Franchising in China and Hong Kong

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INTRODUCTION

In this article, an overview of the regulatory requirements and points-to-note for franchising in China and Hong Kong will be provided.

CHINA

In the past 20 years, franchising in China has developed rapidly, especially in the industries of food and beverage, education and training, laundry services and automotive aftermarket services. The potentially huge franchise market in China has attracted investors and chained enterprises from all over the world. According to the 2018 Top 100 Franchises Report published by Franchise Direct, China has currently over 4,500 franchises and chains in operation.

At the China Franchise Expo (Beijing) 2018 held in Beijing from 4th - 6th May 2018, over 600 franchises from more than 20 countries and regions around the world were showcased at the exposition. The number of participating brands this year increased 20% compared to last year, with food and beverage continuing to be the most popular industry for franchising. With the advancement in and prevalence of mobile internet and e-commerce in China, it is expected that franchising models will also undergo digital transformation to enhance the quality and efficiency in business management and customer services.

With the aim of providing a framework to regulate e-commerce conduct, the long-awaited E-Commerce Law of the PRC was passed on 31 August 2018 and will come into force on 1 January 2019. One of the highlights of the Law is the obligations imposed on Platform Operators to police online sales, including protection of intellectual property rights (IPRs), consumers’ rights and interests, personal data, etc. It is expected that IPRs will receive greater protection in China in light of the passing of this law. Franchisors and franchisees must take note of the new legal obligations arising from the E-Commerce Law.
HONG KONG

With respect to Hong Kong, many international brands target Hong Kong as their regional franchising hub. According to the latest study by the Hong Kong Trade Development Council (HKTDC), international brands are identifying Hong Kong as the prime location to set up their franchise network in order to tap into the huge mainland China market. The HKTDC organized the Hong Kong International Franchising Show alongside the World SME Expo in December last year. The Show in 2017 featured over 130 franchise brands from 16 countries and regions.

There is no specific franchising legislation that governs the offer and sale of franchises in Hong Kong. Neither are there exchange controls, foreign equity participation or local management participation regulations in place. Franchises in Hong Kong are not required to be registered with the Hong Kong Government or any trade associations. As a result, the offer and sale of franchises is subject to common law (with special regard to contract law principles), where the principle of caveat emptor (buyer beware) applies.

FRANCHISING IN CHINA

I. Latest Developments

While the main body of law in the realm of franchising in China has not seen much change, China has expedited the process for the establishment of foreign invested entities (“FIE”) (including wholly foreign owned entities (“WFOE”), equity joint ventures and contractual joint ventures) by abolishing the need to seek approval from the Ministry of Commerce (“MOFCOM”) prior to registration commencing October 2016. So long as the proposed FIE does not conduct business contained in the National Negative List, it can be easily established by filing a standard set of documents online.

II. Franchising Laws in China

There has been no significant change in PRC law regarding franchising over the past few years. Since 2012, franchising in China is primarily governed by the following legislations:

- Measures for Administration on Foreign Investment in Commercial Sector promulgated by the MOFCOM effective 1 June 2004¹ (“Foreign Investment Measures”)  

• Regulation on Administration of Commercial Franchises promulgated by the State Council effective 1 May 2007 (“Franchise Regulation”)

• Administrative Measures for Information Disclosure of Commercial Franchises promulgated by MOFCOM effective 1 April 2012 which govern the continuous disclosure requirements of the franchisor to the franchisee (“Disclosure Measures”)

• Administrative Measures for the Registration of Commercial Franchises promulgated by MOCFOM effective 1 February 2012 (“Registration Measures”)

Pursuant to the Franchise Regulation, a franchisor in China must satisfy the following requirements:

(1) The franchisor must have a mature business model;

(2) The franchisor must be able to provide long-term business guidance, technical support, business training and other services to the franchisee; and

(3) The franchisor must have at least two direct sales stores that have been operating for more than one year (i.e. the “2+1” requirement).

Further, a foreign franchisor must register its Trade Mark (TM) with the China Trademark Office before entering into commercial franchise agreements with local franchisees. In a well-known case Apple Inc. v Shenzhen Weiguan Technology Corp., Apple was unable to successfully register the TM IPAD within China. Ultimately, Apple paid US$60 million to Weiguan to secure the right to use the TM IPAD.

