#), the [Asia-Pacific Economic Cooperation \(APEC\)](#), the [Bank for International Settlements \(BIS\)](#), the [EMEAP \(Executives' Meeting of East Asia and Pacific Central Banks\)](#), the [Financial Stability Forum \(FSF\)](#), the Manila Framework Group (MFG) and SEANZA (South East Asia, New Zealand and Australia). It also participates in the activities of the [World Bank](#), the [International Monetary Fund \(IMF\)](#), [SEACEN \(South East Asian Central Banks\)](#) and other central banking forums. Businesses can rest assured that the banking and financial environment they operate in is not just safe and trusted, but also meets internationally accepted standards.

Securities, one of the largest stock market in the world

On the securities side, the Securities and Futures Ordinance, which consolidated several securities related ordinances, provides a transparent and coherent regulatory regime. This allows a good balance to be struck between protecting investors and promoting market development.

In Hong Kong, when a company wishes to go public, it can either apply to list on the Main Board or the Growth Enterprise Market (“GEM”) of the Stock Exchange of Hong Kong (“SEHK”). The Main Board is for more established companies and has more stringent financial requirements whereas GEM targets growth companies from all industries and sizes that may, or may not have, a track record.

An Initial Public Offering (“IPO”) is a commonly known method whereby shares in a company are offered in order to list a company on the SEHK. Generally speaking, an IPO can be conducted by way of public subscription, or placing, or a combination of both.

Hong Kong, with a developed and well-established legal regulatory framework, serves as a venue in which the process of issuing IPOs can be conducted smoothly. On top of this, the highly liquid securities and financial market allows investors to have flexibility and easy exit, which is an utmost consideration for investors and a requisite factor to any successful financial centre.

With these unique qualities, it is therefore not surprising that international investors and major investment banks are competing for a slice of this lucrative market. The high profile of the SEHK is accentuated by the fact that Hong Kong was the second largest IPO market in the world after London in 2007. Also, Hong Kong is the biggest warrants market in the world in 2008. As at the end of August 2008, our stock market was the sixth largest in the world and the second largest in Asia in terms of market capitalization. The Hong Kong stock market is also the fifth largest equity fund-raising centre in the world. Further, Hong Kong boasts a high number of corporate headquarters in the Asia Pacific region with external assets among the highest in the world. Overseas institutional investors are the largest category of investors in terms of Hong Kong stock market trading activities, ranking higher than local institutional investors and local retail investors. This buoyant market and the surging client base created an ever-escalating demand for professional support services, from legal, accounting and auditing, underwriting, loan syndication to merger and acquisitions and investment advisory, which are met by Hong Kong’s highly skilled and professional workforce.

World-Class Professional Services provided by the Highly Skilled Workforce

Being a financial centre having favourable and competitive conditions, Hong Kong has a highly skilled workforce with world-class expertise in the financial and professional sectors that is readily available to meet the needs of any business. For instance, Hong Kong is home to many large Certified Public Accountants firms, such as KPMG, PricewaterhouseCoopers, Ernst & Young, Deloitte Touche Tohmatsu, Grant Thornton and RSM Nelson Wheeler. With respect to the legal profession, there are currently about 6,129 solicitors and 1,065 barristers practising in Hong Kong⁴. Internationally experienced senior managers and the benign labour regulation stimulate business activities. Having been under the rule of the British government and now the Chinese government, Hong Kong people are flexible, accommodating and adaptive to changes to suit the needs of foreign enterprises.

Strong Ties with China

Hong Kong is the gateway to mainland China and its location at the heart of Asia has opened unlimited opportunities to customers. These same factors have made Hong Kong an appealing Asian foothold for financial institutions attracting business from around the world.

The Closer Economic Partnership Arrangement (“CEPA”) between mainland China and Hong Kong brings about a lot of business and investment opportunities in China. Under CEPA, Hong Kong companies can wholly own businesses in import/export, warehousing, distribution, land transportation, freight forwarding, etc. in China. In addition, Hong Kong companies can form partnerships with foreign companies. As a result of CEPA and the other various advantages that Hong Kong can offer, it is common for a foreign investor to form a Hong Kong company to hold its investment in China. With Hong Kong’s international standards of services, especially in the areas of trademark, intellectual property rights, commercial laws, arbitration, financial services, and so on, foreign companies can securely base their business in Hong Kong to undertake work in areas including design, raw materials processing and value added services.

