

## Hong Kong, China

### Introduction

#### Our Location Offer

Hong Kong, China (HKC) is committed to creating a business-friendly environment conducive to foreign investments in a free and open market principle, with emphasis on providing a level-playing field for all companies and businesses operating in HKC regardless of their origin.

Our development as the world's leading business centre and financial hub has been premised on our fundamental strengths and advantages which continue to attract multinational firms to set up or expand their operations in HKC. These include the free flow of information and capital, the rule of law upheld by an independent judiciary, a simple tax regime with low tax rates, sound economic fundamentals, clean and efficient civil service, excellent infrastructures as well as a rich pool of professionals and highly skilled workforce.

Apart from a business-friendly environment which continues to underpin sustainable economic growth, our unique position as a natural gateway to the mainland of China has reinforced our status as an ideal location for overseas companies to set up regional headquarters or offices here for sales, marketing, finance and research and development functions and form strategic partnerships with our entrepreneurs. We are also an important springboard for enterprises of the mainland of China to go global. We continue to attract high levels of foreign direct investment (FDI) due to our premier position as a business-friendly gateway to the mainland of China.

HKC has proved its enduring appeal as a world class business city and one of the most competitive economies in various global ranking reports. HKC has been ranked the freest economy in the world for 16 consecutive years by the Heritage Foundation and the Wall Street Journal and also topped the list on the 2009 Annual Report on Economic Freedom of the World by the Fraser Institute. As a corollary of this free market policy and favourable investment environment, there has been sustained growth in inward FDI. The World Investment Report 2010 ranked HKC as the fourth largest FDI recipient in the world with FDI inflows of US\$48.4 billion. For the 12th consecutive year, HKC continues to be second largest FDI in Asia, after China. In terms of FDI stock, HKC ranked the highest in Asia with US\$912.2 billion or a share of 37% in 2009.

#### Introduction to investment regime

The Government of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China firmly believes in, and supports, a free market economy and a liberal investment regime. In general, there are no special legislative, regulatory or administrative guidelines governing the admission and establishment of foreign investment in HKC. There are no restrictions on foreign exchange transactions, capital movement, or repatriation of capital and returns relating to foreign investments. We are committed to creating a business-friendly environment conducive to foreign investments in a free and open market principle, with emphasis on providing a level-playing field for all companies and businesses operating in HKC regardless of their origin.

Invest Hong Kong (InvestHK) is the government department responsible for attracting FDI, supporting businesses of other economies to set up and expand in HKC. Its mission is to confirm and strengthen HKC as Asia's leading international business centre and to attract economically and strategically important investment. It provides free and customised services and partners with companies on a long-term basis and throughout any stage of their business development in HKC.

#### Investment priority plan/equivalent policy

HKC has placed particular focus in attracting companies of other economies to HKC through the dedicated investment promotion efforts of InvestHK. In addition to HKC's traditional core markets in Asia, Europe and the US, InvestHK has also intensified its efforts to attract FDI from BRIC (Brazil, Russia, India and China) economies and other target emerging markets.

HKC has committed to developing the following six new growth industries where HKC enjoys clear advantages and can become "engines" of growth, in addition to our four economic pillars, namely financial services, trading and logistics, tourism, and professional services:

- education services
- medical services
- testing and certification services

## Hong Kong, China

- environmental industries
- innovation and technology
- cultural and creative industries

To help fortify HKC's position as a regional wine hub, the HKSAR Government has exempted the wine duty in February 2008 and has been pursuing various supporting measures including customs facilitation.

### More information

Invest Hong Kong : <http://www.investhk.gov.hk>

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

There are in general no screening requirements for foreign investment process.

### Does this apply to all investment or, are there differential treatment?

There are in general no screening requirements for foreign investment process.

### Conditions of investment

#### Banking

An overseas-incorporated bank may set up a branch in the HKSAR under a banking licence or restricted banking licence. The Hong Kong Monetary Authority ("HKMA") is required to be satisfied that the bank meets all the licensing criteria before granting a licence. Subject to the approval of the HKMA, an overseas-incorporated bank may also acquire a major stake (i.e. 10% or more of the equity) of a locally-incorporated bank. There are no regulatory requirements which discriminate against overseas-incorporated banks.

#### Broadcasting: Television Services

For domestic free television programme services, a licence shall be granted to a company which is incorporated in the HKSAR. The majority of the directors and the majority of the principal officers of the licensee, including the principal officer of the company in charge of the selection, production or scheduling of television programmes, shall each be ordinarily resident in the HKSAR (Note 1) and has been so resident for at least one continuous period of not less than 7 years. The control and management of the licensee shall be bona fide exercised in the HKSAR, the majority of its directors required above shall actively participate in the direction of the company.

There are also restrictions on voting control held by unqualified voting controllers (Note 2) in a domestic free television programme service licensee as follows:

- an unqualified voting controller shall not without the prior approval of the Broadcasting Authority hold or acquire 2% or more of the total voting control of a licensee; and
- if the total voting control exercised by unqualified voting controllers at a general meeting of a licensee would otherwise exceed 49% in aggregate of the total voting control exercised on a poll, the votes cast by the unqualified voting controllers shall be attenuated in accordance with a formula to ensure that the aggregate votes cast by qualified voting controllers will always be in the majority vis-à-vis those cast by unqualified voting controllers.

More details about the licensing requirements are set out in the Broadcasting Ordinance (Cap. 562). (Available at <http://www.legislation.gov.hk/eng/home.htm>)

#### Broadcasting: Radio Services

A sound broadcasting licence may be granted to or held only by a corporation that is formed and registered in the HKSAR. The management and control of the licensee shall be bona fide exercised in the HKSAR.

