

LEGALINK
INVESTMENT AND BUSINESS START UP IN HONG KONG

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Hong Kong has a common law legal system that gives great weight to precedents and case law which bind future decisions.

2. What are the major law courts in your country?

The major law courts in Hong Kong include the Magistrates' Courts, the District Court, the Court of First Instance, the Court of Appeal and the Court of Final Appeal.

There are also the Lands Tribunal, the Labour Tribunal, the Small Claims Tribunal, the Juvenile Court, the Obscene Articles Tribunal and the Coroner's Court.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

Hong Kong laws are generally composed of the Basic Law, statutes, case law and rules of equity.

4. What is/are the official language(s) in your country?

The official languages in Hong Kong are Chinese and English.¹

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

Foreign investment is not subject to special regulations or restrictions in Hong Kong except in certain narrow areas. An exception is the broadcasting industry. It is a statutory requirement that the foreign ownership of local broadcasting stations in Hong Kong may not exceed 49%².

6. Are there any exchange control or currency regulations in your country?

¹ Article 9 of the Basic Law of Hong Kong.

² Section 19 of the Broadcasting Ordinance (Cap. 562 of the Laws of Hong Kong).

There is no foreign exchange control in Hong Kong and no restrictions are imposed on the entry and repatriation of funds from profit or capital accounts.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

Hong Kong does not have an extensive regime of tax incentives or grants designed to attract foreign investment. Nonetheless, the tax environment in Hong Kong, including its free-port status, low tax rates, good infrastructure and minimal government interference, is favourable to investors.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

Please provide details on:

- i. Registration formalities;**
- ii. Minimum (and maximum) share capital;**
- iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);**
- iv. Any restrictions on foreign shareholders;**
- v. Management structure and any restrictions on foreign managers;**
- vi. Directors' liability;**
- vii. Parent company liability; and**
- viii. Reporting requirements (including filing of accounts).**

Foreign investors may set up partnerships, representative offices, branches of parent companies, locally incorporated subsidiaries of parent companies, joint ventures or trusts in Hong Kong. The most common form of business vehicle is a private limited company.

i Registration formalities

The registration of a private company involves the following procedures:

- (a) The filing of incorporation documents (such as the memorandum of association and articles of association of the company) to the Companies Registry.**

- (b) After filing of the incorporation documents and the payment of the prescribed fee, the Registrar of the Companies Registry will issue a certificate of incorporation to the company to certify the name and the date of incorporation of the company. This process usually takes four to seven working days.
- (c) Registration with the Inland Revenue Department's Business Registration Office to obtain a Business Registration Certificate.

ii Share capital

Apart from certain types of companies that are regulated (such as banking, securities and insurance), there is no required minimum or maximum authorized capital to set up a company.

iii Non-cash consideration

Shares can be issued for both cash and non-cash consideration. Common non-cash consideration includes the provision of services and the transfer of property in consideration of the shares in the company.

iv Rights attaching to shares

The rights attaching to shares are normally set out in the company's memorandum and articles of association. They are also subject to the provisions of the Companies Ordinance (Cap. 32 of the Laws of Hong Kong).

v Restrictions on foreign shareholders

There is no restriction on foreign individuals or companies being the shareholders of a company in Hong Kong. It is not mandatory that the shareholder of a Hong Kong company must be resident in Hong Kong.

vi Management structure

A minimum of one director is required for a private company. The director need not be a resident in Hong Kong and there are no restrictions on foreign managers.

vii Directors' liability

The general duties of directors in Hong Kong are mainly found in case law. They can be classified into two broad categories, namely

fiduciary duties and duties of care and skill.³ A director may be liable to civil or criminal proceedings if he does not comply with his duties. He may also be disqualified from acting as a director.

viii Parent company liability

Under the laws of Hong Kong, a subsidiary is treated as a separate legal entity and thus its parent company is not liable for the debts of its subsidiary. The legal liability of a parent company is limited to the amount of share capital it has contributed to the subsidiary.