Apart from the above franchising specific laws, other laws that may be relevant to franchising include Contract Law, Trade Mark Law, Copyright Law, Advertisement Law, as well as other industry specific regulations. For instance, Contract Law governs the ongoing relationship between the franchisor and franchisee, and provides that franchisor and franchisee must abide by the principles of fairness and reasonableness.

III. Setting Up Company in China for Franchising

For foreign franchisors, there are three major corporate structures for running a franchise in China:

(1) A foreign company without any presence in China:
This avoids the establishment of a domestic enterprise, but there are risks such as the absence of a local franchisor leading to lack of control over the franchisee.

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(2) A joint venture:
The setting-up of a joint venture with a local partner has been adopted by some well-known international franchisors (such as McDonald’s and Starbucks). However, this arrangement will involve sharing of profits between the foreign franchisor and local partner.

(3) A domestic subsidiary by way of a foreign invested enterprise (FIE) such as a wholly foreign-owned enterprise (WFOE):
This can be an ideal way to manage and build a franchise network in China through the use of FIEs. Having local staff and local presence will aid the supervision and management of the business resources and brand awareness, conducive to later expansion.

IV. Pre-Contractual Disclosure

Under the Franchise Regulation, a franchisor must disclose fairly and in good faith all facts material to the prospective franchisee prior to entering into the franchising agreement. As a matter of PRC Contract Law, the parties to a contract are also required to act in “good faith” in the course of concluding a contract, and not to deliberately conceal any facts material to the conclusion of such contract.

According to Articles 21 and 22 of the Franchise Regulation, a franchisor must provide the following information in writing to the franchisee at least 30 days before entering into a franchise agreement:

- The franchisor's name, domicile, legal representative, registered capital, business scope and the basic situation of franchising activities.
- Basic information of the franchisor’s registered trade marks, corporate logos, patents, proprietary technology and business model.
- The type, amount and method of payment of franchise fees (including whether margin deposit is required and the repayment details of the margin deposit).
- Prices and conditions for the provision of products, services, or equipment to the franchisee.
- The content and implementation plan for the provision of continuous business guidance, technical support and operation training to the franchisee.
- Specific methods of supervising and guiding the operation activities of the franchisee.
- The estimate budget of investment for franchise outlets.
- The number, geographical distribution and business conditions assessment of existing franchisees.
- The last two years' briefs of financial accounting report and auditing report as audited by an accounting firm.
The last five years litigation and arbitration results related to franchising.

Any serious illegal business records of the franchisor or its legal representative.

Any other information prescribed by the commercial administrative department.

There are no exemptions or differences in treatment for a large or sophisticated franchisee or investor. If the franchisee or investor is based outside the country, it must comply with the laws of the country in which it is operating its business.

If the franchisor fails to comply with disclosure requirements, the commercial administrative department will order the franchisor to make a correction and impose a fine between CNY10,000 and CNY50,000. In addition, the franchisor may be fined between CNY10,000 and CNY50,000. If the franchisor does not take steps to correct this non-compliance, it may be fined CNY50,000 to CNY100,000, with public announcement.

Further, the failure to disclose the prerequisite information, or provision of inaccurate information, will afford the franchisee legal grounds to terminate the franchise agreement and to claim damages. Overseas franchisors may be liable for the failures of a local sub-franchisor to meet the disclosure obligation as the disclosure will normally specify that some information must be disclosed by the original franchisor.

V. Franchise Agreement

(a) Formality Requirements of the Franchise Agreement

According to the Franchise Regulation, a franchise agreement must be in writing and must include the following terms:

- Basic information about the franchisor and franchisee.
- Contents and terms of the franchise.
- The type, amount and payment method of franchising fees.
- The content of and the methods for providing business guidance and technical support.
- Business training and other services.
- Quality provisions, standards and guarantees for the product or service.
- Sales promotion, advertising and publicity about the product or service.
- Protection of rights and interests of consumers and assumption of compensation liabilities.
- Change, rescission and termination of the franchise agreement.
- Breach of agreement provisions and liabilities.
• Dispute resolution methods.
• Other agreements between franchisor and franchisee.