## Hong Kong, China

As a condition of licence, unless otherwise approved by the Broadcasting Authority, the chairman and the managing director and the majority of the directors who take an active part in the control of a licensee shall each be ordinarily resident in the HKSAR and have been so resident for a continuous period of at least 7 years.

The aggregate of the voting shares in a licensee to or in which unqualified persons have, directly or indirectly, any right, title or interest, shall not at any time exceed 49% of the total number of voting shares in the licensee. This applies to voting shares in a licensee where the voting rights carried by such shares are for the time being exercisable as regards any question or other matter whatsoever which may be determined by a poll at general meetings of the licensee.

A person shall be deemed as an "unqualified person" unless he is ordinarily resident in the HKSAR and has been so resident for a continuous period of not less than 7 years.

More details about the licensing requirements are contained in Sections 13F to 13I of the Telecommunications Ordinance (Cap. 106) (available at <http://www.legislation.gov.hk/eng/home.htm>).

There is no additional regulatory requirement for operation which discriminate between domestic and foreign service suppliers.

### Insurance

Any company interested in carrying on insurance business in or from the HKSAR may apply to the Insurance Authority for authorisation to do so under the Insurance Companies Ordinance (Chapter 41 of the Laws of Hong Kong).

An applicant for authorisation which is a company incorporated outside the HKSAR must satisfy the Insurance Authority that it is: (a) a company incorporated in an economy where there is a comprehensive company law and insurance law; (b) an insurer under effective supervision by the authority or authorities of its home economy responsible for the proper conduct of insurance business; and (c) a well established insurer with international experience and of sound financial standing.

An overseas applicant may, if it so chooses, incorporate a subsidiary company in the HKSAR for the purpose of the application, in which event the above requirements will not apply. There is no additional regulatory requirement for operation which discriminate between domestic and foreign service suppliers.

### Securities

There is no additional regulatory requirement for operation which discriminates between domestic and foreign service suppliers.

The contact point for further information is:

Licensing Department

Securities and Futures Commission

Tel: (852) 2840 9393

Fax: (852) 2501 0375

Email: [enquiry@sfc.hk](mailto:enquiry@sfc.hk)

Website: <http://www.sfc.hk>

### Legal Services

All foreign law firms must register with the Law Society before they may practise foreign law in the HKSAR. Pursuant to section 39B(1) of the Legal Practitioners Ordinance (Cap. 159), a foreign law firm may apply to the Hong Kong Law Society for registration as a foreign law firm if all partners who intend to practise in the HKSAR are foreign lawyers or the sole proprietor is a foreign lawyer and the firm intends to have, within two months after registration, a place of business in the HKSAR for the purpose of practising or advising on foreign law.

A firm to which section 39B(1) of the Legal Practitioners Ordinance (Cap. 159) applies may be registered as a foreign law firm if it satisfies the qualifications set out in section 7 of the Foreign Lawyers Registration Rules (Cap. 159S). The Law Society may waive any of the requirements for registration as a foreign law firm if it considers appropriate in a particular case.

## Hong Kong, China

Registered foreign law firms are prohibited from practising Hong Kong law. They are also precluded from taking a Hong Kong solicitor into partnership or employing a Hong Kong solicitor or barrister who holds a practising certificate.

A registered foreign law firm may enter into association with a local law firm provided that the number of foreign lawyers to local lawyers does not exceed the ratio of 1:1.

All foreign lawyers are allowed to take specified examination (the Overseas Lawyers Qualification Examination) to gain admission as solicitors in the HKSAR.

A person from any jurisdiction may be admitted as a barrister in the HKSAR if he or she is considered to be a fit and proper person by the Court and has complied with the general admission requirements, including passing the Barristers Qualification Examination and satisfying certain residency requirements.

### Telecommunications

HKC's telecommunications market is fully liberalised. There is no foreign ownership restriction on operating telecommunications services. A telecommunications service licence may be granted to or held by any company registered in the HKSAR.

### Support Services for Air Transport

There is no regulatory requirement for foreign entry into this sector, except that the agreements with the aviation fuel supply system and the air cargo terminal franchise prohibit the acquisition of a controlling stake in the franchises by any government other than the HKSAR Government.

The contact point for further information is:

Division 4, Transport Branch

Transport and Housing Bureau

Tel: (852) 2189 7727

Fax: (852) 2524 9397

Email: enquiry@thb.gov.hk

Website: <http://www.thb.gov.hk>

---

Note1: "Ordinarily resident in the HKSAR" means -

(a) in relation to an individual, residence in the HKSAR for not less than 180 days in any calendar year, or residence in the HKSAR for not less than 300 days in any two consecutive calendar years;

(b) in relation to a corporation, a corporation which satisfies the following -

(i) if the number of directors who actively participate in its direction -

(A) is 2, each is an individual;

(B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in the HKSAR in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and

(ii) the control and management of the company is bona fide exercised in the HKSAR.

Note 2: "Unqualified voting controller" means a voting controller who is not a

qualified voting controller. A qualified voting controller means, inter alia, a voting controller who -

(i) in the case of an individual, is ordinarily resident in the HKSAR

and has been so resident for at least one continuous period of not less than 7 years;

(ii) in the case of a corporation, is ordinarily resident in the HKSAR.

