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Italian companies in Hong Kong

Hong Kong SAR as the ideal business hub to
enter the Chinese market

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TABLE OF CONTENT

LIST OF TABLES AND FIGURES	6
前言	9
INTRODUCTION	11
1. HONG KONG – BRIEF HISTORICAL BACKGROUND	14
2. HONG KONG	18
2.1 Current economic situation.....	18
2.2 International agreements and relationship with mainland China.....	22
2.2.1 The Belt and Road Initiative.....	26
2.3 Regulations for foreign investments.....	27
2.4 Business entities a foreign investor can establish in Hong Kong SAR.....	30
2.4.1 Private company limited by share.....	30
2.4.2 Sole-Proprietorship.....	32
2.4.3 Partnership.....	32
2.4.4 Joint Venture.....	33
2.4.5 Representative Office.....	35
2.4.6 Branch Office.....	35
2.5 Working in Hong Kong: visa and regulations for foreigners.....	37

2.5.1 General Employment Policy.....	37
2.5.2 Visa for professionals.....	38
2.5.3 Visa for Entrepreneurs.....	39
2.5.4 Visa for Entrepreneurs - Start-Up.....	41
3. ITALY AND HONG KONG	43
3.1 Economic relationships with the European Union.....	44
3.2 Relationships with Italy, a general overview.....	45
3.3 Agreements in force between Italy and Hong Kong.....	46
3.3.1 Investment Promotion and Protection Agreement.....	46
3.3.2 Mutual Legal Assistance Agreement.....	48
3.3.3 Double Taxation Avoidance Agreement.....	49
3.3.3.1 An introduction.....	49
3.3.3.2 Main content and provisions.....	50
3.3.3.3 Double Taxation Avoidance Agreement and Italian black lists.....	52
3.4 Italian presence in Hong Kong.....	53
4. INVESTING IN HONG KONG FOR ITALIAN COMPANIES	57
4.1 Market overview.....	57
4.2 Advantages and disadvantages.....	59
4.3 Reasons for choosing Hong Kong compared to China.....	62
4.4 Coop Far East Ltd. case.....	66
CONCLUSION	69
APPENDIX I	74
APPENDIX II	75
APPENDIX III	86

BIBLIOGRAPHY	99
WEBSITES	101

LIST OF TABLES AND FIGURES

Table 1
Hong Kong major economic indicators.....18

Figure 1
Hong Kong Gross Domestic Product growth, year-on-year change.....19

Figure 2
Hong Kong 2017 Gross Domestic Product composition.....19

Figure 3
Foreign investment in China in 2017.....25

Figure 4
Foreign investment in Hong Kong in 2017.....25

Table 2
Company that can be constituted by a foreigner in Hong Kong.....36

Table 3
Hong Kong’s merchandise trade with world, European Union and individual
EU member states.....44

Table 4
Income tax comparison between Italy and Hong Kong.....50

Figure 5
Italian companies in Hong Kong per sector of operation.....53

Figure 6
Merchandise Exports to Italy.....54

Figure 7
Merchandise Imports from Italy.....54

Table 5	
Number of regional headquarters by selected country/territory where the parent company is located.....	55
Table 6	
Number of regional offices by selected country/territory where the parent company is located.....	55
Table 7	
Number of local offices by selected country/territory where the parent company is located.....	56
Table 8	
Hong Kong's merchandise trade with world, European Union and individual EU member states in 2017.....	57
Table 9	
Merchandise exports to Hong Kong.....	57
Table 10	
Merchandise imports from Hong Kong.....	58
Table 11	
Number of companies by selected country/territory where the parent company is located.....	59
Table 12	
China, macroeconomic indicators from 2013 to 2018.....	62
Table 13	
Timing to complete a task in Hong Kong and Shanghai.....	64
Table 14	
Business costs in Hong Kong and China.....	64

前言

根据美国传统基金会发表的《经济自由度指数》，香港是世界上最自由的经济体。受利于其高效率的官僚体制和便利的系统，国际商务法的采用、以英语作为主导的商业社会传播和有利于创新的环境，使这个市场对外国投资者非常有吸引力。（贸发会议，2018年）

本论文以意大利公司为对象，我的论文起先介绍香港的经济和商机情况，然后我探讨意大利在中国特别行政区的存在情况。

香港特区是外国公司和投资者的主要门户，它们愿意进入中国，在发达的体制下运作，而不是在北京的规则下运作。这可能是由于香港与中国大陆的密切关系。

自一九九七年七月一日起，中英联合声明生效，香港正式结束英国殖民统治时期，回归中国。受益于一国两制的政策下，香港享有高度自治权，拥有独立于中国内地的经济和政治政策。由于自治，该地区与世界贸易组织等国际组织或通过双边协议自由地与单一国家建立了关系，同时与中国大陆也有着密切的关系。一个例子是在2003中国和香港签署的更紧密的经济伙伴关系协定（CEPA），以确保在许多部门自由交换产品，避免了两国之间的关税。同时亦令其保有与中国大陆的密切关系，它成为外国公司与外来投资者的眼中在中国的主要门户。

本论文将会首先描述香港的历史，环境，从中了解其对于中国大陆及外来资金的独特性的成因。其后分析香港现行的经济及政治体系，突显其与中国大陆的差异。

因此，本论文中有一部分专门论述了该地区外国人的规则，以及外国投资者可以在香港设立的业务的类型。中国大陆的差异，以明确投资中国特别行政区的优势。

然后，本论文将会首先描述意大利和香港的情况。

及后借以意大利与香港现行生效的各种经济及政治协议，反映意大利与香港的紧密性。根据最近的调查，意大利公司在香港有它们的亚洲总部或地区办事处为175家，但意大利公司的总公司或实体的总数，或意大利经理的公司，或由意大利人建立的超过400家。

并基于此点探讨在地营运的外资企业，从而以 COOP FAR EAST Ltd 作案例，一家意大利资金主导的公司，深入分析意大利公司在香港的实际营运情况。

本文分为四个主要章节。

第一章将会介绍香港的历史背景，由该地区的第一个聚居点的形成，至城市发展过程中各个的重要时间点，如第二次鸦片战争、英国殖民时期及中国收归香港主权等，从而了解中华人民共和国香港特别行政区的成立。香港的独特之处在于其实行一国两制；意思是香港属于中国的主权不可分割的一部分(一国)，但同时在经济和政治事务（两个系统）中保留高度自治性。

第二章将会阐述香港现行的经济和政治制度。该市是世界上最重要的金融和商业中心之一，其高度自治的特性使其保有与中国大陆密切关系的同时，亦能参与到国际机构及组织中，并签订多项国际性协定。

香港作为外来投资者进入中国市场的主要门户和跳板。在这一章中，将会介绍该地区外国资金营运的规则，以及外国投资者能够在香港设立的商业实体的类型；文中将透过强调香港特别行政区与中国大陆的差异，从而突显两地的鲜明对比。

第三章将对意大利与香港的关系进行分析，详细阐述两国间现行生效的协议：投资促进与保护协议、法律援引协议和防止双重征税协议。同时重点介绍在香港经营的意大利公司。据统计，意大利公司和与意大利有合作关系的企业约有 400 家，这一数字每年都在增长，这一点可以在有关行业渗透和公司类型的官方数据的章节中看到。

最后，第四章会探讨意大利公司在香港的实际营运环境。本部分会先透过简述法国、德国和英国在香港市场的营运情况，借此为意大利公司提供比较基准。其后分析在香港投资的利与弊，并与中国大陆进行比较。本章的最后一部分将以 **COOP FAR EAST Ltd.**公司的案例。该公司自 1977 年以来在亚洲运营，目前位于香港。

INTRODUCTION

According to the Heritage Foundation's Index of Economic Freedom, Hong Kong is the freest economy in the world, with an efficient bureaucracy and facilitated taxation. The adoption of international methods in business, the English language diffusion and the environment favorable to innovation ensure continuous and new opportunities for business and make this market very attractive for foreign investors. As reported by the latest edition of the World Investment Report, Hong Kong is the second destination in the world in terms of FDI, just behind the United States, and is ranked as the sixth in the “Best Countries for Business” of the US magazine Forbes (UNCTAD, 2018).

Through a focus on Italian businesses, the thesis aims to present the situation of the Italian presence in the Hong Kong Chinese Special Administrative Region (SAR) after a general overview on Hong Kong and its characteristics.

The thesis first introduces the background of the region to explain how Hong Kong developed and transformed itself from a strategic port for English colonizers to one of the most important financial and business center in the world.

The Hong Kong SAR is the main gateway for foreign companies and investor that are willing to enter China, operating under a well-developed system and not under the Peking rules. This is possible thanks to the strong relationships Hong Kong has with Mainland China, under continuous development since 1st July 1997. On this date, the Sino-British joint declaration took effect and Hong Kong has been officially recovered by Mainland China after 156 years of British colonialism. Despite this, Hong Kong maintains its autonomy in almost all the political and economic decision and has its own currency, the Hong Kong dollar (HKD). Thanks to its autonomy, the region runs its relationships with international organizations such as the WTO or with single states through bilateral agreements freely, but also close relationships with Mainland China are present. An example is the Closer Economic Partnership Agreement (CEPA) signed between China and Hong Kong in 2003 to ensure the free exchange of products in numerous sectors, avoiding any custom tariff between the two countries.

As previously said, Hong Kong is the main gateway for foreign companies to access the Chinese market, therefore in this thesis a section is dedicated to the rules

governing foreign activities in the region, as well as the type of business entities a foreign investor can set up in Hong Kong. Differences with Mainland China are highlighted, in order to provide clearly the advantages of investing in the Chinese SAR.

Hong Kong is the main gateway for Peking also for Italian companies that want to work with China, thus in this dissertation the past and the current situation of the relationships between Italy and the Hong Kong SAR are presented considering all the aspects: from the historical background, to agreements and regulations, future intentions and changes occurred.

According to the most recent surveys, the Italian companies that have in Hong Kong the Asian headquarters or the regional offices are 175, but the total number of companies or entities with Italian interests present, or companies with Italian managers, or founded by Italians is over 400. Among them, the case of Coop Far East Ltd. will be briefly introduced as an example of Italian presence in Hong Kong.

The thesis consists in four main chapters. Chapter 1 introduces the historical background of Hong Kong, from the first settlements in the region, through the major historical events: the Sino-British wars, the British colonialism and the return of Hong Kong under the Chinese dominance in 1997 that led to the establishment of the Hong Kong Special Administrative Region of the PRC, where the *one country, two system* principle is applied. This expression is used to describe the Hong Kong government main characteristic: belonging to China (one country), but with a high level of autonomy in all economic and political matters (two systems).

A general overview on Hong Kong's current economic and political system is presented in chapter 2. The city is one of the most important financial and business center in the world and the high degree of autonomy of the region allows Hong Kong to have several international agreements and to take part to the main international organization, having at the same time close relationships with Mainland China.

Hong Kong is also the main gateway for foreign companies and investor that are willing to enter the Chinese market. In this chapter the rules governing foreign activities in the region, as well as the type of business entities a foreign investor can set up in Hong Kong are presented. Highlighting the differences with Mainland China in order to provide a clear comparison between the two countries.

Chapter 3 is dedicated to the relationships between Italy and Hong Kong, with a detailed explanation of the Agreements in force between the two countries: investment promotion and protection agreement, mutual legal assistance agreement and double taxation avoidance agreement, together with a focus on the Italian companies already operating in Hong Kong. Italian companies and businesses with Italian interests are estimated to be around 400, a number that always grows year-by-year, as can be seen in the chapter where official data regarding sector penetration and type of companies are presented.

Finally, chapter 4 focuses on investing in Hong Kong for Italian companies. The chapter begins with an overview of Hong Kong markets where French, German and British investments represent the main competitors for Italian companies. Then the chapter presents the advantages and disadvantages of investing in Hong Kong, with a comparison with investments in Mainland China. The last part of the chapter is dedicated to the case of Coop Far East Ltd., an Italian company operating in Asia since 1977 and currently located in Hong Kong.

1. HONG KONG – Brief historical background

Hong Kong, (香港, Xiānggǎng) is a Special Administrative Region of the People's Republic of China¹, located on the South coast of China, to the east of the Pearl River estuary. Hong Kong is surrounded by the South China Sea to the east, south and west and to the north it borders with Guangdong province.

From an historical point of view, archeologists think that the earliest modern people in Hong Kong came from North China in the 2nd millennium BCE. Around 100 BCE first settlements of Cantonese started to develop and later also the Hakka and the Hoklo² minorities arrived in Hong Kong. Because of the mountainous territory, with a lack of fertile soil and fresh water, Hong Kong island was inhabited only by a small fishing population and was known as a notorious haunt of pirates.

However, in the mid-19th century, Britain began to use Hong Kong harbor to anchor vessels, as the strategic position of the island on the main Asian trade route offered a base for the merchants to enter the Chinese market. However, the value of British exports from China was about six times higher than that of imports, so in 1793 the British embassy had asked the emperor greater access to the Chinese domestic market to foreign products, but the request was refused. The products English companies were willing to export to China were not as attractive as thought, so the English trading companies started to sell the opium they produced in India.

Opium smoking had spread to China during the 18th century and despite all the attempts made by the Chinese government, the diffusion was massive and China started to have serious social and economic problems due to the huge consume of the drug and the large amount of silver paid to the British for their opium.