Further, the franchise agreement must specify a cooling-off period allowing the franchisee to unilaterally terminate the agreement before the expiry of this period. The law, however, does not regulate on how long a cooling-off period must last, but in practical terms must be reasonable.

(a) Record Filing Requirements

According to Article 8 of the Franchise Regulation, a franchisor must register with MOFCOM within 15 days of entering into the first franchising agreement with the franchisee by submitting the following documents:
• A copy of the business registration certificate of the franchisor;
• A sample franchise agreement;
• A brochure for franchised operations;
• A market plan;
• A written commitment and relevant certification materials as specified under Article 7 of the Regulation; and
• Other documents and materials prescribed by the commercial administrative department.

An elaborate list of documents and materials required to be submitted by a franchisor as discussed above can be found in Article 5 of the Registration Measure.

While the law does not expressly require the franchise documents to be in Chinese, to avoid potential disputes with local franchisees and for the purposes of registration with local authorities, it is advisable to do so or ensure that a translation is available. In addition, the Chinese version of the franchise agreement must be prepared and submitted to MOFCOM.

If any of the documents are prepared outside the PRC, such documents (with Chinese translations) must be notarized by a notary public in the country where the documents are prepared, and certified by the embassy or consulate of the PRC in that country or the certification formalities prescribed in the applicable treaty. Documents prepared in Hong Kong or Macau Special Administrative Region follow a different certification formality where China-Appointed Attesting Officers must be engaged in certifying documents for use in PRC.
(b) **Fees and Payments**

Pursuant to Article 17 of the Franchise Regulation, promotions and advertising expenses must be promptly disclosed to a franchisee and be used in accordance with the terms of the franchise agreement. The parties need to negotiate the methods of payment of all related fees.

The current law does not contain any restrictions on the amount of interest that can be charged on overdue payments. In practice, the franchisor can charge interest, as long as the interest charged is reasonable and not punitive.

(c) **Operations Manual**

A franchisor must provide a franchise operation manual to the franchisee and periodically provide business guidance, technical support, business training and other services to the franchisee in accordance with the franchise agreement, pursuant to Article 14 of the Franchise Regulation. Further, Article 15 of the Franchise Regulation also stipulates that the quality and standards of a franchise product or service must comply with the laws, administrative regulations and the relevant requirements.

If there is a major change to the information provided by a franchisor, he must promptly notify the franchisee of these changes as provided in Article 23(2) of the Franchise Regulation.

(d) **Term of Agreement and Renewal**

There is no statutory maximum term for the franchise agreement. However, under Articles 11(2) and 13 of the Franchise Regulation, the initial term of franchise agreement must not be less than three years unless otherwise agreed by the franchisee, and such term must be defined in the franchise agreement.

At the end of the term, the franchisor can accept or refuse to renew the agreement. The law is silent as to what circumstances permit renewal and the fees payable on renewal, all of which would be the subject of negotiations. Where the franchisor and franchisee agree to renew the original franchise contract on the same conditions, the franchisor is not required to meet the disclosure obligation again as prescribed in Article 5 of the Disclosure Measure; otherwise, the franchisor must make proper disclosures to the original franchisee with reference to any proposed changes of the franchise agreement.
(e) **Termination**

As discussed above, a franchisor must maintain the contractual relationship with the franchisee for three years, unless otherwise agreed by the franchisee.

Early termination of an agreement by a franchisor is only allowed if there is strong evidential support that there is a breach or a violation of good faith. A franchisor must be fair and reasonable when deciding to terminate the agreement. In the absence of contractual provisions, a franchisor can only terminate the franchise agreement in one of the following circumstances according to the PRC Contract Law:

- The franchisee delayed performance of its main obligation after the performance was demanded and failed to perform within a reasonable period.
- It is impossible to achieve the purpose of the agreement due to an event of force majeure.
- The franchisee delays performance of its obligations, or breaches the agreement in some other manner, rendering it impossible to achieve the purpose of the agreement.
- Prior to the expiration of the period of performance, the franchisee expressly states, or indicates through its conduct, that it will not perform its main obligation.

It is therefore advisable for the parties to clearly state any other occurrence of breach that will entitle the franchisor to terminate the franchise agreement, instead of relying on the Contract Law.