## Hong Kong, China

### Investment promotion and facilitation

Established in July 2000, InvestHK is the government department responsible for FDI, supporting other economies' businesses to set up and expand in HKC. Its mission is to confirm and strengthen HKC as Asia's leading international business centre and to attract economically and strategically important investment.

InvestHK proactively carries out its investment promotion activities through the collaborative efforts of its Head Office teams and its overseas representatives based in 26 key business cities worldwide, covering different target markets. It conducts on-going investment promotion visits and meetings as well as promotional events to attract companies to establish a presence or expand their operations in HKC.

InvestHK adopts a sector-specific approach with eight priority sectors as follows :

- \* Business & Professional Service
- \* Consumer Products
- \* Creative Industries
- \* Financial Services
- \* Information & Communications Technology
- \* Innovation and Technology
- \* Tourism and Hospitality
- \* Transport and Industrial

InvestHK offers solution-oriented facilitation and sector-specific expert guidance to companies throughout the investment process and provides aftercare services to companies already established in HKC. Specifically, it provides the following free advice and customised services :

- \* Latest information on HKC's business environment:
  - Sector-specific advice and opportunities
  - Business incorporation procedures
  - Tax and business regulations
  - Cost-of-business models
  - Employment legislation
  - Immigration requirements
  - Business networking opportunities
- \* Introductions to business contacts and service providers:
  - Lawyers, accountants, human resource specialists, consultants, designers, interior specialists and real estate agents
- \* Arrangement of visit programmes:
  - Meetings with service providers, professional associations and government officials and departments
- \* Business support facilitation:
  - Assistance with property identification, visa applications, relocation advice, business licences, trade-mark registration, intellectual property and trade regulations
  - Marketing services during launch and expansion
  - Advice on living and working in HKC, including housing, healthcare, schooling and social networking
  - Ongoing networking opportunities and advice to support the growth of companies' business

## Hong Kong, China

### More information about the process of investing in our economy

Contact details of Invest Hong Kong Headquarters and 12 Investment Promotion Units operating in the Hong Kong Economic and Trade Offices overseas are as follows:

#### Hong Kong

Invest Hong Kong

25/F Fairmont House

8 Cotton Tree Drive

Central, Hong Kong

Tel : (852) 3107 1000

Fax : (852) 3107 9007

E-mail : [enq@InvestHK.gov.hk](mailto:enq@InvestHK.gov.hk)

Website : <http://www.InvestHK.gov.hk>

#### New York

Hong Kong Economic and Trade Office

115 East 54th Street

New York, NY10022

United States

Tel : (1-212) 752 3320

Fax : (1-212) 688 3155

E-mail : [hketony@hketony.gov.hk](mailto:hketony@hketony.gov.hk)

Website : <http://www.hketony.gov.hk>

#### Beijing

The Office of the Government of the Hong Kong Special Administrative Region in Beijing

No. 71, Di'anmen Xidajie

Xicheng District

Beijing (Postal Code : 100009)

China

Tel: (86-10) 6657 2880

Fax: (86-10) 6657 2062

E-mail : [bjohksar@bjo-hksarg.org.cn](mailto:bjohksar@bjo-hksarg.org.cn)

Website: <http://www.bjo.gov.hk>

#### San Francisco

Hong Kong Economic and Trade Office

130 Montgomery Street

San Francisco, CA94104

## Hong Kong, China

### United States

Tel : (1-415) 835 9300

Fax : (1-415) 392 2963

E-mail : [hketosf@hketosf.gov.hk](mailto:hketosf@hketosf.gov.hk)

Website : <http://www.hketosf.gov.hk>

### Berlin

Hong Kong Economic and Trade Office

Jagerstrasse 33

10117 Berlin

### Germany

Tel: (49) 0 3022 6677 228

Fax: (49) 0 3022 6677 288

E-mail : [cee@hketoberlin.gov.hk](mailto:cee@hketoberlin.gov.hk)

Website: <http://www.hketoberlin.gov.hk>

### Shanghai

Hong Kong Economic and Trade Office

21/F, The Headquarters Building

168 Xizang Road (M), Huangpu District

Shanghai (Postal Code : 200001)

### China

Tel: (86-21) 6351 2233

Fax: (86-21) 6351 9368

E-mail : [enquiry@sheto.gov.hk](mailto:enquiry@sheto.gov.hk)

Website: <http://www.sheto.gov.hk>

### Brussels

Hong Kong Economic and Trade Office

Rue d'Arlon 118

1040 Brussels

### Belgium

Tel : (32-2) 775 00 88

Fax : (32-2) 770 09 80

E-mail : [general@hongkong-eu.org](mailto:general@hongkong-eu.org)