The viceroy Liu Zexu³ was sent to Canton to start a repressive policy against opium dealers. A massive confiscation of stocks of the British merchants led to a Britain

¹ 中华人民共和国特别行政区, Zhōnghuá Rénmín Gònghéguó tèbié xíngzhèngqū.

The special administrative regions (SAR) are one type of provincial-level administrative divisions of China directly under Central People's Government, which enjoys the highest degree of autonomy, and no or less interference by either Central Government or the Communist Party of China.

² Han Chinese groups.

³ Viceroy of Liangguang (1840), Shaan-Gan (1845), Yun-Gui (1848) and Huguang (1837-1839). Appointed as commissioner plenipotentiary in 1839 during the First Opium War.

response and the beginning of the First Opium War (1839-1842) (第一次鸦片战争, *dì yī cì yāpiàn zhànzhēng*).

After the First Opium War ended, the Treaty of Nanjing (南京條約, *Nánjīng tiáoyuē*) has been signed. The treaty established the British sovereignty over the territory currently known as Hong Kong island, however the British government was not satisfied as the Crown wanted the complete control of the harbor. This led to the Second Opium War (1856-1860) (第二次鸦片战争, *dì èr cì yāpiàn zhànzhēng*); China was forced to give to the British government the full control of the Kowloon Peninsula⁴ through the signature of the Convention of Peking (北京條約 *Běijīng tiáoyuē*) in 1860.

In an attempt to reach a new agreement between both parties, in 1898, the Second Convention of Peking (中英展拓香港界址專條, *Zhōng yīng zhǎn tà xiānggǎng jiè zhǐ zhuān tiáo*), has been signed. Chinese and British governments agreed that the Kowloon Peninsula, together with 235 islands were leased to Britain for 99 years, from July, 1st 1898. (Sabatini et al., 2005)

Since its establishment as a British colony, Hong Kong welcomed peoples and capitals from China, as well as emigrants, thanks to the free-movement policies of that time. However, after the creation of the Republic of China in 1921, all the privileges British had in China were boycotted. This particularly hurt Britain and led to various strikes in Hong Kong during the 1920s.

Hong Kong returned to be a refuge for Chinese people after the Sino-Japanese War broke out in 1937, but with the War World II in Europe, the colony became a target of the Japanese that attacked and occupied Hong Kong in December 1941. The situation was bad with scarce food, commerce impaired and thousands of people escaping to mainland China⁵, until 1945 when Japan capitulated. Few years after the Japanese invasion, Hong Kong started its revival thanks to immigrant capitalists' investments in textiles industries and the exploit of cheap labor. However, social

⁴ Kowloon Peninsula refers to the south part of Hong Kong.

⁵ The term *mainland China* is strictly a geopolitical term to indicate the areas under the direct jurisdiction of the People's Republic of China. It does not include the Special Administrative Regions of Hong Kong and Macau.

disputes arose in the 1960s that turned in violent and political demonstrations, inspired by the followers of the Cultural Revolution in China⁶.

After the stabilization of the situation, labor legislations, housing projects and public work programs improved the living conditions. Moreover, thanks to the flexibility of the laissez-faire policy of the British government, high-technology industries and the financial and property markets prospered. In 1973 the stock market collapsed, but in the mid-1970s the economy already resumed thanks to the improved relations with China.

As the agreement under the Convention of 1898 was going to expire in less than two decades, initial discussions between the Chinese and the British government started to take place from 1979, but formal negotiations began after the official visit of the British prime minister Margaret Thatcher⁷ to Beijing in 1982.

On December, 19th 1984 the two governments signed an agreement to officially solve the Hong Kong question: the Sino-British joint declaration (中英聯合聲明, Zhōng yīng liánhé shēngmíng) that stipulated that Hong Kong region would be recovered by China from July 1st 1997. This led to a period of difficult negotiations between Hong Kong and Beijing on the way Hong Kong would be governed under the Chinese sovereignty. On April 4th 1990 the National People's Congress⁸ (全國人民代表大會, Quánguó Rénmín Dàibiǎo Dàhuì) formally ratified the application of the Basic Law⁹ (香港基本法, Xiānggǎng jīběnfǎ) which took effect on July 1st 1997

⁶ From 1966 to 1976, China experienced the Cultural Revolution. In an attempt to renovate the communist revolution spirit, Mao Zedong, the Chinese Communist Party Chairman, started to promote this movement. Initial objective of the cultural Revolution was to eradicate from the communist party those he considered as "infiltrators" in the political party. These people was mainly CCP members that didn't share the same vision as Mao's and the leader used the movement to get rid of all the opponents to his ideas.

⁷ Prime Minister of the United Kingdom from 1979 to 1990.

⁸ National People's Congress of the People's Republic of China.

中華人民共和國全國人民代表大會, Zhōnghuá Rénmín Gònghéguó Quánguó Rénmín Dàibiǎo Dàhuì.

⁹ Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

中華人民共和國香港特別行政區基本法, Zhōnghuá rénmin gònghéguó xiānggǎng tèbié xíngzhèngqū jīběnfǎ.

The Basic Law is the Constitution of Hong Kong. Under the Basic Law, the legal system prior to the resumption of the PRC is maintained, with few exceptions i.e. related to the national flag or the calendar.

The Hong Kong Constitution states that for a period of 50 years from July, 1st 1997 Hong Kong is highly autonomous and it is allowed to maintain its legal system and capitalistic economic and trade systems.

and established the Hong Kong Special Administrative Region under the Chinese central government.

2. HONG KONG

2.1 Current economic situation

After the reunification with the PRC, Hong Kong has maintained a legal system based on the English common law system and on the Rules of Law. This means that, instead of having a legal system based on statutory laws, the system is based on judicial precedent, that is a principle under which the decisions of the higher courts set a precedent for all courts to follow in similar cases. These precedents are recognized, affirmed, and enforced by subsequent court decisions. (Holmes, 2009). Moreover, thanks to its economic system with minimal government interference in any sector, Hong Kong is one of the world's great trade center with a GDP that continues to grow. Below the major economic indicators and details on Hong Kong GDP¹⁰:

Economic indicators							
	2012	2013	2014	2015	2016	2017	
Nominal GDP (Mil)	€ 204.391,00	€ 207.587,00	€ 219.345,00	€ 278.862,00	€ 288.618,00	€ 303.719,00	
Real GDP variation	1,7%	3,1%	2,8%	2,4%	2,0%	3,7%	
Population	7,1	7,1	7,2	7,2	7,3	7,4	
GDP per capita at same purchasing power	\$ 51.684,00	\$ 53.767,00	\$ 55.881,00	\$ 57.425,00	\$ 58.902,00	\$ 61.635,00	
Unemployment	3,3%	3,4%	3,3%	3,3%	3,4%	3,1%	
Public debit (GDP%)	37,9%	41,3%	39,5%	40,5%	44,8%	42,8%	
Inflation	3,7%	4,3%	4,9%	2,3%	1,2%	2,1%	
Volume variation of goods and services imports	4,3%	8,3%	1,0%	-1,8%	1,2%	5,1%	

Table 1: Hong Kong major economic indicators. Source: HKTDC

¹⁰ The Hong Kong Trade Development Council (Xiānggǎng mào yì fā zhǎn jú 香港貿易發展局) is the international marketing body for traders, service providers and manufactures based in Hong Kong and it has been established in 1966. The HKTDC is an online platform that promotes Hong Kong for doing business with China and Asia, highlighting the opportunities in Hong Kong and Mainland China, providing information through trade publications, research reports and online. Data from the Economic and Trade Information of Hong Kong, HKTDC.

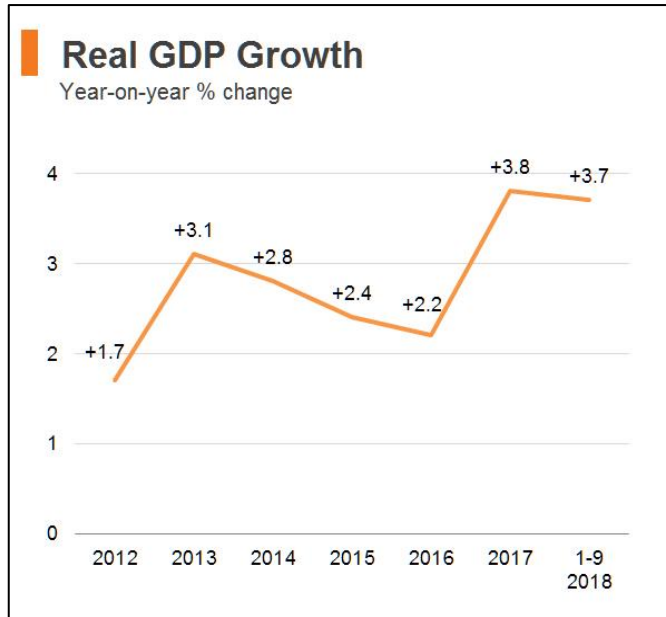


Figure 1: Hong Kong Gross Domestic Product growth, year-on-year change. Source: Hong Kong Trade Development Council.

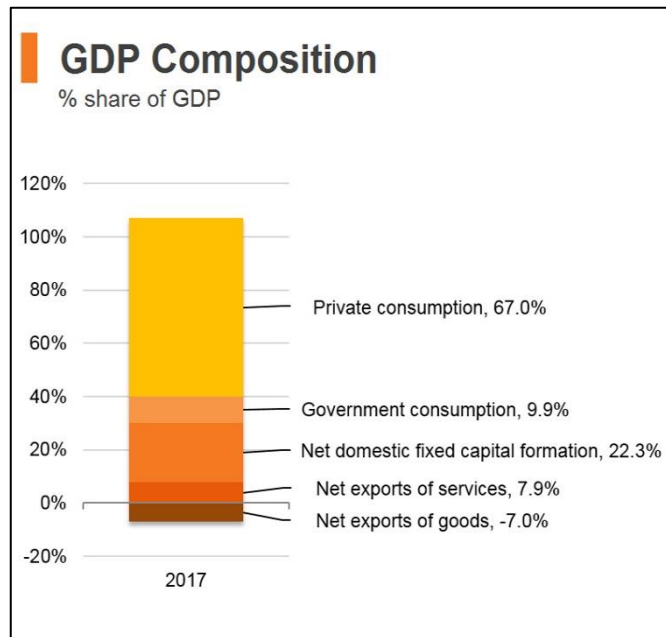


Figure 2: Hong Kong 2017 Gross Domestic Product composition. Source: Hong Kong Trade Development Council.

According to the Heritage Foundation, Hong Kong is the world's freest economy.¹¹ 2018 is the 24th consecutive year Hong Kong is ranked at the first position as the

¹¹ The Heritage Foundation is an American conservative public policy think-tank based in Washington D.C., founded in 1973. The mission of The Heritage Foundation is to formulate and

Chinese SAR has been ranked the world's freest economy every year since the Index was first published in 1995.

The economic system of Hong Kong is based on free enterprise, free trade and free market open to all, with no barriers to trade. According to the Trade and Industry Department of Hong Kong, there are no tariffs, no quotas and no restrictions on investments inward or outward (TID, 2018). Moreover, as illustrated in the Government website, the rate of taxation is one of the lowest in the world and do not exceed 17%; furthermore there is no taxation on dividends, meaning that individuals and companies can import and export capitals at their own discretion (GovHK, 2018).

Moreover, Hong Kong is the second largest recipient of FDI in Asia and the third in the world after United States and China according to the UNCTAD, World Investment Report 2018.¹² Thanks to the favorable geographic position together with the friendly climate for investments, Hong Kong is an outstanding base for foreign companies and investors willing to enter the Chinese market.

As previously seen in the historical introduction, Hong Kong is an important gateway to China since the Britain colonialism and the region is conscious of its strategic position. In the section *InvestHK* of the government website, Hong Kong is described as *Premier Business Hub in Asia*:

"With all of Asia's key markets less than four hours' away, it is easy to see why over 8,000 businesses and companies have made Hong Kong their home. Many have placed their strategic functions [...] in the city." (InvestHK, 2018)

promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense. It provides timely, accurate research on key policy issues, like the well-known Index of Economic Freedom report. The Heritage Foundation measures economic freedom based on twelve quantitative and qualitative factors, grouped into four broad categories, or pillars, of economic freedom: Rule of Law (property rights, government integrity, judicial effectiveness), Government Size (government spending, tax burden, fiscal health), Regulatory Efficiency (business freedom, labor freedom, monetary freedom) and Open Markets (trade freedom, investment freedom, financial freedom).

¹² The United Nations Conference on Trade and Development (UNCTAD), established in 1964 as a permanent intergovernmental body, is the part of the United Nations Secretariat dealing with trade, investment, and development issues.