On the other hand, a franchisee can unilaterally terminate the agreement:

- without cause within the agreed cooling period mentioned above;
- in accordance with the Contract Law;
- if the franchisor conceals relevant information; or
- if the franchisor provides false information.

Contractual penalties and liquidated damages (as opposed to or in addition to damages for breach) are enforceable under the PRC Contract Law.

**VI. Intellectual Property Rights and Franchising**

Franchising is intrinsically connected to a spectrum of Intellectual Property Rights (IPRs) since, through a franchise agreement, the franchisor grants a franchisee a license or permission to utilise the
The franchisor’s business resources in running a replica of the franchise business. The resources are predominately IPRs, including but not limited to:

- Trade marks (logos, brand names, product names, trade dress etc.)
- Copyrights (marketing campaign creatives, operations manual, designs etc.)
- Patents (methods, products, techniques etc.)
- Domain names (e-commerce websites)
- Trade secrets

As IPRs form the foundation of franchising, it is of paramount importance for franchisors to ensure that their registrable IPRs are duly registered in China or at least to have applied to register the same. Non-registrable rights such as trade secrets and know-how can be protected by a carefully-drafted franchise agreement that these are contractual obligations of the franchisee.

It is important that the franchise agreement must contain unequivocal clauses on how the franchisor’s IPRs must be applied to ensure uniform business operations by all franchisees. In addition, it goes without saying that the franchise agreement must state clearly that the IPRs rights shall remain with the franchisor, as the franchisee is only given a license to use the same upon payment of the license fees during the term of the agreement. Terms prohibiting the franchisee from using the IRPs outside the scope of the franchise business or registering (or attempting to register) the same with any IP registration authorities outside and/or within China are essential. Lastly, the consequence of breach of any of the aforesaid obligations shall be adequately addressed by a termination clause giving the franchisor the right to terminate the franchise immediately and to seek for damages and/or other injunctive reliefs.

Most importantly, before disclosing any information to the franchisee with respect to the franchise business, the franchisor can require the franchisee to sign a confidentiality agreement (Article 7, Administrative Measures for Information Disclosure of Commercial Franchise) to ensure that the franchisee will keep the franchisor’s trade secrets confidential and only disclose enough information to its employees for the purpose of carrying out the franchise business. It follows that the franchisor should ensure that the franchisee undertakes to include a similar confidentiality clause in the employment contracts entered into between the franchisee and its employees. Apart from contractual obligations, the Chinese law also prohibits the franchisee from divulging or allowing any other person to use the franchisor’s business secrets.

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VII. Competition law

The Anti-Unfair Competition Law and the Anti-Monopoly Law\(^6\) are the key pieces of legislation governing competition law in China. The Anti-Unfair Competition Law was recently revised, and came into force on 1 January 2018\(^7\). These two laws provide the following use of IP and restrictions on price, which relate to typical franchise transactions:

• With respect to the use of IPRs, the Anti-Unfair Competition Law prevents:
  • using without permission, a label identical or similar to the name, packaging, or decoration or among others, of another person’s commodity with certain influence;
  • using without permission, another person’s or entity’s name with certain influence (including abbreviations), such as trade names of an enterprise;
  • using without permission, the principal part of a domain name, the name of a website, or a web page with certain influence;
  • other acts of confusion sufficient to mislead a person into believing that a commodity is one of another person/entity or has a particular connection with another person/entity; and
  • a business from disclosing or using or allowing another person to use a trade secret in violation of an agreement or the requirements being imposed on it by the owner of the trade secret.

• With respect to pricing, the Anti-Monopoly Law prevents the following:
  • exclusive geographical areas for each franchisee, provided that the franchisor holds a dominant market position;
  • a monopoly agreement, which fixes prices for resale;
  • limits on the developments of new products or new technology; and
  • limits on the output or sale of products.

• A franchisor will not be in violation of the Anti-Monopoly Law and the Anti-Unfair Competition Law unless there is:

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• an abuse of market position;
• interference with a franchisee’s lawful business activities; or
• an impairment of public interest.

Under the Anti-Monopoly Law, the franchisor will not be penalised for imposing online trading restrictions on their franchisees.

VIII. Tax

For any non-tax resident enterprise that do not have an establishment or place of business in China, China imposes withholding taxes on income (such as rent, royalties, dividends) generated in the country unless otherwise specified under any applicable taxation treaties. In general, a Chinese franchisee is required to pay withholding taxes before making any outbound payment to a franchisor located outside China.