Apart from CEPA, the Hong Kong General Chamber of Commerce (“HKGCC”), which was founded in 1861, serves as a bridge to business connections with China and indeed all over the world. HKGCC has approximately 2,000 corporate members, and its membership consists of multinational companies, Hong Kong companies, Mainland China companies, and a growing number of overseas associates. HKGCC is an influential voice representing the business community of Hong Kong as it takes positions on issues that affect Hong Kong’s economic environment.

In August 2006, China and Hong Kong signed an “Arrangement for the Avoidance of Double Taxation on Income and Prevention of Fiscal Evasion” that provides certainty and preferential tax treatment between the two tax jurisdictions. It ensures that the same income, both direct and indirect, will not be taxed twice in China and Hong Kong. The arrangement provides added incentives for international investors to enter the mainland market via Hong Kong and improves the close economic ties between the two places. It enhances cross-border financing arrangements and the

⁴ Data sourced from the Hong Kong Law Society and the Hong Kong Bar Association as at December 2008.

transfer of technical know-how and patent rights. Hong Kong's improvement in competitiveness will make it a more attractive place for overseas capital.

On the transportation front, Hong Kong is also the most popular transit hub for foreign visitors who travel to mainland China.

Exchange Rate Certainty and Freely Convertible Currency

The Hong Kong dollar ("HKD") is pegged to the United States dollar ("USD") at a rate of more or less USD1 to HKD7.8. The peg provides businesses with certainty and reduces exchange rate risks. Foreign exchange dealings in Hong Kong can be effected continuously 24 hours a day. Thanks to Hong Kong's mature and active foreign exchange market, its links with foreign exchanges overseas and the lack of exchange control in Hong Kong, capital can move freely and at anytime in and out of Hong Kong. Such stability and flexibility further strengthens Hong Kong as an offshore centre.

Strong ties with International Authorities and other Countries

Hong Kong has strong and long-established ties with many other countries. As at 31st October 2008, there are 58 Consulate-General, 58 Consulates and 5 Officially Recognised Bodies in Hong Kong, which is more than any other city in the world.

Hong Kong is a member of the Financial Action Task Force ("FATF")⁵. Since the 9/11 incident, the FATF has increasingly applied pressure to countries to comply with anti-money laundering regulations. Given such increase in international pressure imposed by the FATF, it has become more difficult for investors to do business with less well-regulated regions.

Hong Kong is well-known for its trade industry. Each year, the HKTDC organizes nearly 30 world-class international trade fairs in Hong Kong, eight of which are the largest in Asia. Examples of such fairs include the [Hong Kong Gifts and Premium Fair](#), the [Asian Financial Forum](#), the [Hong Kong Watch and Clock Fair](#), the [Hong Kong Electronics Fair](#) and the [Hong Kong Computer and Communications Festival](#). Recently, the [Clinton Global Initiative \("CGI"\)](#) Forum was held in Hong Kong. It was the first time that the CGI Forum was held outside the United States of America. Hong Kong, with a sophisticated transportation network, first-rated hotels and trade venues such as the AsiaWorld-Expo and the Hong Kong Convention and Exhibition Centre, is one of the best venues for hosting events of such kind.

Furthermore, in 1991, Hong Kong joined the Asia-Pacific Economic Co-operation ("APEC"). This provides Hong Kong with a good opportunity to cooperate with other APEC member economies on a wide range of economic and trade issues in the Asia-Pacific region. Together, the APEC member economies take forward facilitation initiatives such as simplifying customs procedures, enhancing business mobility and promoting electronic commerce. This results in improvements in the business environment as such initiatives help reduce business time and costs.

⁵ The FATF was established by the G-7 countries in 1989 and is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing.

TRUSTS

Private Trusts

Hong Kong's trust law is based on and derived from the English law of trusts. Various kinds of trusts, such as fixed and discretionary trusts, can be set up in Hong Kong. The advantage of setting up a trust in Hong Kong is that trust documentation does not have to be registered and there are no statutory requirements in Hong Kong for a trust to make annual returns or submit financial statements, etc., unless it is carrying on business in Hong Kong. Trust structures in Hong Kong are often used as a vehicle to hold assets.