Website : <http://www.hongkong-eu.org>

### Sydney

Hong Kong Economic and Trade Office

Level 1, Hong Kong House,

## Hong Kong, China

### **80 Druitt Street**

**Sydney, NSW 2000**

**Australia**

**Tel : (61-2) 9283 3222**

**Fax : (61-2) 9283 3818**

**E-mail : [enquiry@hketosydney.gov.hk](mailto:enquiry@hketosydney.gov.hk)**

**Website: <http://www.hketosydney.org.au>**

**Chengdu**

### **Hong Kong Economic and Trade Office**

**38/F, Tower 1, Plaza Central**

**8 Shuncheng Street, Yan Shi Kou**

**Chengdu (Postal Code : 610016)**

**China**

**Tel : (86-28) 8676 8301**

**Fax : (86-28) 8676 8300**

**E-mail : [general@cdeto.gov.hk](mailto:general@cdeto.gov.hk)**

**Website: <http://www.cdeto.gov.hk>**

### **Tokyo**

**Hong Kong Economic and Trade Office**

**Hong Kong Economic and Trade Office Building**

**30-1, Sanban-cho, Chiyoda-Ku**

**Tokyo 102-0075**

**Japan**

**Tel : (81-3) 3556 8961**

**Fax : (81-3) 3556 8960**

**E-mail : [tokyo\\_enquiry@hketotyogov.hk](mailto:tokyo_enquiry@hketotyogov.hk)**

**Website : <http://www.hketotyogov.hk>**

### **Guangdong**

**Hong Kong Economic and Trade Office**

**Flat 7101, Citic Plaza**

**233 Tian He North Road**

**Guangzhou (Postal Code : 510613)**

**China**

**Tel : (86-20) 3891 1220**

**Fax : (86-20) 3891 1221**

## Hong Kong, China

E-mail : [general@gdeto.gov.hk](mailto:general@gdeto.gov.hk)

Website: <http://www.gdeto.gov.hk>

Toronto

Hong Kong Economic and Trade Office

174 St. George Street

Toronto

Ontario M5R 2M7

Canada

Tel : (1-416) 924 5544

Fax : (1-416) 924 3599

E-mail : [info@hketotoronto.gov.hk](mailto:info@hketotoronto.gov.hk)

Website : <http://www.hketo.ca>

London

Hong Kong Economic and Trade Office

6 Grafton Street

London W1S 4EQ

United Kingdom

Tel : (44-20) 7499 9821

Fax : (44-20) 7409 0647

E-mail : [general@hketolondon.gov.hk](mailto:general@hketolondon.gov.hk)

Website : <http://www.hketolondon.gov.hk>

GovHK - One-stop portal of the HKSAR Government: <http://www.gov.hk>

Laws of Hong Kong - <http://www.legislation.gov.hk>

## Investment protection

### Protection of property rights and conditions for expropriation

Article 6 of the Basic Law of the HKSAR provides that the HKSAR shall protect the right of private ownership of property in accordance with law.

Article 105 of the Basic Law of the HKSAR further provides as follows:

- The HKSAR shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and inheritance of property and their right to compensation for lawful deprivation of their property.

- Such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay.

- The ownership of enterprises and the investments from outside the HKSAR shall be protected by law.

## Hong Kong, China

Examples of the laws of the HKSAR that provide for deprivation of property and resultant compensation can be found in the Lands Resumption Ordinance (Cap. 124), the Roads (Works, Use and Compensation) Ordinance (Cap. 370) and the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276). These laws apply indiscriminately to all investors affected.

Information on HKC's Investment Promotion and Protection Agreements (IPPAs) is provided in the Section on "International investment agreements".

### More information

HKC has signed IPPAs with 17 economies. For details, please refer to the Section on "International investment agreements".

- Basic Law of the HKSAR- <http://www.basiclaw.gov.hk>
- Laws of Hong Kong- <http://www.legislation.gov.hk>
- Securities and Futures Commission (SFC)- <http://www.sfc.hk>
- SFC's Investor Portal - InvestEd- <http://www.invested.hk>

### Protection of IPRs

HKC is committed to providing effective protection of intellectual property rights through :

- \* the administration of comprehensive intellectual property and related laws which provide for civil redress for owners of intellectual property rights and criminal sanctions against the import, export, manufacture, distribution and sales of pirated and counterfeit goods;
- \* the rigorous law enforcement action taken by the Customs and Excise Department against the piracy and counterfeiting activities via intelligence-led investigations and repeated raids conducted at different levels, including import and export, manufacture, distribution and retail;
- \* the provision of an efficient and impartial judicial system to deal with law suits relating to intellectual property; and
- \* the public education and publicity programmes to promote the awareness of and respect for intellectual property rights.

Articles 139 and 140 of the Basic Law specifically stipulate that HKC should on its own develop appropriate policies and afford legal protection for intellectual property rights. Against this background, HKC has developed a comprehensive body of intellectual property law which aims to reach the highest international standards, and put HKC at the leading edge of intellectual property development and protection.

The main international intellectual property conventions which have been applied to HKC by the People's Republic of China are :

- \* the Paris Convention for the Protection of Industrial Property;
- \* the Berne Convention for the Protection of Literary and Artistic Works;
- \* the Universal Copyright Convention;
- \* the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms;
- \* the Patent Cooperation Treaty;
- \* the Convention establishing the World Intellectual Property Organization ("WIPO");
- \* the WIPO Copyright Treaty; and
- \* the WIPO Performances and Phonograms Treaty.

As a member of the World Trade Organization (WTO) in its own right, the intellectual property protection system in HKC meets the standards set out in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

## Hong Kong, China

The Intellectual Property Department of HKC (IPD) is responsible for advising on policies and legislation to protect intellectual property in HKC; for operating the Trade Marks, Patents, Registered Designs and Copyright Licensing Bodies Registries, and for promoting intellectual property protection through public education.

Under the laws of HKC, patents, trade marks, registered designs, copyright, layout-design (topography) of integrated circuits, plant breeder's rights and trade secrets are protected.

### Patents

A patent is an exclusive right granted to the inventor of an invention. An invention which is novel and involves an inventive step can be registered as a patent in HKC as long as it is susceptible of industrial application and does not belong to the excluded classes of inventions.

The Patents Ordinance (Cap 514) and the Patents (General) Rules (Cap 514C) provide for the relevant requirements under the patent registration system in HKC. In order to obtain protection as registered patents in HKC, patents must be registered under the Patents Ordinance and the Patents (General) Rules.