The extract continues describing the Chinese SAR as:

“[...] Hong Kong has long been the region’s leading financial hub. It offers a highly transparent and robust regulatory regime for financial services [...]. These industries adhere to the best global practices and standards, giving confidence to everyone looking to do business in Hong Kong. The city is also home to the world’s largest offshore hub in Renminbi settlement.” (Ibidem)

Hong Kong is also a leading city for technology and is considered a FinTech hub. In addition, the government website mentions initiative launched in the region such as the Stock Connect and the Bond Connect: projects that offer to foreign and local investors the possibility to access the Chinese market directly. (InvestHK, 2018)¹³

As said in the above extract, the situation of Hong Kong SAR is favorable from every economic point of view. Besides the index of the Heritage Foundation previously mentioned, other studies show the advantageous economic position of Hong Kong. For example, in 2017 in the Global Financial Centre Index, Hong Kong’s stock market has been ranked the 3rd largest in Asia and the 6th largest in the world in terms of market capitalization. The region is also considered an important financial and banking center in the Asia Pacific Area being the 3rd leading global financial center, only after London and New York.¹⁴

However, because of Hong Kong’s geographic characteristic, the region is poor in natural resources and has the necessity to import almost every kind of supply needed: from raw materials to food and consumer goods. Though, the SAR has transformed this downside in an advantage being an international free port. With no custom tariffs on imports, with the exception for some products like alcoholic

¹³ The text reported above is an extract from: Invest Hong Kong. *Premier Business Hub in Hong Kong*.

¹⁴ The Global Financial Centres Index (GFCI) ranks the competitiveness of financial centres in the world. The index includes an analysis of over 29,000 financial centre assessments from online surveys together with over 100 indices from international organisations such as the World Bank, the OECD and the Economist Intelligence Unit. The result is an The index offers a general picture of five key areas: Business environment, Financial sector development, Infrastructure factors, Human capital, and Reputation and general factors.

beverages, tobacco, luxury goods and vehicles, the Victoria Harbour is one of the busiest ports in the world and it is one of the main ports for the South of China.

2.2 International agreements and relationship with mainland China

The Hong Kong SAR has numerous agreements with other countries and international organizations as it can autonomously conduct its commercial relations with other states without any interference from mainland China.

It is a founding member of the World Trade Organization, a member of the Asia-Pacific Economic Cooperation (APEC)¹⁵ and it has double tax treaties as well as bilateral agreements with many countries, among them Italy. The agreements with Italy will be further discussed in the next chapters.

Hong Kong is an important entrepôt for the Chinese mainland being the third largest trading partner of China after the US and Japan. According to the Hong Kong Census and Statistics Department, the majority of Hong Kong's imports are of China origin, accounting for 46% of the total and on the other hand 54% of Hong Kong's total exports are destined for the Chinese mainland (CSD, 2018)

The main Free Trade Agreement (FTA) Hong Kong has with Mainland China is the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA).¹⁶ This agreement is the first free trade agreement between China and the Hong Kong SAR and has been signed on 29th June 2003. Under CEPA, several parts have new business advantages: Hong Kong, China and all the investors from abroad that want to enter these Asian markets.

The CEPA Legal Text states several measures aimed at the liberalization and opening of the Chinese market for services and goods coming from Hong Kong. This grants an even further collaboration between Mainland China and the Hong Kong Special Administrative Region.

¹⁵ The Asia-Pacific Economic Cooperation (APEC) is an inter-governmental forum for 21 Pacific Rim member economies that promotes free trade throughout the Asia-Pacific region. The APEC was established in 1989 in response to the growing interdependence of Asia-Pacific economies and the advent of regional trade blocs in other parts of the world and to establish new markets for agricultural products and raw materials beyond Europe. Hong Kong entered the APEC in November 1991.

¹⁶ Nèidì yǔ xiānggǎng guānyú jiànlì gèng jǐnmì jīngmào guānxì de ānpái, 内地与香港关于建立更紧密经贸关系的安排. Mainland and Hong Kong Closer Economic Partnership Arrangement

For Hong Kong, CEPA provides a window of opportunity for SAR businesses to gain greater access to the Mainland market. CEPA also benefits the Mainland as Hong Kong serves as a perfect base for Chinese enterprises to reach out to the global market and accelerating the Mainland's full integration with the world economy. Foreign investors are also welcome to establish businesses in Hong Kong to leverage on the CEPA benefits and join hands in tapping the vast opportunities of the Mainland market.

The CEPA agreement cover four main areas: goods trade, services trade, investments and economic and technical cooperation.

Specifically, below a brief extract from the dedicated website page of Hong Kong government for the CEPA agreement that describes the four broad areas covered by CEPA; the first part concerns the goods trade and states as below:

***“Trade in goods** - All goods of Hong Kong origin importing into the Mainland enjoy tariff free treatment, upon applications by local manufacturers and upon the CEPA rules of origin (ROOs) being agreed and met.” (GovHK, 2018)*

The second main area regards the services:

***“Trade in services** - Hong Kong service suppliers enjoy preferential treatment in entering into the Mainland market in various service areas. Professional bodies of Hong Kong and the regulatory authorities in the Mainland have also signed a number of agreements or arrangements on mutual recognition of professional qualification.” (Ibidem)*

Followed by the investment part in which the commitment of both parts to facilitate investments is clearly stated:

***“Investment** – Further expands the market access commitments to non-services sectors, promotes and protects investment, and provides investment facilitation measures. The Investment Agreement will be implemented on 1 Jan 2018.” (Ibidem)*

Finally, the last area covered by CEPA refers to the cooperation both in technical and economic fields of Mainland China and Hong Kong:

“Economic and Technical Cooperation – Both sides agreed to enhance cooperation in 22 areas to cater for the trend and support the development and cooperation, as well as to facilitate and promote trade and investment between the two places.” (Ibidem)

Besides CEPA, there are other minor agreement between Hong Kong SAR and Mainland China. For example the Agreement between the Mainland and Hong Kong on Achieving Basic Liberalization of Trade in Services in Guangdong, simply known as the Guangdong Agreement. This economic treaty has been signed in December 2014 and it aims to realize a basic liberalization of trade services with Hong Kong in the Guangdong region. This South Chinese economic area has improved its investment environment and infrastructure in the last ten years and its proximity to Hong Kong makes the territory an important operational area in Mainland China for Hong Kong businessmen in particular in Dongguan, Shenzhen and Guangzhou cities.

The economic agreements between Hong Kong and China are fundamental as both have mutual economic interests. As previously seen, there is a strict relationship among the two parts for product exports; furthermore Hong Kong is the largest source of overseas direct investment in Mainland China and in the same time the SAR is also the leading destination for China’s FDI outflows. Data from HKTDC show that in 2016, 53,2% of the total foreign investment received in China were from Hong Kong and, on the other hand, 57,5% of the total outflow of Chinese FDI has been invested in Hong Kong SAR. Below graphics with data from the Hong Kong Trade and Development Council that schematically present the situation.

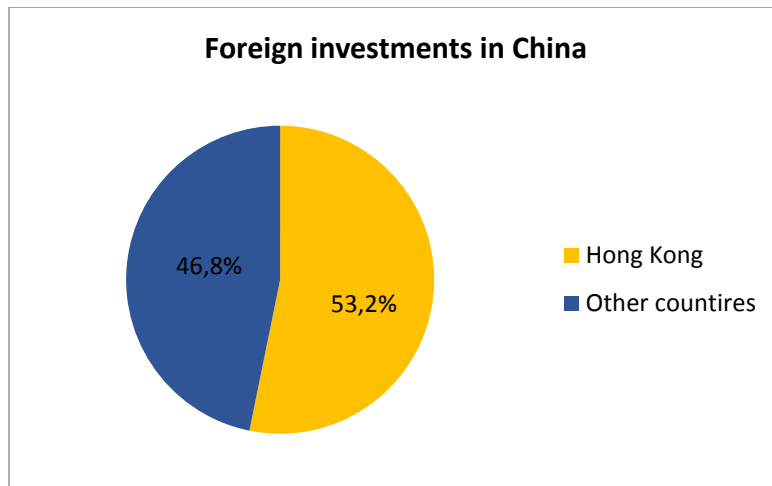


Figure 3: Foreign investment in China in 2017. Source: Hong Kong Trade Development Council

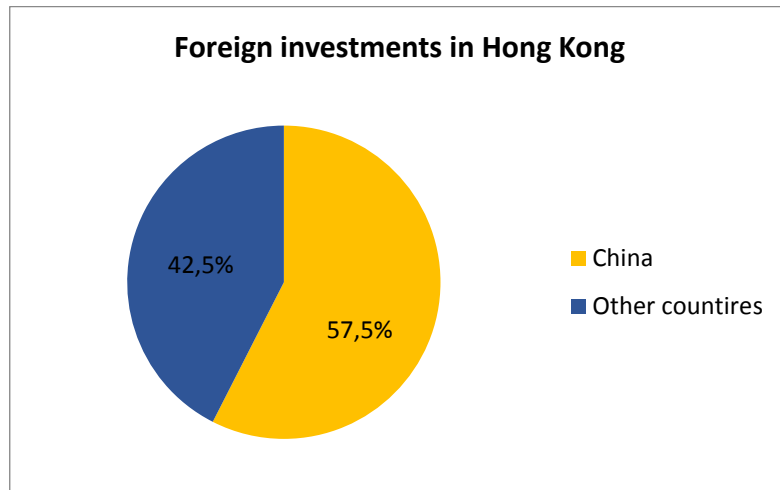


Figure 4: Foreign investment in Hong Kong in 2017. Source: Hong Kong Trade Development Council

Other agreement involving Mainland China and Hong Kong are more related to the financial aspects, with attempt to establish mutual stock market access between two other important stock markets in China: Shanghai and Shenzhen, geographically close to Hong Kong SAR.

These agreement are respectively known as the Shanghai-Hong Kong Stock Connect and the Shenzhen-Hong Kong Stock Connect with the first established in November 2014 and the second one in December 2016. These financial linkages led Hong Kong to became the main Renminbi hub outside Mainland China, with an

even closer connection with China highlighted also by the active participation of Hong Kong in the Chinese Belt and Road Initiative.

2.2.1 The Belt and Road Initiative

The Belt and Road Initiative (BRI) can be considered the Chinese greatest international economic ambition as it aims at stimulating economic development with new partners in Asian, European and African regions, reaching 64% of the world population and 30% of world GDP.¹⁷ Besides finding new international co-operations, the One Belt and One Road (OBOR) initiative is a solution for the support of Chinese economic growth in the next future, considering the registered slowdowns in the growth in respect to previous years.

Peculiarity of the Belt and Road Initiative is that it includes a large number of collateral infrastructure projects: high-speed railroads, telecommunication and electricity linkages as well as new oil and gas pipelines.

Despite significant uncertainties, such as geopolitical risks, financial sustainability of the projects and international policy coordination, several investments have already been made by Chinese companies and institutions, and also by international organizations thanks to the opportunities the BRI offers.

In December 2017, the Arrangement between the National Development and Reform Commission (NDRC) and the Government of the Hong Kong Special Administrative Region for “*Advancing Hong Kong’s Full Participation in and Contribution to the Belt and Road Initiative*” (simply known as the Arrangement) was signed. This officially marked the beginning of Hong Kong’s active role to the One Belt and One Road project. In fact, as confirmed by experts, the importance of the Chinese SAR for the BRI is to fill the gap between financing and project aspirations related to the initiative, and this is possible thanks to Hong expertise in financial services together with the international economic position of the region (Jing et al., 2019).

¹⁷ Yīdài yīlù, 一帶一路. (One belt, one road)

2.3 Regulations for foreign investments

As previously mentioned, according to the UNCTAD, foreign investments play an important role in Hong Kong's economy, as the region is ranked as the second largest recipient of FDI in Asia. Referring to the current economic situation of Hong Kong, it is important to keep in mind that its economic system is based on free enterprise, free trade and free market open to all, with no barriers to trade.¹⁸

The Hong Kong Basic Law has a specific section dedicated to the industry and commerce in which the protection of foreign investments is clearly stated:

"[...] The ownership of enterprises and the investments from outside the Region shall be protected by law."¹⁹

In Hong Kong companies regulations for foreign investments are the same as the domestic ones. Moreover, in order to facilitate the management of foreign activities and to continuously attract external investors, there are governmental offices that offer support to the non-local companies, i.e. the Commerce and Economic Development Bureau (CEDB)²⁰, a state organization specifically dedicated to *"policy matters on Hong Kong's external commercial relations, inward investment promotion, intellectual property protection, industry and business support, tourism, consumer protection and competition"*, as stated in the CEDB website homepage. Government interference and bureaucracy procedures are limited to the bare minimum and this is demonstrated by the fact that the only document sufficing for the creation of a company in the Chinese SAR is the Business Registration Certificate, which is obtainable within one month from starting the business.²¹ This

¹⁸ In the Hong Kong Basic Law article 109, article 114 and 115 set, respectively, the maintenance of the status of Hong Kong as an international financial center, as a free port with no tariffs and as a pursuer of free trade and free movement of goods, intangible assets and capital.

¹⁹ Basic Law, Chapter V: Economy, Section 1: Public Finance, Monetary Affairs, Trade, Industry and Commerce. Article 105

²⁰ Commerce and Economic Development Bureau 商务及经济发展局, Shāngwù jí jīngjì fāzhǎn jú

²¹ All local or non-Hong Kong companies which were incorporated outside Hong Kong and have established a place of business in Hong Kong must be registered with the Companies Registry. The Inland Revenue Department (IRD) provides an efficient services to help business operators to comply with their legal obligations through the application for a Business Registration Certificate. To be noted that the business registration does not regulate business activities, either is it a licence to trade, in fact, information on the Business Register is for reference only.

document is mandatory under the Business Registration Ordinance and serves to notify the establishment of any domestic or foreign company to the Hong Kong Inland Revenue Department.²² (See Appendix I, Business Registration Certificate Sample).