ix Reporting requirements

- (a) An Annual Return for reporting the details of directors, shareholders and registered address is required to be filed with the Companies Registry every year.
- (b) An Employer's Return is issued by the Inland Revenue Department ("the IRD") for reporting salaries paid to staff subject to Hong Kong taxes each year in April. The completed Employer's Return shall be filed with the IRD within one month from the date of issue.
- (c) Profits Tax Return must be filed to the IRD annually together with the audited accounts. The date of the first submission can be fixed within 18 months from the date of incorporation of the company.
- (d) The names, personal particulars of the directors and secretary, register of charges, share capital, registered office address, etc, must be filed with the Companies Registry upon formation and upon any subsequent changes. However, a private company need not file its accounts for public inspection.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The main legislation regulating employment relationships in Hong Kong is the Employment Ordinance (Cap. 57) (the "EO"). It sets out mandatory employment rights, benefits, obligations and protections for employees and employers in Hong Kong. Parties cannot choose to contract out of the provisions in the EO. Any term of an employment contract that purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the EO will be void.

³ Please refer to "A Guide on Directors Duties" published by the Companies Registry for further details on directors' duties (accessible at http://www.cr.gov.hk/en/publications/docs/042008_ch3-e.pdf)

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

In Hong Kong, a written contract of employment is not required. However, it is a common practice to have a written contract. In addition to the express terms, an employment contract also consists of a number of terms implied either by legislation (which parties cannot exclude) or by common law (which parties can vary or exclude by express agreement). One example of employment terms implied by the EO includes provisions regarding rests days, statutory holidays and paid annual leaves.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Foreign employees must obtain a Hong Kong employment visa to work in Hong Kong. Hong Kong has a special work permit scheme for hiring skilled foreign employees called "Employment for Professionals". The admission criteria are whether the applicants have good educational qualifications and possess special knowledge or experience of value to and not readily available in Hong Kong.

The processing of the employment visa usually takes about 4-6 weeks and the government charges a nominal fee for the visa if the application is approved. In case the application is rejected, the applicant can file an appeal with the authorities.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employees are not entitled to management representation on the board of Hong Kong companies as of right. Generally speaking, employers are not required to consult with employees before corporate transactions such as redundancies and disposals.

However, if an employer has entered into an applicable industrial agreement with a trade union, the employer should observe its management representation or consultation obligations (if any) under the relevant agreement.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

The Minimum Wage Ordinance (Cap. 608) provide for a minimum wage at an hourly rate for certain employees in Hong Kong. The statutory minimum wage rate applies to most employees in Hong Kong except interns, work experience students or live-in domestic workers.

The initial statutory minimum wage rate is currently at HK\$28 per hour. It will be adjusted to HK\$30 per hour from 1 May 2013.

There are no restrictions on working hours in general, except for employees who are aged between 15-18 years old.

On top of rest days, statutory holidays, sick leave and maternity leave, employees who have been employed under a continuous contract for one year have a right to paid annual leave⁴.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

There is no pension system in Hong Kong.

However, employers and employees must be enrolled in an Mandatory Provident Fund (**MPF**) scheme. MPF is an employment-based retirement protection system in Hong Kong. Except for exempt persons, employees (regular or casual) and self-employed persons who are at least 18 but under 65 years of age are required to join an MPF scheme.

Under the Mandatory Provident Fund Schemes Ordinance (Cap.485), employees and employers who are covered by the MPF system are each required to make regular mandatory contributions calculated at 5% of the employee's relevant income to an MPF scheme, subject to the minimum and maximum relevant income levels. For a monthly-paid employee, the minimum and maximum relevant income levels are \$6,500 and \$25,000 respectively. Hence, the monthly contribution by an employer and an employee is subject to a cap of HK\$1,250.

Both employees and employers are free to make voluntary contributions in addition to mandatory contributions.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

The EO stipulates minimum notice periods for various situations (during probation, after probation and for summary dismissal)⁵.