In the event that a foreign company has incorporated a company in China for the purpose of selling franchises, then such company will be considered as a tax resident of China and is liable for paying enterprise income tax on its profits.

IX. Remittance issue

China adopts a foreign exchange control system and payment made from China must be approved prior to remittance from China. In particular, all outbound payments (except for settlements with Hong Kong, Macao and Association of Southeast Asian Nations countries, which can be made in renminbi) must be converted from RMB to some other foreign currencies. The bank usually requires the franchisor to provide the following documents in order to satisfy the payment requirements to an overseas franchisor:

• Agreements (such as franchise agreements and licence agreement) that have been filed with the Ministry of Commerce or its local counterpart.

• Tax certificate evidencing that the franchisee has fulfilled its obligation in respect of withholding tax (if any).
• All other documents that are required by the payer bank in accordance with foreign exchange control regulations.

X. Choice of law and jurisdiction

Generally, if one of the parties is a foreign company, the parties may select foreign law as the applicable law of the franchise agreement. However, pursuant to Article 2 of the Regulation on Administration of Commercial Franchises (promulgated by the State Council effective 1 May 2007), the mandatory local rules apply to any franchise agreements made in China. Besides, the Chinese courts are ready to enforce commercial contracts governed by the PRC Law. As such, it is a practical approach to select Chinese Law as the governing law.

In comparison, enforcement of foreign judgments in China is not as straight-forward because many foreign countries are not prepared to enforce and recognize Chinese judgments, unless prior arrangements have been agreed upon under international treaties. Accordingly, the Chinese Courts may not enforce nor recognize judgments from these countries based on the concept of reciprocity.

Alternatively, arbitration is considered to be the preferred dispute resolution method for many reasons, such as confidentiality of the proceedings, freedom to appoint reputable arbitrators and finality of the award. Most importantly, arbitral awards are enforceable in 156 countries pursuant to the New York Convention to which China is a signatory party.

In addition, parties are encouraged to resolve private disputes through mediation under the People's Mediation Law effective since 1 January 2011. However, please note that for any mediation agreement reached by the parties to be enforceable by the Chinese Courts, the parties must jointly apply to the Chinese Court for judicial confirmation after the mediation agreement has been concluded before the People's Mediation Committee.
FRANCHISING IN HONG KONG

I. Franchising Laws in Hong Kong

As mentioned in the introduction above, there is no specific franchising legislation that governs the offer and sale of franchises in Hong Kong. The relationship between the franchisor and franchisee will be subject to the principles of contracts under the common law system of Hong Kong, such as implied terms, representations and warranties, estoppel, etc. The contractual relationship will also be subject to regulation of other related ordinances, including the Control of Exemption Clauses Ordinance (Cap 71) and the Misrepresentation Ordinance (Cap 284).

Further, the amended Personal Data (Privacy) Ordinance (Cap 486) regulates the collection and processing of personal data in Hong Kong. The franchisee must pay particular attention when dealing with personal data provided by customers. Moreover, although there is no restriction on the offshore transfer of personal data at present, such restrictions are expected to come into force in the near future.

II. Setting Up Company in Hong Kong for Franchising

In Hong Kong, there are no specific tax benefits, restrictions on foreign investments, exchange controls or foreign equity participation. Therefore, there is no specific reason for an overseas franchisor to use a separate entity, except for the usual good reasons (for example, assets protection, avoidance of litigation for a parent company, and wishing to use a separate legal entity as opposed to its principal business).

It is simple and straightforward to set up a business in Hong Kong and investors may choose among a variety of business entities. The most common type of business vehicle is a private company limited by shares.

III. Pre-Contractual Disclosure

Hong Kong does not have any rules or regulations that require a franchisor to disclose any prescribed information about the franchising business before entering into a franchising agreement with a franchisee. However, franchisors that are members of the Hong Kong Franchise Association (HKFA) are required to adhere to the code of ethics published by the HKFA (although the code of ethics is not legally binding).
The code of ethics stipulates that:

- Franchisors must provide full and accurate written disclosure of all information that is material to the franchise relationship to prospective franchisees within a reasonable time prior to concluding the franchise agreement.
- Prospective franchisees are expected to provide full and frank disclosure of all information considered material in order to facilitate the franchisor in choosing the appropriate franchisee.
- Where the disclosure process includes any information provided by an overseas franchisor or IP owner, the overseas franchisor or IP owner will be expected to participate in the local disclosure process.