For companies listed on the Stock Exchange of Hong Kong (SEHK)²³ some additional regulations are provided, i.e. the “*Hong Kong Code on Takeovers and Mergers*” that sets standards of commercial conduct and behavior considered acceptable. As explained by the Securities and Futures Commission (SFC) of Hong Kong, the Code does not have any force of law, but it has a general consensus among Hong Kong’s business actors, demonstrating once again the low level of government’s interference when possible.²⁴

As just said, whether the company is domestic or not, the rules governing the business conduct are the same and it is not required for a firm to have specific licenses or regulatory authority consent to operate in Hong Kong. The only exception are telecommunication and broadcasting companies as these institutions belongs to the key sector of media and communication which can influence and control information. The Hong Kong government decided to restrict the possibility of foreign investors to participate in these companies imposing 49% as a limit for voting control for non-residents, as well as having residency requirements for the directors of broadcasting companies.

As for business regulations, Hong Kong government does not make any difference among foreign and local companies also for taxation and the tax rates in the Chinese SAR are the lowest in the world.

In the Business Registration Ordinance it is clearly stated that every person who carries on a business in Hong Kong has to apply for business registration within one month from the date of commencement of the business, and to display a valid Business Registration Certificate at the place of business. If the registered particulars of the business have changed, the business operator has to notify the IRD in writing within one month of the change.

²² Business Registration Ordinance, Chapter 310 of the Basic Law.

²³ The Stock Exchange of Hong Kong, officially founded in 1986 is the third-largest stock exchange in Asia and the sixth in the world. The Stock Exchange of Hong Kong Limited - Xiānggǎng liánhé jiāoyì suǒ yǒuxiàn gōngsī, 香港聯合交易所有限公司

²⁴ The Securities and Futures Commission (SFC) is an independent statutory body set up in 1989 to regulate Hong Kong's securities and futures markets.

There are no tariffs²⁵, no quotas, no restrictions on investments inward or outward and dividends are not taxed, meaning that individuals and companies can import and export capitals at their own discretion. Moreover VAT, capital gains tax, estate tax and withholding tax are not imposed in Hong Kong.

The only direct taxes imposed to businesses and individuals are:

- Profits tax. Tax levied on revenues earned in Hong Kong from trading, business or professional operations in the region;
- Salaries tax. Tax on income derived from an office, an employment or a pension in Hong Kong;
- Property tax. Tax on income levied on real-estate properties in Hong Kong.

These direct taxes are charged adopting the so-called “territorial source principle”, according to which taxes are levied from incomes arose in that specific area. Under this principle, only the incomes that derived from businesses carried in Hong Kong are taxed. Having a general overview, the higher tax rate is the one for salaries, reaching 17%; profits tax can vary from 8.25% to 16.5% and the property tax rate is 15% (InvestHK, 2018).

As a general consideration, Hong Kong offers the perfect environment to set up a foreign company, with low tax rates, clear regulations and low level of government intervention.

In the next paragraph, will be presented in detail the different types of company a foreign investor can choose from.

²⁵ Unless otherwise prescribed by law.

2.4 Business entities a foreign investor can establish in Hong Kong SAR

In this section will be presented the characteristics of the different type of companies that can be established by a foreign investor in Hong Kong, adding, when possible, a comparison with the rules governing the establishment of the same type of business, or a similar one, in Mainland China. In doing so, the differences will be highlighted and the advantages of choosing the Hong Kong SAR will be clearly shown.

2.4.1 Private company limited by shares

Generally speaking, companies in Hong Kong can be public or private, with a further distinction for the latter that can be limited by shares or by guarantee.²⁶ The most common form of company in Hong Kong is the private company limited by shares, simply known as private limited company (Ltd.). Since it is a separate legal entity, the Business Registration Certificate presented above is required; the company needs to have a registered address in Hong Kong and the institution's name should be in Chinese or English. Members' liability of this type of company is limited to the amount of the subscribed shares of the share capital which generally has a minimum of HK\$ 10.000, represented by 10.000 ordinary shares of 1 HK\$ each and there is no restriction on the maximum amount of capital.²⁷

The members of a private limited company are: shareholders, directors and company secretary, each of them with specific characteristics. The shareholders, also known as *Founder Members*, can be in a variable number from one to fifty shareholders, can be a local or foreign individual or a company and a shareholder could also be the same as the director. The directors, or *First Directors*, can be a person or a company and there is no limit to the number of directors allowed. With no limitation for nationality and residence, it is just required that the directors are not convicted for bankrupt or any other malpractice. The Company Secretary is the only individual or company that must reside or have the registered office in Hong Kong.

²⁶ Private companies limited by guarantee are usually set up by non-profit organizations

²⁷ HK\$ 10.000 ~ US\$ 1.200. USD HKD exchange rate: 7.8452HKD. February 1st, 2019.

Each limited company must appoint at least one company secretary, that is responsible for maintaining the statutory books and records of the firm.

A private limited company by shares, as previously seen, can be 100% owned by a foreign investor or institution and can operate in every sector (excluding the communication field) and it can be compared with the Wholly Foreign-Owned Enterprise (WFOE)²⁸ that can be established in Mainland China. The WFOE allows a foreign investor to incorporate a limited liability company without the participation of a Chinese part. However, the disadvantages, compared to a private limited company in Hong Kong are numerous. First of all, the business activities are restricted to certain sectors, mainly trade and manufacture and there is a lack of government support. The capital required to open a WFOE is higher and starts from 50.000 US\$. Moreover, the Chinese law is applied, with different practices and regulations in the various Chinese regions, implying that is hard to understand what is legally accepted and what not. Lastly, in Hong Kong a limited company is subject to the payment of the profit tax only (16%), while in China several taxes are levied: corporate tax (15% to 25%), profit tax (up to 35%), consumption tax (up to 56%), stamp duty tax (1%), land appreciation tax (30% to 60%) and resources tax (up to 20%) (PRC, 1998).²⁹

In China, another possibility is to establish a Foreign Investment Companies Limited by Shares (FICLS)³⁰. To create a FICLS, shareholders need to be qualified and can be an individual or a company, if foreign, while the Chinese part needs to be a legal enterprise. A particular characteristic of this limited company is that all decisions made by the board of directors or by the shareholders require only a two-thirds majority, not the unanimity as per the other business organizations. Thus, a single shareholder can exercise full control of the company if he or she holds at least two-thirds of the shares. However, a relevant disadvantage is the high capital required, minimum RMB 30 million, and the restriction of a three year lock-up for the share disposition.³¹ Moreover, the sector of operation of a FICLS is limited by provisions

²⁸ Wàishāng dúzī qǐyè, 外商独资企业

²⁹ Jake Liddle and Tongyu Zhang , *Setting Up a WFOE in China: a Step-by-Step Guide*, June 22, 2017. China Briefing <http://www.china-briefing.com/news/setting-wfoe-china-step-step-guide/>

³⁰ Wàishāng tóuzī gǔfèn yǒuxiàn gōngsī, 外商投资股份有限公司

³¹ RMB 30 million ~ US\$ 4.4 million. US\$ - RMB Exchange rate: 6.7422CNY. February, 1st 2019.

stipulated by the government, as well as the type of products, services and technologies that can be offered. As per the WFOE, the requirements and procedures to establish a FICLS compared to a limited company in Hong Kong are more unfavorable and complicated (Jim et al., 2001)

2.4.2 Sole-Proprietorship

With the term sole-proprietorship is indicated a business conducted by one person only, who is the sole investor of the company, thus is completely liable. The registration of a sole-proprietorship follows the same rules as all the other type of companies under the Business Registration Ordinance, so a Business Certificate is required. Advantages of setting up this kind of organization are related to the simplicity of business and capital management as well as the earning of the whole profit as the owner is the only investor and director of the company. However, the owner has unlimited liability, the workload is heavy and the working pressure is high; characteristics that makes this type of organization suitable for small business that does not have a wide angle of operation.

2.4.3 Partnership

Partnership is a business entity which involves two to twenty owners who join together to do business. The Hong Kong Partnership Ordinance regulates the rights and obligations of partners through the Partnership Agreement, a written document or verbal agreement between partners to state and control their rights and obligations. The Partnership Agreement clarify the partners' roles and relationships, how the business should be conducted, how to control finance of the business, and how to terminate the partnership. Moreover, every partner has to behave trustworthily, honestly, fairly and reliably to the firm and to the other partners and this is call "fiduciary duty".

Responsibilities and workload, as well risks and liability are shared by the partners that are completely liable for the company debts and obligations in proportion to

their personal investment. However, a partner can be liable to all of the debts and obligations incurred by the firm if other partners are unable to pay their portion of liability. When choosing this type of business, it is important to keep in mind that the profits are shared, as well as the risks and that the fiduciary duty among the partners plays an important role.

In mainland China, instead, there is no possibility to create a partnership between foreigners only, however, a foreign investor can be part of a Foreign-Invested Partnership (FIP)³². The FIP has been established with the PRC Partnership Enterprise Law of 2007 and it is a form of business completely different from the others that can be created in China from the administrative point of view. Although there are still some foreign-investment restrictions applied, the FIP does not require any examination and approval by the PRC Ministry of Commerce to be set up and partners can have limited or unlimited liability, depending on the type of partnership subscribed. However, compared to the Hong Kong partnership agreement, in the Chinese FIP partners have different roles: there are general partners who are in charge for the management of the business and are liable for the company debts and limited partners who are mainly financial investors with no responsibilities.

2.4.4 Joint Venture

There is not a legal definition for the term “Joint Venture”, thus the definition given by Stewart will be used to introduce the concept of a joint venture:

“The term is best defined by the existence of certain characteristics, understandings and arrangements. An international joint venture is often described as the joining together of two or more business partners from separate jurisdictions to exchange resources, share risks and divide rewards from a joint enterprise.” (Stewart et al., 2011).

In Hong Kong a foreign investor can establish a Joint Venture Agreement through the creation of a partnership or of a limited company. In this case, the rules

³² Wàishāng tóuzī héhuǒ qǐyè, 外商投资合伙企业

governing the Joint Venture will be the rules of the type of business enterprise chosen.

As per the above seen entities, with the exception of the WFOE, in China there is no possibility to set up a wholly foreign owned Joint Venture. Equity Joint Venture (EJV)³³ is the only JV type that can be constituted in China and it is the main form of foreign investment, emerged in the post-socialist period with the Sino-foreign equity joint venture law of 1979. The Equity JV is a business entity that must have at least two partners, one Chinese and one foreign, that cooperate to reach a common purpose. The Equity Joint Venture is established through an EJV Agreement, governed by the contract law chosen by the parties that set the rules for the business management and operation, as well as the rights and duties of the parties.³⁴ (USCBC, 2010)

In China there are some specifications that limit the operational possibilities of the foreign part; in fact, the foreign investments cannot exceed 25% of the invested capital, the Chinese part deals with the distribution channel and the authorities, while the foreign partner shall assist the EJV for abroad activities and act as an international linkage. Moreover, when profits are divided, the approval from the authorities is required to transfer the profits abroad or to convert them into a foreign currency. (Lester, 2010)

Leaving aside the fact that it is impossible to constitute a whole foreign joint venture in Mainland China, as just seen above, great limitations emerge in terms of rights and duties a foreign investor has when deciding to subscribe an Equity JV Agreement. In Hong Kong every actor shares the fiduciary duty (only for partnership) and is liable for the investments done, while in China there is a clear distinction of the roles of the parts, with the impossibility for the non-local partner to deal directly with the Chinese authorities and the difficulties to export and exchange the profits earned.

³³ Hézī qǐyè, 合资企业

³⁴ In China there is no possibility to choose a different governing law than the Chinese Law for businesses run in China. Reference law are the Chinese Company law of 1993 and the Chinese Contract Law of 1999.

2.4.5 Representative Office

Representative office (RO) is a form of business reserved to foreign companies only. A representative office, or liaison office, is a business that is established by a parent company in a foreign country or in a jurisdiction where the business is not yet licensed to conduct marketing and other non-transactional operations. The owner of a RO has limited operational possibilities: he or she can hire local staff, purchase goods or services, but cannot raise funds, trade, sale goods and any other activity that implies a profit. Despite the limited operational possibilities, the representative office still has to be registered in the Business Registration Office in order to operate in Hong Kong and needs to have the same name as the overseas parent company.

In Mainland China it is possible to open a representative office which operating sectors, as in Hong Kong, are restricted to market research activities, products sales and service provision. There is a maximum of four foreign workers that can be hired in the RO while all the other employees should be Chinese. Moreover, the Representative Office in China can be registered only by companies who are at least two years old. The establishment of a representative office, apart from the last two differences just indicated above, follows almost the same rules both in Mainland China and in the Hong Kong SAR (Ku, 2013).

2.4.6 Branch Office

A branch office in Hong Kong is not a legal entity registered under the Company Register (CR) because it is considered an extension of a company already existing in Hong Kong and in case the branch office is terminated it is sufficient to notify the Hong Kong CR.

The parent company is liable for any debt of the branch office as it is not treated as a separate legal entity. To open a branch office, it is necessary to register it as a branch under the Business Registration Certificate of the parent company and, as previously said, it needs to have the same name as the parent company. To start its operation, a branch is required to have also a local resident acting as representative and an established place of business in Hong Kong.