Under the EO, it is unlawful to dismiss the following types of employees:

- (a) A female employee who has been confirmed pregnant and has served a notice of pregnancy (up until and including the day she is due to return to work on the expiry of her maternity leave or the date she ends her pregnancy)⁶;
- (b) an employee on sick leave receiving statutory sickness allowance;
- (c) an employee due to having given evidence or information in any proceedings or inquiry⁷;

⁴ Section 41AA of the EO.

⁵ Section 6 of the EO.

⁶ Section 15 of the EO.

⁷ Section 72B of the EO.

- (d) an employee striking for trade union membership and activities⁸;
- (e) an injured employee before entering into an agreement with the employee for employees' compensation or before the issue of a certificate of assessment.

It is also unlawful to dismiss an employee in contravention of any of the various anti-discrimination laws. These laws prohibit discrimination on the ground of sex⁹, disability¹⁰, family status¹¹ and race¹².

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Under the EO, unless summarily dismissed for good cause, an employee is entitled to notice or a specific payment in lieu of notice.

Furthermore, a severance payment is payable to employees who are made redundant after having been employed continuously for at least two years¹³. However, a severance payment may not be payable if the employee who is made redundant unreasonably refuses a re-employment offer.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Hong Kong adopts a territorial source principle of taxation in relation to employees.

18. Under what circumstances are employees subject to taxation in your country?

In relation to employees, salaries tax is imposed on all income arising in or derived from Hong Kong from an office or employment.

In determining the source of employment, the following three factors are relevant:

- (a) the place where the contract of employment was negotiated and entered into, and is enforceable;
- (b) the employer's place of residence; and
- (c) the place of payment of the employee's remuneration.

⁸ Section 21B of the EO.

⁹ Sex Discrimination Ordinance (Cap. 480)

¹⁰ Disability Discrimination Ordinance (Cap. 487)

¹¹ Family Status Discrimination Ordinance (Cap. 527)

¹² Race Discrimination Ordinance (Cap. 602)

¹³ Section 31B of the EO.

In general, if all three factors take place outside Hong Kong, the employment is regarded as located outside Hong Kong and hence not subject to taxation in Hong Kong. However, the Inland Revenue Department reserves the right to look beyond these factors in appropriate cases.

19. What income tax or social security contributions must be paid by:

i. Employees?

If the employment is regarded as Hong Kong employment, all income derived from it is normally subject to salaries tax. It is calculated on the employees' net chargeable income (i.e. assessable income after deductions and allowances). The net chargeable income rate can be up to 17%. However, the total amount taxed is subject to a ceiling of 15% of the net total income, which is assessable income after deductions but before allowances.

Employees must pay 5% of their salary to a MPF scheme, subject to a cap of HK\$1,250.

ii. Employers, in relation to their employees?

Employers must make monthly contribution of 5% of the employee's salary to a MPF scheme, subject to a cap of HK\$1,250.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Hong Kong adopts a territorial source principle of taxation in relation to corporations.

21. Under what circumstances are incorporations subject to taxation in your country?

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade, profession or business.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

i. Profits Tax

The rate of profits tax is 16.5% for corporations.

ii. Stamp Duty

Another applicable tax is stamp duty which is charged on the following documents at the following rates:

- (a) Transfer of Hong Kong shares: 0.2% of the consideration or the shares value, whichever is higher;
- (b) Hong Kong bearer instruments: 3% of the market value;
- (c) Sale or transfer of immovable property: depends on the amount of consideration¹⁴;
- (d) Leases of immovable property less than one year: 0.25% of the total rent payable over the term of the lease;
- (e) Leases of immovable property over one year but not over three years: 0.5% of the average annual rent; and
- (f) Leases of immovable property over three years: 1% of the average annual rent.

iii. **Property Tax**

Property tax is charged at the rate of 15% of the assessable value of any land or buildings in Hong Kong. The net assessable value is the rent receivable less any rent that has become irrecoverable, rates paid and a fixed allowance of 20% for repairs. Companies carrying on business in Hong Kong can elect to be exempted from property tax and subject instead to profits tax.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Dividends paid to foreign corporate shareholders are not taxable.

ii. Dividends received from foreign companies?