IV. Franchise Agreement

Under the principle of freedom of contract, the parties are free to negotiate any terms and conditions for the franchise agreement. The franchise agreement will be valid and enforceable as long as it fulfills the basic requirements for formation of a binding contract in Hong Kong:

- Offer and acceptance
- Intention to create legal relation
- Consideration
- Legal capacity to make contracts.

There is no requirement on the formality or content of a franchise agreement in Hong Kong, as compared to the PRC. In commercial practice, a franchise agreement will generally include the following key aspects:

- Grant of franchise
- Scope of franchise operations
- Payment of franchising fees or royalties
- Franchisor’s provision of training and support
- Operations Manual
- Franchisee’s operational covenants
- Quality control of the products or services
- Promotion and advertisement of the franchising business
- Protection of intellectual property
- Reports and performance
- Termination of the franchise agreement
- Events of default and liabilities
• Restrictive covenants
• Governing law and dispute resolution

In general, the Hong Kong courts are willing to give effect to the free will of the contracting parties. As such, an entire agreement clause and specific exclusions will serve their specific purposes if carefully drafted with the intention of excluding such specific matters. However, as mentioned, specific exclusion clauses will be subject to the scrutiny of the Control of Exemption Clauses Ordinance (Cap 71).

V. Intellectual Property

Hong Kong is a signatory to various international agreements for all aspects of laws and particularly for IP such as the Paris convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literacy and Artistic Works, the Universal Copyright Convention and the Nice Agreement Concerning the International Classification of Goods and Services. There is specific protection regime for each of the IPRs as set out in the relevant legislations, including the following:

• Trade Marks Ordinance
• Patents Ordinance
• Registered Designs Ordinance
• Copyright Ordinance
• Prevention of Copyright Piracy Ordinance
• Trade Descriptions Ordinance
• Layout-Design (Topography) of Integrated Circuits Ordinance
• Plant Varieties Protection Ordinance

A franchisor will generally stipulate the types of IPRs to be licensed to the franchisee for use regarding the operation of the franchising business and prescribe the form and manner of use of those IPRs to protect the franchisor’s brand and goodwill. These terms are tailor-made and must clearly be incorporated into the franchise agreement.

If the parties enter into separate TM licensing agreements, they should register such agreements with the Hong Kong Trade Marks Registry to ensure enforceability against a third party pursuant to sections 35 – 37 of the Trade Marks Ordinance.
VI. Competition Law

The Competition Ordinance covers all sectors of the economy of Hong Kong as it regulates the conduct of market players, and its provisions concerning price fixing, market allocation and so on can have an impact on a franchise business.

Under the “three conduct rules” of the Competition Ordinance, the following conducts are regarded as anti-competitive and therefore prohibited:

- Any form of agreement, concerted practices and decisions of a trade association which have the object or effect of preventing, restricting and/or distorting competition in Hong Kong;
- The abuse to a substantial degree of market power by conduct which has the object or effect of preventing, restricting and/or distorting competition in Hong Kong (For instance, where a franchisor is an undertaking with a substantial degree of market power, it will be prohibited from product tying or bundling if such conduct will give rise to foreclosure in the latter markets, leading to higher prices for consumers); and
- Any direct or indirect mergers, acquisitions and joint ventures between telecommunications carrier license holders that have the effect of substantially lessening competition in Hong Kong.