Advantage of a branch office is that the management of every branch is directly under the control of the parent company, thus it is not required for a branch to have accounting or management offices.

Summing up, a foreign entrepreneur can choose among several options to invest in Hong Kong. Below a table to compare the main characteristics of the different options described in this section:

COMPANY TYPE	NECESSARY DOCUMENTATION	SEPARATE LEGAL ENTITY	MEMBERS COMPOSITION
Private Limited Company	Business Registration	Yes	1 director 1 shareholders, 1 company secretary: shall be an Hong Kong resident Max. 50 members
Sole proprietorship	Business Registration	Yes	1 owner
Partnership	Business Registration + Partnership Ordinance	Yes	2 owners Max 20 members
Representative Office	Business Registration	No	1 local agent
Branch	Business Registration for the branch + Business Registration of the parent company	No	N/A
Joint Venture	Business Registration + Ordinance (if partnership)	Partnership Yes	If limited company: 1 director 1 shareholders, 1 company secretary: shall be an Hong Kong resident Max. 50 members If partnership: 2 owners. Max 20 members

Table 2: Company that can be constituted by a foreigner in Hong Kong

2.5 Working in Hong Kong: visa and regulations for foreigners

In this chapter an overview of the procedures and documents that are necessary for a foreigner to be able to work in Hong Kong will be presented. In general, the Hong Kong Special Administrative Region Government (HKSARG) does not give the right to land in Hong Kong to a person coming to the region for working reasons, without a valid visa. The Immigration Department is the reference office that deals with visa procedures which application process is governed by the General Employment Policy (GEP).

2.5.1 General Employment Policy

Generally speaking, the General Employment Policy sets the main criteria for the application of a visa that can be taken into consideration if the following requirements from the GEP are respected:

1. The person applying for the visa has no crime records and there are no objections related to security for his/her application
2. A good level of education in the relevant field should be demonstrated and for specific circumstances the Hong Kong government requires also to have proven documentation of professional and technical abilities together with granted experience in the relevant sector
3. There is a job vacancy suitable for the applicant and this job should be appropriate and in line with the applicant educational and professional background
4. The income and all the other benefits offered by the company hiring the applicant should be in line with the market offer in Hong Kong
5. Finally, as stated in the GEP of Hong Kong, above requirements should be satisfied together with general immigration prerequisites, such as having a valid travel document and possibility to return to the country of residence.
(GovHK,2018)

Depending on the purpose of the visit of a foreign person in the Hong Kong SAR, there are different type of visa. A specific visa is required for: work, study, training or for specific professions, i.e. domestic helpers. Procedures are different depending on the applicant nationality: a general distinction is made between foreigners from every county, mainland Chinese and Macao citizens and among foreign people additional procedures can be required considering the country of origin.³⁵

In this section, only the procedures needed for a foreigner (not Mainland Chinese or Macau citizen) to obtain the working visa necessary to have a job in the region will be reported.

2.5.2 Visa for professionals

With the term *professionals*, the Hong Kong government refers to the individuals coming to Hong Kong for working reasons that belongs to a specific profession demonstrated by the dedicated studies done and/or by the practical learning of the profession.

The visa is necessary in order to start working and it can be paid by the person itself or by a sponsor, that usually is the company hiring the professional.

The application criteria that apply to the visa for professionals are the one contained in the General Employment Policy (GEP) listed above, with no additional requirements. Generally speaking it could be said that a foreign citizen may apply for a working visa in Hong Kong if qualified and have a good educational background in the working field or professional experience that makes him/her a better choice for the company that wants to hire him/her compared to a local professional.

The Hong Kong Government has developed some specific plans for this kind of visa, in order to facilitate both the companies and the foreigners coming to the Chinese SAR to work enhancing the previous visa duration from 1-2-2-3 years to the option of having the employment visa for two years and then renovating it for three years.

³⁵ For Italian citizens the general requirements are applied and there are no additional criteria that need to be considered.

Together with a new timing arrangement also for top-tier entrants' that now has changed to first working visa for two years and renovation for six years. (GovHK,2018)

2.5.3 Visa for entrepreneurs

A slightly different approach is reserved for entrepreneurs that want to come to Hong Kong to invest and set up businesses, being the owner or one of the participants of a company. In this case, the General Employment Policy and its criteria are applied, with some additional requirements that take into consideration and analyse specific factors related to the investment that will be done.

Besides granting a good educational background and to be qualified, a foreign investor willing to enter the Chinese SAR to set up a business shall demonstrate the substantial contribution to the Honk Kong economy. Thus, the HK government requires additional documentation related to business plan, investment sum, business turnover, number of jobs created, financial resources and if applicable, also a report of new technologies or skills introduced to HK of the business that the foreign investor is willing to open in the region. Specifically, below the details of the additional requirements contained in the section for entrepreneur visa of the GEP, starting with the section related to the business plan:

“Business Plan

An applicant who wishes to establish or join in business in Hong Kong should submit a two-year business plan stating the nature of the business, market analysis, market positioning, business direction, sales targets, product marketing strategy, etc. in order to demonstrate that the business is suitable for and capable of developing in Hong Kong. The applicant should also submit a two-year forecast of the profit-and-loss account statement, cash flow statement and balance sheet to demonstrate the feasibility of the business in terms of operation, finances and development.” (GovHK, 2018)

“The Immigration Department will seek advice, if needed, from relevant government departments or professional bodies on the applicant’s business plan in order to assess whether the business

supports Hong Kong's overall economic development. For example, the Immigration Department may consider whether the applicant's business belongs to or is able to complement industries that Hong Kong enjoys clear advantages, such as the four traditional pillar industries (i.e. trading and logistics, tourism, financial services, and professional and producer services) or the four clusters of sectors being explored for support measures by the Economic Development Commission (i.e. transportation, convention and exhibition industries and tourism, manufacturing industries, innovative technology and cultural and creative industries, and professional services), etc.” (GovHK, 2018)

As regard to the business turnover, it is stated as follow:

“Business Turnover

If the applicant is running relevant business overseas or has joined in a business in Hong Kong, he/she should submit the profit-and-loss account statement and balance sheet showing the business turnover and profit in the previous year. Those who intend to establish business in Hong Kong should submit a two-year forecast of profit-and-loss account statement and balance sheet as mentioned above, including the anticipated business turnover in order to demonstrate the feasibility of the business operation and development.” (Ibidem)

“In assessing an application for entry for investment to establish business in Hong Kong, the Immigration Department will also consider whether the applicant has relevant investment or working experience in the business concerned. If needed, the Immigration Department will seek advice from relevant government departments or professional bodies in order to assess whether the business is suitable for and able to sustain a steady growth in Hong Kong, and can give impetus to the industry concerned.” (Ibidem)

Financial resources are another relevant part that should be submitted to the HK government:

“Financial Resources

The applicant should submit statements of his/her personal and company bank accounts in the previous year and proof of other

sources of funding, as well as the company's latest audited financial report (if any) to demonstrate that he/she has sufficient financial resources to run the relevant business in Hong Kong and also support the smooth operation and sustainable growth of the business.”
(Ibidem)

As well as investment sum, in which the businessman shall provide to the Immigration Department documents stating the investment amount that he/she is willing to introduce in Hong Kong, to demonstrate the possibility to sustain the business he/she is going to set up.

These documents are combined with statements in which the applicant specify the number of employments needed for the business, pointing out the number and level of jobs that will be actually created in Hong Kong.

Finally, if applicable, is required also an explanation of the new skills and technologies that will be introduced to Hong Kong, specifying the high-value-added sectors in Hong Kong and potential patents acquired by the investor that can contribute to Hong Kong economy. (Ibidem)

2.5.4 Visa for entrepreneurs – start-up

Under the criteria required for an investor to obtain a valid visa to promote his/her business in Hong Kong, a section is reserved for the conditions to be follow to open a start up in the Hong Kong Special Administrative Region.

The start-up needs to be supported by the government, after a rigorous selection process, and the visa applicant should be the proprietor or partner of the start-up company or a key researcher of the relevant project. A foreign start-up business in Hong Kong may belong to one of the below-listed *government-backed programmes*:

- StartmeupHK Venture Programme administered by InvestHK;
- Incu-App, Incu-Bio and Incu-Tech programmes administered by the Hong Kong Science and Technology Parks Corporation;
- Cyberport Incubation Programme;
- Small Entrepreneur Research Assistance Programme and Enterprise Support Scheme administered by the Innovation and Technology Commission;

- Design Incubation Programme administered by the Hong Kong Design Centre.
(GovHK, 2018)

3. ITALY AND HONG KONG

Since July 1997, Hong Kong is a Special Administrative Region of the People's Republic of China. As already discussed, the "One Country, Two Systems" principle provides significant economic, trade, financial and monetary autonomy to the Hong Kong Special Administrative Region (HKSAR), reflecting the possibility of the region to deal autonomously with its trading partners.

Hong Kong already had important agreements with international organizations under the British government, in fact, the region was represented abroad through the Hong Kong Economic and Trade Offices (HKETOs) and through specific offices in the British Embassies. Furthermore, in 1986, Hong Kong became an autonomous member of the General Agreement on Tariffs and Trade (GATT). It is also one of the founding members of the World Trade Organization (WTO) established on January 1st, 1995 and became a member of the Customs Cooperation Council (subsequently renamed as the World Customs Organization) in 1987 and of the Asia-Pacific Economic Cooperation (APEC) in 1991. When the Hong Kong sovereignty was transferred to the PRC, the region maintained its autonomy and also the opportunity to keep the HKETOs in all the main trading partners of Hong Kong: United States, South Asian countries, the EU, Australia and others. The main functions of Hong Kong Economic and Trade Offices operating in the EU are to facilitate trade negotiations, inter-government relations as well as to promote the investments in the Chinese SAR.

Before talking specifically about the relationships between Italy and the Hong Kong region, a general overview of Hong Kong relations with the European Union will be presented.

3.1 Economic relationships with the European Union

The European Union and Hong Kong are important trading partners. According to the HK government, the region has been ranked 17th among the EU's merchandise trading partners in the world in 2017. In the same year, the EU was Hong Kong's 3rd largest merchandise trading partner after Mainland China and the Association of Southeast Asian Nations (ASEAN).

The total merchandise traded between Hong Kong and the EU amounted to €72 billion, representing 7.7% of Hong Kong's global merchandise trade in 2017 (TID, 2018). The EU was Hong Kong's 4th largest goods supplier in 2017 after Mainland China, Taiwan and Singapore: 6.5% of Hong Kong's imports, amounting to €32 billion, were sourced from the European Union, of which the United Kingdom, France and the Netherlands were the top three markets for Hong Kong products, while Italy places itself at the 5th position with a value of total trade amounting at €8,330 million, of which €5,435 million for imports, €24 million for domestic exports and €2,872 for re-exports.

Below the table with data from the Hong Kong Trade and Industry Department that shows the Hong Kong's merchandise trade with world, European Union and the first ten ranked EU member states:

		Value of Total Trade (in million €)	Value of Imports (in million €)	Value of Domestic Exports (in million €)	Value of Re-Exports (in million €)
	World	933,436	493,991	4,927	434,517
	EU	71,652	32,303	225	39,124
Ranking	Member				
1	Germany	14,496	6,116	23	8,358
2	United Kingdom	11,232	5,711	80	5,441
3	France	9,823	5,639	38	4,146
4	The Netherlands	9,587	2,333	24	7,23
5	Italy	8,33	5,435	24	2,872
6	Belgium	4,795	2,77	4,9	2,021
7	Spain	2,458	895	8	1,554
8	Hungary	1,812	242	2,2	1,568
9	Poland	1,467	337	1,3	1,128
10	Sweden	1,056	291	1,5	763

Table 3: Hong Kong's merchandise trade with world, European Union and individual EU member states. Source: Hong Kong Trade and Industry Department.

As already said, Hong Kong is an important entrepôt to access the Chinese market and this is true also for European products: nearly €10 billion of the Mainland's imports from the EU routed through Hong Kong and on the other hand, re-exports of Chinese-origin goods to the EU traded through Hong Kong exceeded €33 billion.³⁶

The importance of Hong Kong for European companies is showed also by the survey, made by the HK government in 2017, which considered 8225 companies in Hong Kong with parent companies located outside the region. The report showed the presence of 452 regional headquarters, 705 regional offices and 997 local offices in Hong Kong representing parent companies located in the European Union, accounting for almost one third of the total of the companies analyzed.

3.2 Relationships with Italy, a general overview

As seen before, Hong Kong is the preferred city for foreign businesses, due to its low tax regime, access to international capital markets and its stable financial system. Over 400 Italian companies in automotive, insurance and banking, agri-food sector and luxury, have already set up their operations in Hong Kong, of which 175 with stable headquarters or representative offices (Ambasciata d'Italia, 2018). Moreover, with the recent removal of Hong Kong from two of the three Italian blacklists, even more companies can advantageously invest in the Chinese SAR. Several other reasons work in favor of the region as Hong Kong is the main market in the world for trading goods, the competition is high, the environment is dynamic and the position is strategic: from Hong Kong it takes on average four hours to fly to the main Chinese Mainland business and commercial centers and all the main Asian markets, and half of the world's population could be reached with less than a 5 hours flight.

