



HONGKONG

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Hong Kong as a so-called special administrative region is part of the People's Republic of China. It is, however, in certain areas due to the handover contract between the UK and People's Republic of China legally independent. According to the contract, the colonial common law will continue to be valid until 2047. Hong Kong is a free port with low tax rates and is one of the most liberal economies in the world.



For investment activities usually a so-called private company limited by shares is used which in the main is similar to the German GmbH apart from the fact that the influence of the shareholders against the power of authority of the board of directors is less. The board of directors is the real centre of power in the company. A company founding lasts approx. two weeks, whereby a notarial certification is not required. Other legal forms are usually not practical.

Joint ventures are often formed with local partners, whereby here it should be observed that the proportion of the shareholdings is correspondingly reflected on the board of directors and care taken that the (foreign) partner has sufficient possibilities to control and influence the company. The joint venture agreement then takes priority over the articles of association.

The capitalisation of a Hong Kong company is low. There is not a requirement for a minimum amount of share capital, but usually it amounts to HKD 10,000 (approx. 1,000 euros). Financing is usually made via shareholder loans as capital increases and decreases are disproportionately time-consuming. An annual financial statement must be prepared and attested before it is submitted to the Inland Revenue Department to determine the corporation tax (16.5 %), whereby it is not published.

The labour law in HK is essentially liberal. It was only recently that a statutory minimum wage of HKD 30 per hour was introduced. Employee protection and in particular dismissal protection as known in Germany does not exist in Hong Kong. The employee on-costs for the employer are low (max. HKD 1,000 social insurance contributions per month) and tax must be paid by the employee himself (15 % income tax).

In addition to corporation and income tax there are only a few other types of tax such as stamp duty for the transfer of shares and acquisition of property. There is no sales tax (VAT).

Practical examples

Taxes

Background facts:

The German company U would like to hire Mr. X, resident in Hong Kong, to penetrate the Chinese market for U. Mr. X shall mainly operate in China, but proposes that he should receive his full salary in Hong Kong because there is a lower tax rate there. This is “the usual thing to do”.

What can be done now?

There is now the risk that the elements of the offence of tax evasion are satisfied in the People's Republic of China because Mr. X must pay tax on his salary in China for services he has provided in China.

What should one have done differently from the beginning?

In such constellations it is recommendable to conclude two employment contracts with Mr. X. One employment contract according to the law of the People's Republic of China and the second employment contract according to the law of Hong Kong. The tax approval must then be separately obtained from each of the authorities.

Law

Background facts:

The German company X has concluded a contract with the limited company C registered in Hong Kong for the delivery of goods. X pays the agreed purchase price, but C does not deliver.

What can be done now?

Even when the prospects for success in legal proceedings are good, it should first of all be examined whether C at all has sufficient physical substance and assets to make economic sense of enforcement. Trading companies in Hong Kong are often just letter box companies without appreciable assets which means enforcement is essentially ineffective.

What should one have done differently from the beginning?

Prior to the conclusion of the contract a check should be made of the creditworthiness of the contract partner and if necessary a safeguard demanded in the form of guarantees or personal guarantees from the shareholders, etc.

Law / Administration

Background facts:

The German company X would like to contest a decision of the immigration department in the case where a work permit was refused.

What can be done now?

In Hong Kong there is no independent administrative law as known in Germany. Decisions from the authorities are only justiciable to a limited extent and then only within the context of civil proceedings.

What should one have done differently from the beginning?

In such cases it is recommendable at an early stage to include a law firm in the negotiations and the application process. The process of changing a decision already made by the authorities is considerably more time consuming and complicated than obtaining legal advice from the beginning and having a legal representative.

Fraud

Background facts:

The German taxpayer S purchases shares from the Hong Kong company G to the value of 100,000 euros and these are allocated accordingly to his portfolio of securities which he can view on the home page of company G. After the share price has risen he would like to sell the shares for a profit. But now he finds out that at company G nobody reacts to his calls or emails any more. A short time later the home page of the company G goes offline.

What can be done now?

S can check whether legal proceedings in Hong Kong are worthwhile. In most cases, however, company G will be just a letter box company which means enforcement is essentially ineffective.

What should one have done differently from the beginning?

Avoid involvement in these kind of transactions which are generally only made to evade paying taxes in Germany.

Corporate (white-collar) crime

Background facts:

The German company X learns that in the Hong Kong subsidiary bribes have been paid for many years to a business partner and authorities in the People's Republic of China in order to obtain certain orders.

What can be done now?

The subject must be immediately examined and fully sorted out. The so-called organised and serious crimes ordinance in Hong Kong means that actions in Hong Kong which aid and abet an action which is a criminal offence abroad are also punishable by the law of Hong Kong. Due to this extension of punishability, the mere tolerating of a criminal act in China by the company directors of the Hong Kong company is relevant in relation to criminal law.

What should one have done differently from the beginning?

We recommend the implementation of an internal control system right from the beginning which will prevent such types of behaviour. In addition, it is advisable to outsource the financial accounting.