There are two types of patents that can be registered in HKC :

\* **Standard Patent:** having a maximum term of protection of 20 years counting from the date of filing of the application.

\* **Short-term Patent:** having a maximum term of protection of 8 years counting from the date of filing of the application.

An application for registration of a standard patent or a short-term patent must be made to the Patents Registry of the IPD. The Patents Registry would conduct formality examination of the documents required in the application form and the supporting documents. The Patents Registry would not conduct substantive examination of the application (e.g. the novelty and inventiveness of the invention).

### Patents: Standard patents

The grant of a standard patent in HKC is based on the registration of a patent granted by one of the following three patent offices, referred to as the "designated patent offices" :

1. the State Intellectual Property Office, People's Republic of China;
2. the European Patent Office (in respect of a patent designating the United Kingdom);
3. the United Kingdom Patent Office.

The application process is made in two stages by filing :

1. a "request to record" with the Patents Registry within 6 months after the date of publication of the corresponding patent application in a "designated patent office"; and
2. a "request for registration and grant" with the Patents Registry within 6 months after the date of grant of the patent by the designated patent office, or publication of the request to record by the Patents Registry, whichever is later.

### Patents: Short-term patent

The grant of a short-term patent in HKC is based on a search report from an international searching authority under Article 16, Patent Co-operation Treaty or one of the three designated patent offices. A short-term patent application in HKC is made by filing a request for grant supported by the documents and information required.

A patent gives the patent owner the exclusive right to make, use, import or put his or her invention on the market. The patent owner can take legal action to prevent any person from manufacturing, using, selling or importing the patented invention (standard or short-term patent) without his or her consent, and to apply for an injunction, delivery-up, damages or an account of the profits and a declaration that the patent is valid and has been infringed.

### Trade Marks

## Hong Kong, China

A trade mark is a sign that distinguishes the goods and services of one trader from those of others. A trade mark may consist of words (including personal names), indications, designs, letters, characters, numerals, figurative elements, colours, sounds, smells, the shape of goods or their packaging and any combination of these. A sign must be capable of being represented graphically in order for it to be registered as a trade mark.

The Trade Marks Ordinance (Cap 559) and the Trade Marks Rules (Cap 559A) provide, inter alia, the framework for HKC's trade mark registration system, the basis and criteria for registration, and the rights attached to a registered trade mark. In order to obtain protection as registered trade marks in HKC, trade marks must be registered under the Trade Marks Ordinance and the Trade Marks Rules. An application for registration of a trade mark must be made to the Trade Marks Registry of the IPD. The duration of protection of a registered trade mark is 10 years from the filing date of the application for registration, and may be renewed for further periods of 10 years.

The owner of a registered trade mark has the exclusive right to use the mark on the goods or the services for which the mark was registered. The owner can institute legal action to prevent anyone from using his or her registered trade mark in relation to those goods or services without his or her consent.

Unregistered trade marks may be protected by the common law action of passing off. Passing off is usually a more difficult action to bring than an action for infringement of a registered trade mark in HKC.

### Trade Marks: Domain names

A domain name is used for locating the internet address of a commercial presence on the "world wide web" (internet). Hong Kong Internet Registration Corporation Limited is a non-profit-making and non-statutory corporation that administers Internet domain names under '.hk' country-code top level domain. It provides registration services through its wholly-owned subsidiary, Hong Kong Domain Name Registration Company Limited. There is no specific legislation that regulates the registration of a domain name.

A domain name may be protected as a trade mark if it is registered under the Trade Marks Ordinance in HKC or, if it is unregistered, under the common law of passing off.

### Registered Designs

Designs that are new at the filing date of the application and applied to an article by an industrial process can be registered as registered designs provided that they appeal to and can be judged by the eye in the finished article.

In order to obtain protection as registered designs in HKC, designs must be registered under the Registered Designs Ordinance (Cap 522) and Registered Designs Rules (Cap 522A). The period of protection of a registered design is renewable for periods of five years up to a maximum of 25 years.

An application for registration of a design must be made to the Designs Registry of the IPD. The Designs Registry would conduct formality examination of the documents required in the application form. It would not conduct substantive examination of the application (e.g. whether the design is new or not).

The owner of a registered design has the exclusive right to prevent others from making, importing, using, selling or hiring the registered design product without his or her consent.

The right in a registered design is infringed by a person who, without the consent of the owner of a registered design, makes, imports, uses, sells or hires the registered design product. Civil legal action can be brought against the infringement of a registered design. The owner of a registered design may apply for reliefs including an injunction, damages, order for delivery up or an account of profits derived from the infringement.

### Copyright

In general, copyright is the right given to the owner of an original work. The Copyright Ordinance (Cap 528) provides comprehensive protection for recognized categories of original works. Copyright can subsist in literary works such as books and computer software, musical works such as musical compositions, dramatic works such as plays, artistic works such as drawings, paintings and sculptures, sound recordings, films, broadcasts, cable programmes and the typographical arrangement of published editions of literary, dramatic or musical works, as well as performers' performances. Copyright works made available on the Internet environment are also protected. Works created or first published anywhere in the world, irrespective of the nationality and domicile of the authors, qualify for copyright protection in HKC.

## Hong Kong, China

Copyright is an automatic right which subsists in a work when it is created and recorded. No registration formalities are required for a copyright owner to obtain copyright protection in HKC.