Dividends received from foreign companies are not taxable.

iii. Interest paid to foreign corporate shareholders?

Interest paid to foreign corporate shareholders is generally not taxable unless it is received as part of the income of a taxpayer, which is subject to profits tax.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Royalties on intellectual property received from Hong Kong by a non-resident shall be taxable if (a) the intellectual property is used in Hong Kong; or (b) the intellectual property is used outside Hong Kong and

¹⁴ Details of the rate of stamp duty charged can be found in http://www.gov.hk/en/residents/taxes/stamp/stamp_duty_rates.htm

the royalty payment is deductible in ascertaining the assessable profits of the payer under profits tax.¹⁵

Generally, the tax rate equals to 30% of the sum receivable by the non-resident person. However, the rate equals to 100% of the sum receivable by the non-resident person if the intellectual property royalties are paid by an associate.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

There is no thin capitalization rules in Hong Kong.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

There is no controlled foreign company rules in Hong Kong.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Yes, there are transfer pricing rules in Hong Kong¹⁶.

Where a non-resident person carries on business with a resident person with whom he is closely connected and the course of such business is so arranged that it produces to the resident person either (a) no profits which arise in or derive from Hong Kong or (b) less than the ordinary profits which might be expected to arise in or derive from Hong Kong, the business done by the non-resident person in pursuance of his connection with the resident person shall be deemed to be carried on in Hong Kong, and such non-resident person shall be chargeable with tax in respect of his profits from such business in the name of the resident person as if the resident person were his agent¹⁷.

27. How are imports and exports taxed in your country?

In general, imports into Hong Kong are tax-free except:

- (a) motor vehicles for use on the road which are subject to a First Registration Tax administered by the Transport Department; and
- (b) the four types of dutiable commodities which are subject to excise duties, irrespective of whether they are imported or locally manufactured. These goods are liquors, tobacco, hydrocarbon oil and methyl alcohol.

¹⁵ Section 15 of the Inland Revenue Ordinance (Cap. 112).

¹⁶ Please refer to Departmental Interpretation and Practice Notes ("DIPN") No. 46 on "Transfer Pricing Guidelines - Methodologies and Related Issues" issued by the IRD on 4 December 2009 for further details.

¹⁷ Section 20(2) of the Inland Revenue Ordinance (Cap. 112).

There is no tax or excise duty on exports from Hong Kong.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Hong Kong has a wide network of Double Tax Treaties (DTT), which can be categorized as follows:

(a) Comprehensive DTTs

Hong Kong has concluded comprehensive DTTs with countries such as Belgium, Mainland of China, Thailand, Vietnam and Luxembourg¹⁸.

(b) DTTs that cover airline income only

Hong Kong has concluded airline income treaties with countries such as Bangladesh, Canada, Croatia, Ethiopia, Estonia, Finland, Fiji, Iceland, Israel, Jordan, Kenya, Korea, Kuwait, Laos, Macau, Maldives, Mauritius, Mexico, New Zealand, Norway, Russian Federation, Sweden and the Switzerland¹⁹.

(c) DTTs that cover shipping income only

Hong Kong has concluded shipping income treaties with countries such as Denmark, Germany, Netherlands, Norway, United Kingdom and the United States²⁰.

(d) DTTs that cover both airline and shipping income:

Hong Kong has concluded airline and shipping income treaties with countries such as Singapore and Sri Lanka²¹.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

On 14 June 2012, the Legislative Council voted to enact the Competition Ordinance (Cap. 619) in Hong Kong. The prohibitions in the law are not yet in operation and are expected to come into effect when the new Competition Commission and Tribunal have been established, which is estimated to take approximately 12 months.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes. The First Conduct Rule in the Competition Ordinance prohibits undertaking from engaging in restrictive agreements and concerted practice that will prevent, restrict or distort competition in Hong Kong.

¹⁸ Please refer to http://www.ird.gov.hk/eng/tax/dta_inc.htm for the full list.

¹⁹ Please refer to http://www.ird.gov.hk/eng/tax/dta_air.htm for the full list.