In this chapter the economic and political relationships between Hong Kong and Italy will be presented in detail, in order to offer a complete overview of the situation and to explain better the reasons why to invest in Hong Kong as a great opportunity for Italian companies to enter the Chinese market.

³⁶ Complete data for 2018 are not available yet. All the data mentioned refers to 2017.

3.3 Agreements in force between Italy and Hong Kong

3.3.1 Investment Promotion and Protection Agreement

Hong Kong has signed Investment Promotion and Protection Agreements (IPPA) with several countries, among them Italy.³⁷ The Agreement has been signed in Rome on November 28th, 1995, and entered effectively into force on February 2nd, 1998, valid for a fifteen years period. And, unless a notice of termination has been given by either a Contracting Party at least twelve months before the date of expiry of its validity, the Agreement will be extended tacitly for ten years periods.

An Investment Promotion and Protection Agreement can be defined as a mutual agreement between two governments for the promotion and protection of investments done from one contracting party in the area of the other party. A typical IPPA generally provides for the following protection for investments:

- to be fairly and equitably treated;
- to be fully protected and secured, without any discrimination for investments themselves and for any loss or conflict arose with others;
- to be compensated if the investments has been expropriated;
- to be freely transferred abroad and return to Hong Kong and the other contracting party territories;

An IPPA also grant additional protections in case of disputes between the parties' investors on any topic or occasion. Hong Kong's IPPAs give additional assurance to both overseas and Hong Kong business man, that the capitals invested in the area of the contracting parties are protected (TID, 2018).

The IPPA signed between the Hong Kong SAR and Italy is a document, composed of several articles, that covers all the aspects related to investment promotion and protection, specifically divided into:

- Article 1: Definitions
- Article 2: Promotion and Protection of Investments and Returns
- Article 3: Treatment of Investments

³⁷. Cùjìn hé bǎohù tóuzī xiédìng, 促进和保护投资协定. Investment Promotion and Protection Agreement

- Article 4: Compensation for Losses
- Article 5: Expropriation
- Article 6: Transfer of Investments and Returns
- Article 7: Exceptions
- Article 8: Subrogation
- Article 9: Application
- Article 10: Settlement of Investments Disputes
- Article 11: Settlement of Disputes between the Contracting Parties
- Article 12: Entry into Force
- Article 13: Duration and Termination³⁸

Below an extract from Article 2 that gives a general overview on the aim of the IPPA:

“(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its area, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.” (Ibidem)

“(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its area of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.” (Ibidem)

For the complete text of the Investment Promotion and Protection Agreement between Hong Kong SAR and the Italian republic governments reference is made to Appendix I.

³⁸ The complete text of the Hong Kong-Italy Investment Promotion and Protection Agreement can be found in Appendix I.

3.3.2 Mutual Legal Assistance Agreement

The second agreement signed between the Hong Kong SAR and the Italian Republic is the Mutual Legal Assistance Agreement. Aimed at improving an effective cooperation in criminal investigations and procedures between the two countries, the Agreement has been written on October 28th, 1998, but effectively entered into force on August 14th, 2010.³⁹

As stated in the opening part of the document, the *“scope of assistance consists in the provision of the parties of mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.”*⁴⁰

The assistance includes all the aspects related to an effective cooperation: from identifying and locating people to providing and facilitating documents, witnesses and experts with the aim of efficiently proceed with the criminal investigations.

The complete text of the Mutual Legal Assistance Agreement between Italy and HK can be found in Appendix II; below a recap of the Articles contained in the ordinance, Schedule 1:

- Article I: Scope of assistance
- Article II: Central authority
- Article III: Limitations on compliance
- Article IV: Requests
- Article V: Execution of requests
- Article VI: Representation and expenses
- Article VII: Limitations of use
- Article VIII: Obtaining of evidence, articles or documents
- Article IX: Location or identity of persons
- Article X: Service of documents
- Article XI: Publicly available and official documents
- Article XII: Certification and authentication

³⁹ Xíngshì shìyí xiānghù fǎlù xiézhù (yìdàlì) lìng, 刑事事宜相互法律协助(意大利)令. (Mutual legal assistance in criminal matters (Italy) order)

⁴⁰ Article I of the Mutual legal assistance in criminal matters, between the government of the Hong Kong Special Administrative Region of the People's Republic of China and the government of the Italian Republic concerning mutual legal assistance in criminal matters.

- Article XIII: Transfer of persons in custody
- Article XIV: Transfer of other persons
- Article XV: Immunity
- Article XVI: Search and seizure
- Article XVII: Proceed of crime
- Article XVIII: Entry into force and termination

3.3.3 Double Taxation Avoidance Agreement

3.3.3.1 An introduction

The third, most recent and important agreement signed between the two governments of Italy and Hong Kong refers to taxation. The Agreement, officially known as “*Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income*”, has been signed on January 14th 2013 and entered into force on June 18th 2015 in Italy and on August 10th 2015 in the Hong Kong SAR.⁴¹ The Double Taxation Agreement has officially started to be operative on January 1st 2016 in Italy and April 1st 2016 in Hong Kong, respectively the beginning of the fiscal year in the two countries. The document has been signed by the representatives of the two governments: Professor K C Chan, Secretary for Financial Services and the Treasury in Hong Kong and the Minister of Economy and Finance in Italy, Professor Vittorio Grilli.

As said before, aim of the Agreement is to prevent double taxation on income and to avoid fiscal evasion as regard to profit tax, salary tax and property tax in Hong Kong and the correspondent *IRES*, *IRPEF* and *IRAP* in Italy.⁴²

⁴¹ Guānyú shōurù shuì xiàng de shuāngchóng kè shuì kuān miǎn hé fángzhǐ táoshuì, 关于收入税项的双重课税宽免和防止逃税. (Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income)

⁴² IRES: Imposta sul Reddito delle Società; Italian tax levied on company income. Tax rate: 24%
 IRPEF: Imposta sul Reddito delle Persone Fisiche. Italian tax imposed on individuals that varies in respect to their income or profits
 IRAP: Imposta Regionale sulle Attività Produttive. Italian regional tax levied on companies that varies in respect of their sales volumes. Tax rate: 3.90% - 8.50%

Below a table that shows a comparison of the tax rates in Hong Kong and Italy for the income taxes levied:

	Hong Kong	Italy
Profit Tax / IRES	16,50%	24% + IRAP (3,90%)
Salaries Tax / IRPEF	2-17%	23-43% (progressive) + local taxes (1,3% - 3,1%)

Table 4: Income tax comparison between Italy and Hong Kong

3.3.3.2 Main content and provisions

The Double Taxation Avoidance Agreement signed between Italy and Hong Kong has been drafted in conformity with the model proposed by the Organization for Economic Cooperation and Development (OECD).⁴³ In fact, main provisions include the tie-breaker rule, a tax treaty provision designed to prevent an individual from being deemed resident for tax purpose in both countries, as well as the maximum tax rate applicable to the so called passive income: 10% for dividends, 12.5% for interest and 15% for royalties in Hong Kong, while in Italy royalties are taxed at 22.5% and dividends and interests at 20%. In addition, it specifies the adoption of the *ordinary credit* method for Hong Kong, and the *exemption with progression* method adopted by Italy to avoid the double taxation. With the ordinary credit method, a tax credit is given for the foreign tax suffered by the taxpayer against his domestic tax imposed on the same income. The amount of tax credit relief is normally restricted to the lower payable level of the two interested countries. On the other hand, the application of the exemption with progression method, prevents a taxpayer from taking advantage of a lower tax rate in the state of residence by earning income abroad. In fact, under this method, the state of residence provides an exemption from its tax for income earned in the state of source, but the residence state retains

⁴³ The Organization for Economic Cooperation and Development (OECD) is a unique forum where the governments of 34 democracies with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development. The Organization provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and coordinate domestic and international policies.

for itself the right to take the exempt income into account for the purposes of determining the marginal rate at which the taxpayer's non-exempt income is subject to tax.⁴⁴

Residence of the taxpayer is another important element to avoid the double taxation, in fact the individual should be a resident in one of the two countries and, differently from the past, is now the government the authority in charge to demonstrate any incongruence with the individual declaration while before the taxpayer should demonstrate the validity of its residential address. Under the Italian laws, an individual, Italian or Hong Kongese, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, while in Hong Kong is liable any individual who ordinarily resides in the region and any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year.⁴⁵

On the other hand, for a company is used the principle of *permanent establishment* which categorize companies as resident in one of the two countries considering the timing of operation in the area of the other contracting party with a limit that cannot exceed 6 months in one year. This principle is not applicable for warehouses used for exhibitions or for goods distribution.

The Double Taxation Avoidance Agreement imposes, in Article 25, the exchange of documents upon request of one of the contracting parties, in order to avoid any fraud and tax evasion. If requested, one country shall provide to the other all the information of companies and individuals resident there, with a cash balance on their bank account bigger than 15.000€. Information include personal data, bank account number, balance and detail of every financial investment and any other relevant information that can be useful.⁴⁶

⁴⁴ Article 22: Elimination of double taxation of the Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income (Italian Republic Order)

⁴⁵ Article 3: General Definition of the Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income (Italian Republic Order)

⁴⁶ Article 25: Exchange of information of the Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income (Italian Republic Order)

3.3.3.3 Double Taxation Avoidance Agreement and Italian black lists

Hong Kong has always been considered as a fiscal privileged country, which lead to the inclusion of the region in three Italian blacklists, specifically:

- Blacklist 1: instituted by the Italian government on May 4th of 1999, that includes the countries where persons are fiscally privileged.
- Blacklist 2: underwritten on November 21st 2010 for countries that are subject to the Controlled Foreign Companies (CFC) regulations
- Blacklist 3: created on January 23rd 2002, that includes the countries with costs that cannot be deducted.

In 2015, with the entry into force of the “*Double Taxation Relief and Prevention of Fiscal Evasion with respect to Taxes on Income Agreement between Italy and Hong Kong*”, the criteria to include a country in a blacklist have been updated.

In fact, for the Italian government a country is included in a black list if, as seen above, persons are fiscally privileged (blacklist 1) and if the country does not cooperate with the exchange of information (blacklists 2 and 3). However, the Article 25 of the Agreement clearly state and impose the exchange of information and documents between the two countries, resulting in Hong Kong’s removal from two of the three Italian blacklist the region was included into: blacklist 2 for controlled foreign companies regulation and blacklist 3 for non-deductible costs.

Generally speaking, the standards and the criteria contained in the Double Taxation Avoidance Agreement allow a better cooperation between the two countries in term of taxation. The only blacklist in which Hong Kong remains included is the blacklist 1 meaning that all the operations done by Italian companies and individuals with Hong Kong will continue to be strictly monitored to avoid any tax evasion. (Gazzetta Ufficiale n. 279, 2015).

3.4 Italian presence in Hong Kong

As previously seen, over 400 Italian companies in automotive, insurance and banking, agri-food sector and luxury, have already set up their operations in Hong Kong, of which 175 with stable headquarters or representative offices.

Besides the sectors listed above, Italian interests can be found also in the Bio- and Nano-technologies, sustainable energies and eco-friendly businesses. Considering the high potential of Hong Kong for innovation development, in 2017 the project “Startit.asia” has been created to offer tangible supports to all the Italian start-ups operating in innovative sectors that can flourish in the Asian market. This initiative has been promoted through a collaboration of the General Consulate, the Italian Chamber of Commerce of Hong Kong and Macao, the Incubatore Imprese Innovative of the Polytechnic University of Turin (I3P), P&P consulting and the Hong Kong Science and Technology Park (HKSTP). (Ambasciata d’Italia – Hong Kong, 2018).

To provide a full picture of the current situation, below a graphic populated with data from the Italian Trade Commission Hong Kong that shows the distribution of Italian companies in Hong Kong based on their sector of operation:

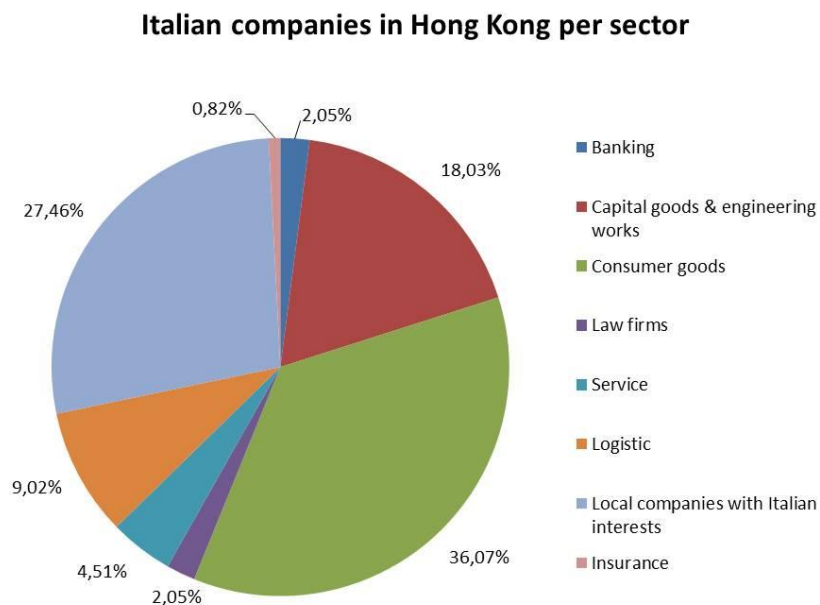


Figure 5: Italian companies in Hong Kong per sector of operation. Source: Istituto Commercio Estero (ICE), 2018

As can be seen from the graphic in Figure 5, merchandise trade continues to play a major role in the Italian-Hong Kong relationships as the region serves as base to re-exports Italian merchandise in Asian markets, especially Mainland China. In fact, almost 60% of the total Italian exports to Hong Kong are dispatched to China. (HKTDC, 2017).