The Copyright Ordinance gives copyright owners certain exclusive rights known as "restricted acts". These include :

- \* copying the work;
- \* issuing copies of the work to the public;
- \* renting the work to the public;
- \* making copies of the work available to the public by wire or wireless means, e.g. on the Internet;
- \* performing, showing and playing the work in public;
- \* broadcasting the work by wireless or cable; and
- \* adapting the work

The general rule is that copyright lasts until 50 years after the creator of the work dies. However, there are minor variations to this rule, depending on the type of work.

A copyright owner can bring civil proceedings in court against any person who infringes his or her copyright. The court may grant an injunction to prevent further infringement, order the infringer to deliver up all infringing items, disclose details of the infringement and give an account of the profits derived from the infringement or pay damages to the copyright owner.

### Lay-out Design (Topography) of Integrated Circuits

The Layout-design (Topography) of Integrated Circuits Ordinance (Cap.445) protects the original layout-design for incorporation into an integrated circuit. Subject to certain exceptions, the owner is able to take civil action to prohibit others from reproducing or distributing his or her layout-design without his or her consent or without payment of royalties. There is no need to register the layout-design right and protection will be automatic.

The duration of protection afforded to a layout-design (topography) which has been commercially exploited with the owner's consent is 10 years after the end of the year in which it was first so exploited. Otherwise, the duration of protection is 15 years after the end of the year in which it was created.

### Plant varieties protection (Plant breeder's rights)

Plant varieties protection is also known as "plant breeder's rights". The Plant Varieties Protection Ordinance (Cap 490) confers proprietary rights to breeders of plant varieties. The Director of Agriculture, Fisheries and Conservation of HKC is the Registrar of Plant Variety Rights. A plant variety must be new, distinct, homogeneous and stable in order to become eligible for protection under the law. The duration of protection of plant variety rights is 25 years for trees and vines, and 20 years in other cases. A grantee of Plant Variety Rights shall have the exclusive rights to produce reproductive material of the protected variety for the purpose of commercial marketing, to sell or offer for sale reproductive material of the protected variety, to import-export reproductive material of the protected variety and licence others to carry out the aforementioned activities. In addition, the protection also covers harvested material of the protected variety.

### Trade Secrets (Undisclosed Commercial Information)

Trade secrets and undisclosed commercial information are confidential information in a commercial setting, such as formulae, methods, technologies, designs, product specifications, business plans and client lists, that have commercial value. In HKC, trade secrets and undisclosed commercial information are protected by the common law of confidence. An obligation of confidence will arise whenever the information is communicated to or acquired by a person who knows or ought as a reasonable person to know that the other person wishes to keep that information confidential. An industry or trade custom or practice may also impose an obligation of confidence. The release of trade secrets and undisclosed commercial information would be detrimental to the owner or advantageous to his or her competitors or others. The remedies available for breach of confidence include injunctions, damages, account of profits and delivery up of materials containing confidential information.

## Hong Kong, China

Protection of trade secrets and undisclosed commercial information is of particular importance when the intellectual property is not registrable or where the period of patent protection (20 years) is not long enough. Whilst patents enjoy a limited term of protection, trade secrets and undisclosed commercial information protection last until the information becomes public knowledge. However, trade secrets and undisclosed commercial information do not give you exclusive rights. Business competitors may independently invent an identical product or process or come up with the same ideas which they can exploit freely.

### More information

Laws of Hong Kong:

<http://www.legislation.gov.hk/eng/home.htm>

The Intellectual Property Department :

<http://www.ipd.gov.hk/eng/home.htm>

The Customs and Excise Department :

<http://www.customs.gov.hk/en/home/index.html>

The Agriculture, Fisheries and Conservation Department :

[http://www.afcd.gov.hk/english/quarantine/qua\\_pvp/qua\\_pvp\\_pbr.html](http://www.afcd.gov.hk/english/quarantine/qua_pvp/qua_pvp_pbr.html)

The Hong Kong Internet Registration Corporation Limited :

<http://www2.hkirc.hk/default.jsp>

### Flow of funds

HKC's linked exchange rate system has been in place since October 1983. This is essentially a currency board system in which the monetary base must be fully backed by foreign reserves at the fixed exchange rate. In HKSAR, the monetary base comprises the Certificates of Indebtedness against which banknotes are issued, notes and coins issued by the HKSAR Government, the sum of clearing account balances held by banks with the Exchange Fund for settlement purposes (i.e. the Aggregate Balance) and outstanding Exchange Fund Bills and Notes.

Certificates of Indebtedness are issued and redeemed against US dollars at the fixed exchange rate of HK\$7.80 to US\$1.00. Exchange Fund Bills and Notes are issued only when there are inflows of funds. At present, additional exchange paper is issued to absorb interest payments on existing stock of Exchange Fund papers.

And if managed, under what circumstances or purposes does your government/central bank intervene?

The HKMA conducts foreign exchange operations to maintain exchange rate stability, which is the primary monetary policy objective of HKC. The impact of such operations on the monetary base is effected through the Aggregate Balance. Under the present arrangement, the Hong Kong Dollar (HKD) market exchange rate is allowed to move within a band of 7.75 to 7.85. When there is a decrease in demand for HKD assets and the market exchange rate weakens to HK\$7.85/US\$1.00, the HKMA is committed to buying HKD from licensed banks, leading to a contraction of the Aggregate Balance. Interest rates then rise, creating the monetary conditions conducive to capital inflows to maintain exchange rate stability. When there is an increase in demand for HKD assets and the HKD market exchange rate strengthens to HK\$7.75/US\$1.00, the HKMA is committed to selling HKD to licensed banks, leading to an expansion of the Aggregate Balance and thereby exerting downward pressure on interest rates in order to discourage continued capital inflows.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There is no restriction regarding the repatriation of funds related to foreign investment. There is no restriction regarding the convertibility of currencies for the overseas transfer of funds.