The relatively simple trust law in Hong Kong is ideal for individuals and where appropriate, corporations, to establish trust for reasons of confidentiality, asset protection and tax planning.

Unit Trusts

A unit trust fund is a collective investment vehicle which pools the money of investors into one large fund, thereby enabling investors to diversify their investments into different markets and asset classes. Unit trust funds must be authorized by the Securities and Futures Commission before they can be marketed to the public in Hong Kong. Unit trust funds enable smaller investors to have access to global investment opportunities, diversification and professional investment management services.

SIMPLE PROCEDURES FOR INCORPORATION OF DIFFERENT BUSINESS STRUCTURES IN HONG KONG

Hong Kong does not have a separate offshore sector per se and all types of companies are available to both local and overseas investors. Incorporation of Hong Kong companies takes approximately two weeks, but existing clean "shelf" companies are available immediately. Under the Companies Ordinance, Cap. 32, companies may either be public or private, unlimited, limited by shares or limited by guarantee. The most common vehicle for offshore or international business is the Hong Kong private company limited by shares.

Outline of the Incorporation of Private Companies/ Limited Companies

No Minimum Capital Requirements

Hong Kong limited companies have no minimum capital requirements but companies are rarely formed with authorised capital of less than HK\$1,000. Capital duty is levied at a flat rate of 0.1% for authorised capital, capped at HK\$30,000. All shares issued must have a par value, and bearer shares are not permitted in Hong Kong. A company may issue shares at a premium or a discount (if sanctioned by the court), and may also buy back its own shares.

Only One Shareholder and One Director is required

Every Hong Kong limited company can now have a minimum of one shareholder and one director with effect from 13th February 2004 and there is no restriction on nationality or residence of the shareholders and directors. Corporate directors are permitted to act as directors and as day-to-day business managers for private companies. Thus, a Hong Kong company can be the director or shareholder of another Hong Kong company, as long as these companies are not part of a corporate

group containing a public or listed company. The names, addresses and Hong Kong ID Card/passport numbers of directors must be submitted to the Registrar of Companies. Every Hong Kong company must have a secretary, who may be either a Hong Kong resident or a Hong Kong registered company. Nominee secretaries are permitted.

Few Restrictions In Terms of the Fields of Business

A Hong Kong limited company is subject to very few restrictions in terms of the fields of business in which it can engage.

Should you have further queries, please feel free to contact our Mr. Billy Kong at (852) 2532 5489 (bkong@fclklaw.com.hk), Ms. Grace Chu at (852) 2532 5490 (gchu@fclklaw.com.hk) or Ms. Anita Lee at (852) 2532 5433 (alee@fclklaw.com.hk).

范紀羅江律師行

FAIRBAIRN CATLEY LOW & KONG

FAIRBAIRN CATLEY LOW & KONG was established in 1970. As one of Hong Kong's larger practices, the Firm advises on all major aspects of the law in Hong Kong, whilst expanding and developing its practice in Mainland China. The Firm remains international in outlook with access to resources from the global network of lawyers of the **MULTILAW**, with which it is affiliated. Upon strong local foundations and established global network, the Firm has built a wealth of experience in Hong Kong, Mainland China and international matters. Its practical yet creative and professional approach is valued by its clients in Hong Kong and around the world. Strong emphasis is placed on the value of personal contact and individual attention.

Should you have any queries regarding the jurisdiction or the services stated in this section of handbook, please feel free to contact us:

Contact:

HONG KONG OFFICE

23/F, Shui On Centre
6-8 Harbour Road, Hong Kong
Telephone: (852) 2522 2041/(852) 2525 9161
Facsimile: (852) 2845 9282/(852) 2845 2928
E-mail: post@fclklaw.com.hk

SHANGHAI REPRESENTATIVE OFFICE

47/F, Hong Kong New World Tower,
No. 300 Huai Hai Zhong Road., Shanghai, China 200021
Telephone : (8621) 6335 3376 / (8621) 5116 2883

Billy C. H. KONG

Tel: (852) 2532 5489
E-mail: bkong@fclklaw.com.hk

Grace H. W. CHU

Tel: (852) 2532 5490
E-mail: gchu@fclklaw.com.hk

Anita Y. Lee

Tel: (852) 2532 5331
E-mail: alee@fclklaw.com.hk