²⁰ Please refer to http://www.ird.gov.hk/eng/tax/dta_ship.htm for the full list.

²¹ Please refer to http://www.ird.gov.hk/eng/tax/dta_air_ship.htm for the full list.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Yes. The Second Conduct Rule in the Competition Ordinance prohibits undertakings with a substantial degree of market power from abusing such power by engaging in conducts that will prevent, restrict or distort competition in Hong Kong.

32. Are mergers and acquisitions subject to merger control in your country?

Yes. However, the Merger Rule in the Competition Ordinance is limited to the telecommunications sector. It only applies to undertakings which are telecommunication license holders and prohibits these undertakings from directly or indirectly carrying out mergers that will or are likely to lessen the competition in the telecommunication industry in Hong Kong.

Mergers in other industries are not subject to the Merger Rule but they may still fall under the ambit of the First or Second Conduct Rule.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?**
- ii. How is it protected?**
- iii. How is it enforced?**
- iv. How long is it protected?**

In Hong Kong, the main intellectual property rights are patents, trademarks, registered designs and copyright.

a. Patents

- i. What is the nature of the right?**

A patent gives the inventor an exclusive right to use his invention. An invention which is new and involves an inventive step can be patented in Hong Kong by registration as long as it is susceptible of industrial application and does not belong to the excluded classes of inventions.

There are two types of patents in Hong Kong: a standard patent and a short-term patent.

ii. How is it protected?

The grant of a standard patent in Hong Kong is based on the registration of a patent granted by one of three patent offices called “designated patent offices”. They are the State Intellectual Property Office, People's Republic of China; the European Patent Office, in respect of a patent designating the United Kingdom and the United Kingdom Patent Office.

A standard patent application is made in two stages by filing a request to record and a request for registration and grant to the Patents Registry.

The grant of a short-term patent in Hong Kong is based on a search report from an international searching authority or one of three designated patent offices.

A short-term patent application in Hong Kong is made by filing a request for grant of short-term patent supported by the documents and information required.

iii. How is it enforced?

A patent protects an invention by giving the patent owner a legal right to prevent others from manufacturing, using, selling or importing the patented invention.

The owner may seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an order for delivery up of the infringing items, disclosure of information about the supply and/or dealings of the infringing items and an award for damages as well as costs.

Further, the patent owner can also ask for a declaration that the patent is valid and has been infringed.

iv. How long is it protected?

The period of protection of a standard patent can be renewed annually after the end of the third year, up to maximum term of 20 years.

Protection under a short-term patent is renewable after the end of the fourth year, up to a maximum term of 8 years.

b. Trademarks

i. What is the nature of the right?

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

ii. How is it protected?

A trademark application must be filed at the Hong Kong Trade Marks Registry.

iii. How is it enforced?

Registering a trademark means that the trademark owner has the exclusive right to use the trademark in relation to the goods and services for which the mark is registered. If other people use it in the course of trade or business in Hong Kong in relation to the same or similar goods or services without consent, they may be liable for infringement of the mark.

The owner may seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an order for delivery up of the infringing items, disclosure of information about the supply and/or dealings of the infringing items and an award for damages as well as costs.

Unregistered trademarks may be protected by the common law action of passing off if the owner can prove the reputation in the unregistered mark and that the other person's use of the mark will cause damage to the owner.

iv. How long is it protected?

A trademark registration is valid from the date of application for ten years. Registration can be renewed indefinitely for successive ten-year periods. However, if a registered trademark is not used in Hong Kong for any continuous period of 3 years, any interested person can apply for its removal on the ground of non-use.

c. Registered designs

i. What is the nature of the right?

Registered designs protect only the appearance of products, but not the way in which the product relating to the design works. To be registrable, a design must be new. A design is new if (a) it has not been previously registered for the same or any other article, or (b) it

has not been previously published or disclosed in the Hong Kong or elsewhere.

ii. How is it protected?

The application involves the filing to the Designs Registry (a) a completed application form; (b) a set of clear representation of the design; and (c) payment of the filing fee and advertisement fee. Applications are examined only for formalities and the registrability of the design is not considered.

iii. How is it enforced?