VII. Tax

Hong Kong has a simple and low-rate tax system. There is no discrimination between foreign and local companies, with both subject to the same rate of taxation. The Profits Tax Rate used to be 16.5% for all corporations and 15% for unincorporated businesses since the financial year of 2018/19. The Inland Revenue (Amendment) (No. 7) Bill 2017 (Profits Tax bill) was gazette on 29 December 2017 and introduced a two-tiered profits tax rate regime. Commencing from the year of assessment 2018/19 (i.e. on or after 1 April 2018), the two-tiered profits tax regime will apply to both corporations and unincorporated businesses as follows:

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<thead>
<tr>
<th>Assessable profits</th>
<th>Profits Tax Rate</th>
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<tr>
<td></td>
<td>Corporations</td>
</tr>
<tr>
<td>First HK$2 million</td>
<td>8.25%</td>
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<tr>
<td>Over HK$2 million</td>
<td>16.5%</td>
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VIII. Choice of Law and Dispute Resolution

The parties have the freedom to choose the applicable law in Hong Kong. The local courts will recognize a choice of foreign law in a franchise agreement provided that the franchisor and the franchisee specify the foreign law which will be applicable in the franchise agreement.

The parties are free to submit to the exclusive or non-exclusive jurisdiction of Hong Kong courts. Hong Kong court is a popular forum for dispute resolution owing to its sophisticated legal system and extensive body of common law that allows effective enforcement of contracts, dispute settlement, and protection of rights.

Arbitration is another viable option for dispute resolution in Hong Kong. The Arbitration Ordinance provides a legal framework for arbitration largely based on the UNCITRAL Model Arbitration Law. The Arbitration (Amendment) Bill was passed on 14 June 2017 and the Amendment Ordinance came into effect 1 January 2018. The Amendment Ordinance clarifies that disputes over IPRs can be resolved by arbitration, and it is not contrary to the public policy of Hong Kong to enforce arbitral awards involving IPRs. The amendment has come as a favourable policy that facilitates arbitration as a way to resolve disputes over IPRs.

Mediation is also seen as an efficient alternative dispute resolution mechanism in Hong Kong. It involves the appointment of an impartial third party to facilitate the disputing parties to negotiate and reach a settlement. Since Practice Direction 31 came into effect in 2010, mediation has become an essential step in most civil litigation proceedings in Hong Kong and has successfully brought many cases to settlement before going into a full-blown trial.
Ella Cheong is the Senior Partner of ELLA CHEONG & ALAN CHIU, a Hong Kong based full service firm specialising in Intellectual Property (IP) practice.

Ella is a pioneer in Asia for IP and respected world-wide with 100+ professional awards and one of the pioneers in the Hong Kong IP practice. Ella concentrates on all IP related legal issues, including enforcement and commercial-related IP issues such as licensing and franchising, as well as litigious issues before the Courts and the IP Registries.

Ella was inducted into the IP Hall of Fame 2018 (by IAM) in recognition of her outstanding contribution to the development of IP law and practice. She has been selected for recognition as the only franchise specialist listed in the Hong Kong region in Who's Who Legal: Franchise 2018.

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- Hong Kong Law Society (Roll of Honour/Former Chair of Intellectual Property Committee).
- Asian Patent Attorneys Association (Enduring Award/Founding President (HKG)).
- Association Internationale pour la Protection de la Propriété Intellectuelle (Member of Honour).
- Fédération Internationale des Conseils en Propriété Industrielle (Member of Honour).
- Hong Kong Women Professionals & Entrepreneurs Association (HKWPEA) - Outstanding Women Entrepreneurs Award
ABOUT THE FIRM

We are a leading IP boutique firm in Hong Kong (previously known as Ella Cheong Law Office) founded by Ella Cheong, a highly respectable IP figure in Hong Kong. The firm is now led by our two acclaimed partners Ella Cheong and Alan Chiu.

We firmly believe that the most valuable assets of companies are their creativity, ideas and innovations – these are intellectual properties – and we are committed to strategize and protect these intangible assets.

We advise extensively on all types of IP matters, in particular, brand protection, IP enforcement strategies and commercial exploitation of IPRs, including but not limited to IP licensing and franchising. Apart from IP, we have a full team advising on other areas including civil and commercial litigation, corporate and commercial, data privacy, computer forensic and e-commerce. From IP strategies, licensing and franchising to joint venture, strategic alliance, business reorganization, M&A and IPO, our firm provides a full range of legal services that can help you protect and commercialize your IP assets.

Main Practice Areas:
- Intellectual Property Enforcement & Dispute Resolution
- Franchising, Transactional and Commercial Intellectual Property
- Domain name, E-commerce and Internet-related issues
- Litigation and Dispute Resolution
- Corporate and M&A
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- Data Protection and Privacy
- Notarization and China Attestation
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