## Hong Kong, China

HKC's IPPAs with the following 15 economies have entered into force: Australia, Austria, the Belgo-Luxembourg Economic Union, Denmark, France, Germany, Italy, Japan, the Republic of Korea, the Netherlands, New Zealand, Sweden, Switzerland, Thailand and the United Kingdom. These agreements provide for the unrestricted right to transfer investments and returns by investors of one contracting party out of the area of the other contracting party. In the agreements entered into with Australia, Denmark and New Zealand, it is stipulated that the transfer shall be subject to the laws, regulations and/or policies of each contracting party.

### Mechanisms to review decisions, and settle disputes

[See below]

What, if any, mechanism do you have for foreign investors to settle disputes?

There are a variety of ways in the HKSAR for settling disputes arising in connection with a foreign investment. These include negotiations, mediation, arbitration, and litigation.

Similar to jurisdictions in economies such as the United States of America, Canada, Australia, the United Kingdom, New Zealand and Singapore, which have embraced the use of mediation to resolve disputes, the HKSAR is also following this global trend and has taken steps to facilitate and promote the use of mediation to resolve disputes from complex commercial disputes to conflicts among ordinary citizens. Mediation service providers including the Hong Kong Mediation Council of the Hong Kong International Arbitration Centre, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre have jointly participated and set up the Joint Mediation Helpline Office ("the JMHO") to provide one-stop mediation referral services for parties in need of mediation services. The JMHO is conveniently located in readily accessible premises at the High Court Building.

The benefits of mediation have also been recognised by the courts in the HKSAR. It has been observed by the Court that skilled mediators are able to achieve results satisfactory to both parties in many cases quite beyond the power of lawyers and courts to achieve. As a measure to implement the objective to facilitate settlement of disputes, the judiciary of the HKSAR has promulgated a Practice Direction on Mediation commonly known to practitioners of the HKSAR as PD 31. The aim of PD 31 is to assist the Court to discharge the duty to facilitate settlement of disputes by encouraging the parties to use mediation. The main feature of PD 31 includes the requirement to file a Mediation Certificate, a Mediation Notice and Response. This serves to focus the minds of the parties on using mediation and to facilitate lawyers in advising their clients on mediation. It also provides a mechanism for parties to enter dialogue on mediation. There are potential cost sanctions for any party who chooses not to attempt mediation. The Court will take the conduct of the parties into account in deciding cost sanctions if any party unreasonably refuses to consider mediation.

The Arbitration Ordinance (Cap. 341) provides a comprehensive legal framework for arbitration procedures, enforcement of arbitration agreements and arbitration awards. Arbitral awards made under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and those made in the mainland by a recognized mainland arbitral authority in accordance with the Arbitration Law of the People's Republic of China are enforceable in the courts as domestic judgments with the leave of the court.

The HKSAR has a well-developed system of courts which have different jurisdiction in civil matters:

- The Court of First Instance - it has unlimited jurisdiction over all civil matters.
- The District Court - its jurisdiction is generally limited to civil actions involving claims for an amount over HK \$50,000 but not more than HK \$1 million (for legal action not related to land) and claims involving maximum value not exceeding HK \$3 million (for legal action related to land).
- The Small Claims Tribunal - it handles claims for money involving HK \$50,000 or less.
- The Lands Tribunal - it has jurisdiction to hear and adjudicate cases on possession of premises, building management disputes, cases involving compulsory sale of land for redevelopment purpose, to assess compensation when land is resumed by the HKSAR Government or reduced in value because of public developments, and to determine appeals on rating and valuation matters.

### ICSID

## Hong Kong, China

The ICSID Convention was extended to Hong Kong by the United Kingdom on 19 December 1966, and continued to be applicable to HKC since the resumption of the exercise of sovereignty by China over Hong Kong on 1 July 1997.

Over the last five years, there has been no dispute in relation to HKC brought to resolution by ICSID.

### More information

The following organisations provide services and facilities in arbitration:

- Hong Kong International Arbitration Centre- <http://www.hkiac.org>

- International Chamber of Commerce- Hong Kong, China- <http://www.icchkcbc.org>

The following organisations provide assistance to parties seeking to settle disputes by mediation:

- Hong Kong Mediation Council of the Hong Kong International Arbitration Centre- [http://www.hkiac.org/show\\_content.php?article\\_id=35](http://www.hkiac.org/show_content.php?article_id=35)

- Hong Kong Bar Association- <http://www.hkba.org>

- The Law Society of Hong Kong- <http://www.hklawsoc.org.hk>

- Hong Kong Mediation Centre- <http://www.mediationcentre.org.hk>

- Hong Kong Institute of Arbitrators- <http://www.hkiarb.org.hk>

- Hong Kong Institute of Architects- <http://www.hkia.net>

- Hong Kong Institute of Surveyors- <http://www.hkis.org.hk>

- The Chartered Institute of Arbitrators (East Asia Branch)- <http://www.ciarb.org/branches/asia/east-asia-branch>

### International investment agreements

With;

Australia; Austria; Belgium; Denmark; Finland; France; Germany; Italy; Japan; Korea, Republic of; Kuwait; Luxembourg; Netherlands; New Zealand; Sweden; Switzerland; Thailand; United Kingdom ;

Please provide a brief description of these IIAs, or your IIAs in general.