Registered design owners have the right to prevent others from manufacturing, importing, using, selling or hiring the design product. The owner may seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an order for delivery up of the infringing items, disclosure of information about the supply and/or dealings of the infringing items and an award for damages as well as costs.

iv. How long is it protected?

The registration of a design lasts for five years beginning from the filing date. It may be extended for additional periods of five years, up to a maximum of 25 years from the filing date.

d. Copyright

i. What is the nature of the right?

In general, copyright is the right given to the owner of an original work. This right 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.

ii. How is it protected?

There are no formalities required to obtain copyright protection for a work in Hong Kong.

iii. How is it enforced?

A copyright owner can take civil legal action against any person who infringes the copyright in the work. The activities that the owner can prevent vary according to the various types of works; but essentially

the owner has the exclusive right to copy the work and to distribute it to the public. The owner may seek all necessary relief against the infringer, such as an injunction to prevent further infringement, an order for delivery up of the infringing items, disclosure of information about the supply and/or dealings of the infringing items and an award for damages as well as costs.

There are wide-ranging provisions in the law for criminal enforcement of copyright. Those who commit copyright piracy, such as making of or possession of infringing articles for trade or business, may be subject to a term of imprisonment of up to four years and a maximum fine of HK\$50,000 per infringing article.

iv. How long is it protected?

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

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

- i. Agency;
- ii. Distribution; and
- iii. Franchising

Marketing agreements are not regulated in Hong Kong. There are no specific laws concerning agency, distribution and franchising arrangements.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

The Electronic Transactions Ordinance (Cap. 553) was enacted to serve the purpose of facilitating the use of electronic transactions for commercial purposes. It accords electronic record and electronic signature the same legal status as that of their paper-based counterparts; and establishes a voluntary recognition scheme for certification authorities to enhance public confidence in electronic transactions.

The Unsolicited Electronic Messages Ordinance (Cap. 593) was enacted to govern electronic messages being sent as text, pre-recorded calls or messages to telephones, fax machines or to email addresses with a purpose of advertising,

promoting or offering any goods, services, business opportunities or the sender themselves. Senders of commercial electronic messages are now required to provide clear and accurate sender information in the message and to provide an unsubscribe facility and an unsubscribe facility statement in the message.

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

The Personal Data (Privacy) Ordinance (Cap. 486) governs personal data in Hong Kong. It stipulates six main data protection principles for data user to follow:

Principle 1 concerns the purpose and manner of collection of personal data in which personal data shall not be collected unless it is for a lawful purpose, and by means which are lawful and fair in the circumstances. The data subject must be informed of the purpose of the collection of the data and his rights to request access and correction of the data.

Principle 2 provides that all practicable steps shall be taken to ensure that personal data are accurate having regard to the purpose for which the data are to be used and must not be kept longer than is necessary for the fulfillment of the purpose

Principle 3 requires that personal data can only be used for the purposes for which it was collected or for directly related purposes.

Principle 4 requires that all practicable steps shall be taken to ensure that personal data held by a data user are protected against unauthorized or accidental access, processing, erasure or other use.

Principle 5 provides the information that are to be generally available, which includes a data user's policies and practices in relation to the personal data, the kind of personal data held by a data user and the main purposes for which personal data held by a data user are to be used.

Principle 6 provides that a data subject is entitled to ascertain whether a data user holds personal data of which he is the data subject, request access and correction to personal data and to be given reasons if his request is refused and to object to this refusal.

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

The main legislation regulating product liability and product safety in Hong Kong are the Consumer Goods Safety Ordinance (Cap. 456) and the Sale of Goods Ordinance (Cap. 26).

The Consumer Goods Safety Ordinance imposes a duty on manufacturers, importers and suppliers of certain consumer goods to ensure that the consumer goods they supply are safe and for incidental purposes. A breach of such requirements will lead to criminal liability.

The Sale of Goods Ordinance implies into every contract for the sale of goods the condition that the goods are of merchantable quality, or are fit for the purposes for which goods of that kind are commonly bought.