Below merchandise import and exports between Italy and the Hong Kong SAR from 2013 to 2017:

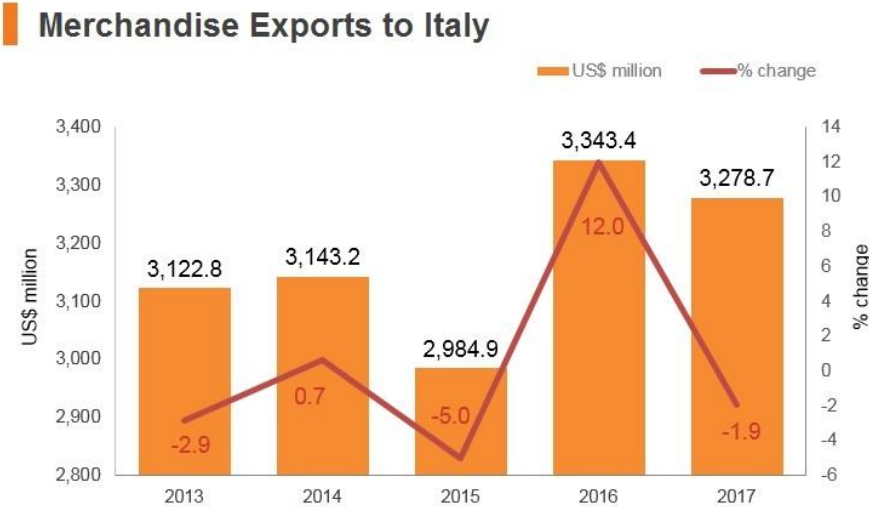


Figure 6: Merchandise Exports to Italy. Source: HKTDC

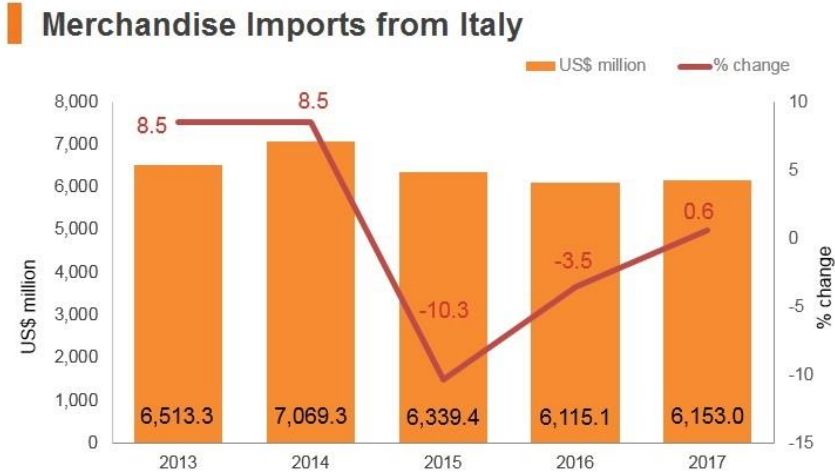


Figure 7: Merchandise Imports from Italy. Source: HKTDC

A general look to the Hong Kong SAR commercial partner shows that in 2017 Italy placed itself at 18th position for total trade with 73,473 HK\$ million value and 16th position for imports amounting at 47,932 HK\$ million. Both data registered a growth of 0.9% and 1.1% compared to previous year, respectively. (TID, 2018).

A positive growth is registered also in the number of Italian companies operating in Hong Kong. In fact as shown in the tables below, since 2014 there is a constant increase of Italian presence in the region⁴⁷:

Country/Territory where the parent company was located	Number of regional headquarters									
	2014		2015		2016		2017		2018	
USA	310	22,3%	307	21,9%	286	20,7%	283	20,0%	290	19,0%
Japan	240	17,3%	238	17,0%	239	17,3%	233	16,5%	244	16,0%
The mainland of China	119	8,6%	133	9,5%	137	9,9%	154	10,9%	197	12,9%
UK	120	8,6%	126	9,0%	124	9,0%	122	8,6%	137	9,0%
Germany	91	6,5%	87	6,2%	85	6,1%	87	6,2%	98	6,4%
France	68	4,9%	67	4,8%	73	5,3%	81	5,7%	92	6,0%
Switzerland	45	3,2%	43	3,1%	51	3,7%	55	3,9%	54	3,5%
Singapore	43	3,1%	42	3,0%	40	2,9%	45	3,2%	46	3,0%
Italy	43	3,1%	40	2,9%	36	2,6%	39	2,8%	39	2,6%
Australia	37	2,7%	40	2,9%	37	2,7%	35	2,5%	35	2,3%

Table 5: Number of regional headquarters by selected country/territory where the parent company is located. Source: Hong Kong Trade and Industry Department, 2018

Country/Territory where the parent company was located	Number of regional offices									
	2014		2015		2016		2017		2018	
USA	490	20,5%	505	21,1%	480	20,4%	443	18,9%	434	17,9%
Japan	465	19,4%	447	18,7%	420	17,9%	428	18,3%	421	17,4%
The mainland of China	160	6,7%	186	7,8%	174	7,4%	196	8,4%	255	10,5%
UK	24	1,0%	220	9,2%	223	9,5%	221	9,4%	219	9,0%
Germany	125	5,2%	121	5,1%	131	5,6%	140	6,0%	139	5,7%
France	110	4,6%	105	4,4%	109	4,6%	101	4,3%	119	4,9%
Singapore	90	3,8%	93	3,9%	102	4,3%	106	4,5%	106	4,4%
Taiwan	144	6,0%	122	5,1%	115	4,9%	109	4,7%	97	4,0%
Switzerland	84	3,5%	82	3,4%	80	3,4%	84	3,6%	83	3,4%
Italy	61	2,5%	61	2,6%	64	2,7%	54	2,3%	62	2,6%

Table 6: Number of regional offices by selected country/territory where the parent company is located. Source: Hong Kong Trade and Industry Department, 2018

⁴⁷ Data of regional headquarters/regional offices/local offices by selected country/territory where the parent company is located refers to the position as at 1st June 2018

Country/Territory where the parent company was located	Number of local offices									
	2014		2015		2016		2017		2018	
The mainland of China	678	17,8%	772	18,8%	812	19,1%	914	20,4%	1139	23,7%
Japan	683	17,9%	673	16,4%	717	16,9%	717	16,0%	728	15,1%
USA	531	13,9%	556	13,5%	587	13,8%	587	13,1%	627	13,0%
UK	260	6,8%	285	6,9%	309	7,3%	332	7,4%	356	7,4%
Singapore	210	5,5%	222	5,4%	240	5,7%	257	5,7%	275	5,7%
Taiwan	251	6,6%	265	6,5%	247	5,8%	253	5,7%	252	5,2%
France	133	3,5%	143	3,5%	152	3,6%	161	3,6%	162	3,4%
Germany	119	3,1%	132	3,2%	141	3,3%	155	3,5%	159	3,3%
Netherlands	79	2,1%	92	2,2%	98	2,3%	95	2,1%	100	2,1%
Switzerland	113	3,0%	127	3,1%	113	2,7%	99	2,2%	98	2,0%
South Korea	83	2,2%	86	2,1%	82	1,9%	94	2,1%	90	1,9%
Australia	89	2,3%	94	2,3%	88	2,1%	91	2,0%	87	1,8%
Italy	48	1,3%	58	1,4%	60	1,4%	67	1,5%	63	1,3%

Table 7: Number of local offices by selected country/territory where the parent company is located. Source: Hong Kong Trade and Industry Department, 2018

Summing up, Hong Kong remains the main base for Italian and foreign companies that operates with Asia, demonstrated also by the growing number of companies that sets their business in the Chinese region.

4. INVESTING IN HONG KONG FOR ITALIAN COMPANIES

4.1 Market overview

Considered a premier business hub in Asia, Hong Kong has been chosen by several companies from countries all over the world as the perfect place to set up their base to deal with China and the other major Asian markets.

To provide a complete overview of the market situation that can be a useful reference for Italian companies, general information about Germany, France and the United Kingdom will be displayed in this paragraph. These countries have been chosen as reference among all the other states because of their EU-member status and because they register noticeable performances when dealing with Hong Kong market, being the three leading EU-member states for merchandise traded.

Tables below present the current (Table 8) and the past (Table 9 - 10) trading situation of Germany, France and United Kingdom with Hong Kong:

Ranking	Member	Value of Total Trade (in million €)	Value of Imports (in million €)	Value of Domestic Exports (in million €)	Value of Re-Exports (in million €)
1	Germany	14,496	6,116	23	8,358
2	United Kingdom	11,232	5,711	80	5,441
3	France	9,823	5,639	38	4,146
4	The Netherlands	9,587	2,333	24	7,23
5	Italy	8,33	5,435	24	2,872
6	Belgium	4,795	2,77	4,9	2,021
7	Spain	2,458	895	8	1,554
8	Hungary	1,812	242	2,2	1,568
9	Poland	1,467	337	1,3	1,128
10	Sweden	1,056	291	1,5	763

Table 8: Hong Kong's merchandise trade with world, European Union and individual EU member states in 2017. Source: Hong Kong Trade and Industry Department, 2018.

Country	Merchandise exports to Hong Kong									
	2013		2014		2015		2016		2017	
Germany	\$9.513,80	-5,1%	\$9.366,20	-1,6%	\$9.067,00	-3,3%	\$8.597,60	-5,5%	\$9.488,10	9,4%
United Kingdom	\$6.964,60	-2,0%	\$7.006,60	0,6%	\$7.065,20	0,8%	\$6.455,40	-9,4%	\$6.250,60	-3,3%
France	\$5.292,50	10,4%	\$5.097,90	-3,8%	\$4.518,10	-12,8%	\$4.475,40	-1,0%	\$4.737,40	5,5%
Italy	\$3.122,80	-2,9%	\$3.143,20	0,6%	\$2.984,90	-5,3%	\$3.343,40	10,7%	\$3.278,70	-2,0%

Table 9: Merchandise exports to Hong Kong. Source: Hong Kong Trade and Industry Department, 2018.

Country	Merchandise Imports from Hong Kong									
	2013		2014		2015		2016		2017	
Germany	\$7.198,70	-2,5%	\$7.546,70	4,6%	\$6.851,20	-10,2%	\$6.555,40	-4,5%	\$6.925,00	5,3%
United Kingdom	\$6.958,10	0,8%	\$6.252,50	-11,3%	\$6.165,20	-1,4%	\$5.767,00	-6,9%	\$6.466,10	10,8%
France	\$6.338,90	5,6%	\$5.670,50	-11,8%	\$4.967,10	-14,2%	\$5.339,80	7,0%	\$6.384,20	16,4%
Italy	\$6.513,30	8,5%	\$7.069,30	7,9%	\$6.339,40	-11,5%	\$6.115,10	-3,7%	\$6.153,00	0,6%

Table 10: Merchandise imports from Hong Kong. Source: Hong Kong Trade and Industry Department, 2018.

Generally speaking, even considering the historical background of British colonization of Hong Kong until 1997, this did not lead to any remarkable difference among the investment methods of these countries in the Chinese region in terms of specific advantages for British companies. In fact, the investment approaches of Germany, UK, France and Italy can be considered similar. This is justified by the fact that the countries are subject to the main EU-provision for investments and, on the other hand, the Basic Law of Hong Kong does not make any difference for the rules governing foreign businesses among the world countries and from the local businesses itself, providing specific provisions and regulations for the type of company a foreign investor can set up in Hong Kong, as seen in chapter 2.

Some relevant data regarding the actual presence of German, French and British companies are available in the “*Report on 2018 Annual Survey of Companies in Hong Kong with Parent Companies Located outside Hong Kong*”. Here the foreign companies with a regional headquarter, a representative office or a local office in Hong Kong has been analyzed by country of origin of the parent company, by major line of business of both the parent company and the HK offices and by size of the business. The major line of business results to be in line with the sector penetration of Italian companies, in fact the leading sector is the one of consumer goods with import/export trade and retail, followed by the financing and banking one.

Besides being the first three EU-countries for trade with Hong Kong, the United Kingdom, Germany and France result to have a leading position also in the total number of regional headquarters, RO and local offices only beyond Mainland China, Japan, USA (United Kingdom) and Singapore (Germany and France).