To give additional assurance to overseas investors that their investments in the territory are adequately protected, and to enable our businesses to enjoy similar protection in respect of their investments overseas, HKC has signed IPPAs with 17 economies so far.

## Hong Kong, China

These IPPAs generally provide for fair treatment of investors of the contracting parties, compensation for losses owing to non-commercial risks, free transfer abroad of investments and returns, and settlement of investment disputes under internationally accepted rules.

[Note for Belgium and Luxembourg, the investment agreement was signed with the Belgo-Luxembourg Economic Union.]

### More information

Details of HKC's IPPAs which have entered into force can be found at:

<http://www.legislation.gov.hk/table2ti.htm>

Laws of Hong Kong - <http://www.legislation.gov.hk>

Hong Kong Bar Association - <http://www.hkba.org>

Law Society of Hong Kong - <http://www.hklawsoc.org.hk>

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

Nationals of about 170 foreign countries and territories may enter HKC visa-free for business, social or pleasure visits for a stay ranging from seven to 180 days provided that they-

- (a) are bona fide visitors;
- (b) have adequate funds to cover the duration of their stay without working;
- (c) hold onward or return tickets (unless in transit to the mainland of China, or Macao); and
- (d) have the incentive to return to their home country / territory.

There is no specific visa for business visits. Business persons wishing to visit HKC but do not enjoy the visa waiver concession, or if they wish to stay beyond the allowed visa-free period (if applicable), they should obtain a visit visa before coming. A person permitted to enter HKC as a visitor may engage in the following business-related activities:

- (i) Concluding contracts or submitting tenders;
- (ii) Examining or supervising the installation/packaging of goods or equipment;
- (iii) Participating in exhibitions or trade fairs (except selling goods or supplying services direct to the general public);
- (iv) Settling compensation or other civil proceedings;
- (v) Participating in product orientation; and
- (vi) Attending short-term seminars or other business meetings.

All business persons wishing to enter HKC for employment as professionals or for investment (establish or join in business), should obtain an employment or investment visa as appropriate before travelling to HKC. Professionals and talent from outside HKC who possess special skills, knowledge or experience of value to and not readily available in HKC, or who are in a position to make substantial contribution to the economy, may apply to work in HKC.

A successful applicant is only allowed to take such employment or establish or join in such business as approved by the Hong Kong Immigration Department (HKID). In this connection, admitted professionals should seek prior approval from the HKID before any change of employment or taking sideline employment.

An employment or investment visa is normally good for an initial stay of 12 months, or the duration of the employment contract, whichever is the shorter. Admitted professionals may apply for extension of stay to continue to work in HKC before their limit of stay expires. Extension of stay, if approved, will normally follow the 2-2-3 years pattern or be in accordance with the duration of the employment contract, whichever is the shorter.

## Hong Kong, China

Admitted professionals may apply to bring in their spouse and unmarried dependent children under the age of 18 to HKC. The length of stay of the dependants will be linked to that of their sponsors. Dependants are required to leave HKC when their sponsor leaves HKC. Admitted dependants can take up employment in HKC.

### More information

Hong Kong Immigration Department: Visit Visa/Entry Permit Requirements for the HKSAR - [http://www.immd.gov.hk/ehhtml/hkvisas\\_4.htm](http://www.immd.gov.hk/ehhtml/hkvisas_4.htm)

Guidebook for Entry for Visit/Transit in Hong Kong

<http://www.immd.gov.hk/ehhtml/id1004.htm>

Guidebook for Entry for Employment as Professionals in Hong Kong

<http://www.immd.gov.hk/ehhtml/id991.htm>

## Taxation

### Taxation of foreign nationals and foreign firms

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in HKC are chargeable to tax on all profits (except those arising from the sale of capital assets) arising in or derived from HKC from such trade, profession or business. There is therefore no distinction made between residents and non-residents when it comes to liability to profits tax. A resident may therefore derive profits from abroad without being charged to tax; conversely, a non-resident may be chargeable to tax on profits arising in or derived from HKC.

Salaries tax is imposed on all income arising in or derived from HKC from an office or employment or any pension irrespective of whether tax on that income has been paid in other jurisdictions. In general, full income derived from an office (e.g. directorship) in HKC is chargeable to salaries tax. This is not affected by the office holder's length of stay in HKC. Regarding an employment, if the source of employment is HKC, full income is chargeable to salaries tax even if part of the duties are performed outside HKC. If the source of employment is outside HKC, only the income attributable to the services rendered in HKC is chargeable, and it is generally computed according to the number of days the person was in HKC in a year of assessment.

Repatriation of profits: No tax is levied on the repatriation of profits.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

HKC adopts a territorial basis for taxation. Only income or profits arising in or derived from HKC are chargeable to tax. As some economies tax on a global basis, this can lead to double taxing of the activities undertaken in HKC. To overcome this problem, and prevent fiscal evasion, HKC has entered into a number of agreements with other economies. A list of these economies is at [http://www.ird.gov.hk/eng/tax/dta\\_country.htm](http://www.ird.gov.hk/eng/tax/dta_country.htm). These agreements (also referred to as "Double Tax Agreements") ensure investors will not have to pay tax twice on a single source of income and give a high degree of certainty in taxation rights for investors.

The tax law of HKC generally requires tax to be withheld on royalties to be paid to non-residents. The rate of withholding tax is 4.95 per cent. However, the Double Tax Agreement may provide for a reduced withholding rates.

### More information

More information can be obtained from the Inland Revenue Department of the HKSAR Government at <http://www.ird.gov.hk>.