With a business presence always increasing since 2014, the number of companies in 2018 has now reached 712 for United Kingdom (4th position), 396 for Germany (6th position), 373 for France (7th position) and 164 for Italy (12th position). (Hong Kong Census and Statistic Department, 2018)

Below the number of companies in Hong Kong since 2014 by country where the parent company is located:

Country/Territory where the parent company was located	Number of companies									
	2014		2015		2016		2017		2018	
The mainland of China	957	12,6%	1091	13,8%	1123	14,1%	1264	15,4%	1591	18,2%
Japan	1388	18,3%	1358	17,2%	1376	17,2%	1378	16,8%	1393	16,0%
USA	1331	17,5%	1368	17,3%	1353	17,0%	1313	16,0%	1351	15,5%
UK	584	7,7%	631	8,0%	656	8,2%	675	8,2%	712	8,2%
Singapore	343	4,5%	357	4,5%	382	4,8%	408	5,0%	427	4,9%
Germany	335	4,4%	340	4,3%	357	4,5%	382	4,7%	396	4,5%
France	311	4,1%	315	4,0%	334	4,2%	343	4,2%	373	4,3%
Taiwan	426	5,6%	413	5,2%	387	4,9%	381	4,7%	371	4,3%
Switzerland	242	3,2%	252	3,2%	244	3,1%	238	2,9%	235	2,7%
Netherlands	187	2,5%	190	2,4%	190	2,4%	178	2,2%	180	2,1%
Australia	173	2,3%	182	2,3%	179	2,2%	174	2,1%	172	2,0%
Italy	152	2,0%	159	2,0%	160	2,0%	160	2,0%	164	1,9%
South Korea	136	1,8%	144	1,8%	135	1,7%	148	1,8%	145	1,7%
Canada	97	1,3%	110	1,4%	110	1,4%	106	1,3%	113	1,3%
Sweden	84	1,1%	92	1,2%	91	1,1%	90	1,1%	95	1,1%

Table 11: Number of companies by selected country/territory where the parent company is located. Source: Hong Kong Trade and Industry Department, 2018

The continuous growing number of companies for all the countries investing in Hong Kong demonstrate the ability of the region to maintain its status as a perfect business hub to enter the Asian market as well as the ability of Hong Kong to be always able to offer the necessary support to the investors that want to set up or manage their operation in Asia.

4.2 Advantages and disadvantages

When investing abroad, in order to evaluate the advantages of the chosen location, the eclectic paradigm proposed by John Dunning can be used as initial approach. This theory, also known as OLI Model, suggest an investment is worthy when three advantages are achieved: ownership advantages (O) meaning that the company can be competitive both with locals and foreigners; location advantages (L) related to the specific benefits that can be found in the chosen territory; internalization advantages (I) referring to the ability of the company to use its abilities to produce by itself internalizing suppliers and intermediaries (Dunning, 1979).

Considering its location on the Pearl river delta, the close cooperation with Mainland China and the opportunities and support offered by the region, at first glance it can be said that Hong Kong satisfy the advantages of the OLI model proposed. Furthermore, the region offers other important advantages that should be considered when evaluating the Hong Kong SAR as the destination of anyone investments.

In this paragraph the advantages of investing in Hong Kong will be presented in more details, together with an outline of the main disadvantages that can be faced.

At first, what stands most is the geographical position of the country; Hong Kong is part of the Great Pearl River Delta Region that includes nine cities in the Guangdong area and the two Special Administrative Regions of Hong Kong and Macao. Here the main developed sectors are the textile industry, electronics, informatics and technology and thanks to the Guangzhou Agreement signed in 2014 there is a close collaboration for trade services among the interested cities.

Besides that, all Asia's key markets are less than four hours away and the Hong Kong international free port is one of the most important in South Asia and in the world. In fact, as already mentioned, in Hong Kong there is the free trade and free movement of goods, with no tariffs except for tobacco, hydrocarbon oil, alcoholic beverages and methyl alcohol. The region also offers world leading infrastructures with an important and well-developed international airport, convenient public transports, world leading logistics and efficient connection with Mainland China.

Another important advantage is related to the promising and sympathetic government of Hong Kong; the Basic Law of the country sets specific rules that are equal for local and foreign companies, clear and easily enforceable. Moreover, in order to continue to attract investments there are government offices and facilities specifically dedicated to provide the right support to foreigners. Furthermore, the Hong Kong tax system is one of the most tax-favorable in the world with only three direct taxes imposed: profit tax (16.5%), salary tax and property tax (15%).

Part of the supportive government can also be considered the language that plays an important role as well, in fact, the official languages of the region are Chinese and English, with the latter as preferred language for business and contracts.

The city is also a leading financial center that grants free movement of intangible assets and capital. Financial operations require just few days to be completed and

a company has also the possibility to do invoices or any other financial operation in the preferred currency.

Hong Kong has always maintained an open business environment for business activities and commerce thanks to the *one country, two systems*. As explained in the first part of this thesis, Hong Kong has its own currency, political and legal systems that allowed the city to flourish as an international business environment, whilst enjoying the benefits of unrivalled access to opportunities in Mainland China. The CEPA, Closer Economic Cooperation Agreement, is the most important accord between HK SAR and China that, as seen before, sets important market liberalizations measures between the two territories.

Finally, the freedom of the region in dealing with international matters offers to Hong Kong the possibility to have several Free Trade Agreements, several Double Taxation Agreements (including Italy and China) and to be autonomously part of international organizations such as the WTO and the ASEAN (InvestHK, 2018).

As regard to the relevant risks or disadvantages that should be considered, the first one is the vulnerability of Hong Kong to international market fluctuations because of the great degree of openness of its economy. In case of international financial crisis, the Hong Kong economy can suffer of negative impacts, because of its great openness to and linkages with other countries' economy. Moreover, the closer connections with China that is currently an advantage, if not well managed can lead to the potential risk of high dependency of Hong Kong economy on the Chinese one with all the relative implications related to the autonomy of the region.

From an operational point of view, the high cost of rental prices can damage an effective functioning of the companies that are forced to settle to the outskirts of the city to have more reasonable rental costs. The high prices of real estate determine also the possibility of reaching unsustainable costs leading to a potential property bubble (Ambasciata d'Italia – Hong Kong, 2018).

This analysis demonstrates that, even considering the disadvantages presented above, the advantages of investing in Hong Kong are more important, concrete and numerous. In fact, the benefits presented are tangible and effective, while the risks indicated are a result of forward-looking projections that currently does not have relevant data to demonstrate they can possibly happen in the near future.

4.3 Reasons for choosing Hong Kong compared to China

When planning to expand in Asia, choosing to invest in Hong Kong or in Mainland China can be a difficult decision and several factors should be taken into consideration. The analysis in this paragraph will consider operational, financial and legal advantages and disadvantages for a business in Hong Kong and in China in order to provide a useful comparison between the two territories.

China is the world leading country in term of nominal GDP, in fact is at 1st place after overtaking the USA in 2014, but to give a better idea of the current economic situation of China, below a table that introduce the main macroeconomic factors of the country:

Economic indicators						
	2013	2014	2015	2016	2017	2018
Nominal GDP (Bln)	\$ 9.635,00	\$ 10.535,00	\$ 11.226,00	\$ 11.222,00	\$ 12.015,00	\$ 13.357,00
Real GDP variation	7,8%	7,3%	6,9%	6,7%	6,9%	6,9%
Population (Mln)	1.350	1.355	1.361	1.366	1.372	1.378
GDP per capita at same purchasing power	\$ 12.470,00	\$ 13.600,00	\$ 14.770,00	\$ 15.710,00	\$ 16.670,00	\$ 17.900,00
Unemployment	4.1%	4.1%	4.0%	4.0%	3.9%	3.9%
Public debit (GDP%)	14.5%	14.8%	15.2%	16.1%	16.6%	18.8%
Volume variation of goods and services exports (GDP%)	24.4%	23.8%	21.3%	19.5%	20.4%	20.5%
Volume variation of goods and services imports (GDP%)	22.0%	21.3%	17.8%	17.3%	18.4%	18.4%

Table 12: China, macroeconomic indicators from 2013 to 2018. Source: Osservatorio economico

Another relevant data to be considered is the total trade between Italy and the PRC that in 2018 was 43.950 billion euro, with a 4.8% growth compared to 2017. However, when analyzing the value of merchandise traded between the two countries, there is a negative commercial balance of -17.611 billion euro, due to the fact that in 2018 the total imports from China amounted at 30.781 billion euro, while the total exports to China resulted to be only 13.170 billion euro with a loss of -2.40% with respect to 2017. (Osservatorio economico, 2018)

To properly show the actual differences between investing in the Hong Kong SAR or in the People Republic of China, first the relevant risks investors should consider when entering the Chinese market will be presented, followed by a comparison between the actual business costs in China and in Hong Kong to open the same business.

Differently from Hong Kong, the PRC present several factors that can affect a business success. The most recent uncertainty is the one related to the Chinese-USA trade conflict: a dispute on tariffs against each other's exports that considering the international importance of both countries can lead to damages for the entire world economy if a clear agreement will not be reached.

Moreover, there are risks related to patents as, despite the efforts of the Chinese government, it is still difficult to effectively protect intellectual property.

Other important factors to take into consideration are the rental and salaries costs, together with the bureaucracy factor. Recently, salaries costs in China have grown: in the last 10 years wages in China yearly increase by 8% on average, while in Hong Kong the increase amount at 4.5% reflecting the inflation (Walters, 2018).

As previously seen, rental costs in HK are an important expense for the company, however this cost is becoming much higher also in Mainland China. Considering for example Shanghai, rents are subject to a volatile increase every year that can vary from 2.2% up to 6.1%, leading to a reduction of the difference with rental costs in Hong Kong that now reaches an average of 25% (InvestHK - Italia, 2018).

The Heritage Foundation Index that ranks Hong Kong as the freest economy in the world, positions China at 100th place among the mostly unfree countries. This result is a combination of several factors, among them the low level of freedom, the high control of the Communist party on the economy and the Chinese bureaucracy, with its long timing, unclear procedures and a *grey area* of rules enforceability left to the discretion of the public officials and employers. This cause a great degree of uncertainty investors have to face when entering the Chinese market as the corporate compliance rules governing businesses are not clear and change frequently.

To better show the bureaucracy differences in Hong Kong and Mainland China, the average timing to complete basic tasks will be presented, considering Shanghai as the sample city for the Chinese market.

Task	Timing to complete a task	
	Hong Kong	Shanghai
Change director/legal representative	1 week	2-3 months
Bank change	10-15 working days	2-3 months
Visa for travelling	2-4 working days	10-15 working days
Change company address	1 week	2-3 months
Overseas payments	Internet banking, immediate	In person, 1 week

Table 13: Timing to complete a task in Hong Kong and Shanghai. Source: InvestHK, 2018

Another important factor that shall be considered when comparing China and Hong Kong is the actual corporate cost to be sustained. With data provided by the Italian Embassies in Hong Kong and China, below a table that compare the main business costs to be sustained in China and Hong Kong.⁴⁸

Cost description	Business costs	
	Hong Kong	China
Chief Executive/general manager salary (per year)	€ 448.509,94	€ 267.711,28
Department managers salary (per year)	€ 190.979,23	€ 122.988,18
Senior employees salary (per year)	€ 164.936,01	€ 120.127,81
Accountants and employees with responsibilities (per year)	€ 81.899,83	€ 57.489,24
Junior employees salary (per year)	€ 70.037,75	€ 52.273,45
Secretaries, administrative and normal employees salary (per year)	€ 31.094,25	€ 16.313,54
Factory workers salary (per year)	€ 21.111,92	€ 8.582,88
Office rent per year (€/m ²)	€ 2.042,47	€ 1.212,86
Corporate tax	16,5%	25%
VAT	N/A	25%
Profit tax	15%	45%
Previdential funds paid by the employer (%/salary)	5%	40%

Table 14: Business costs in Hong Kong and China. Source: Italian Embassy, 2015

⁴⁸ The reports of Ambasciata d'Italia – Hong Kong and Ambasciata d'Italia – Cina only contains data for 2013, 2014 and 2015. Last report updates: 2017. Data shown in the table only refers to 2015.

Data in the table show that Chinese salaries costs are 38% cheaper than the Hong Kong ones, however, the social security that should be paid by the employer make the actual cost of an employee for the company almost the same in Hong Kong and China as, as shown in the table, employer participation in the pension fund is just 5% in Hong Kong, but 40% in China. Furthermore, when looking at the taxes inserted in the table, China is 317% more expensive than the HK SAR and this percentage will be even higher if considering also all the other taxes levied in China, but not in Hong Kong, i.e. tax on dividends or on capital gains.

The above mentioned low level of freedom and high control existing in China can be seen also in the internet connection services. China banned the use of Google chrome browser and consequently all the services related to this platform as well as the use of the most common social networks and communication apps. The internet connection in Mainland China is controlled and the service can be slow, resulting in operational problems for companies.

Considering the issues presented above, at a first glance Hong Kong seems to be less convenient than China for rental and salaries costs, however, for a company these are not the only costs that should be taken into consideration. When analysing the situation from a wider angle, considering also important factors as connections, bureaucracy, taxes and regulations Hong Kong results to be the best option for investing in China.

It should be specified that the limits of Hong Kong in term of geological composition does not allow to set up big industrial buildings and factories which, on the opposite, can be built in Mainland China. However, considering the Hong Kong advantages presented and the close linkage the region has with Mainland China, Hong Kong still remains a good option for a foreign investor that works in the manufactural sector and not in the service one. In fact, the factories in Mainland China can be fully controlled by an Hong Kong holding company the foreign investor can set up in the HK SAR, enjoying all the benefits the city can offer.

4.4 Coop Far East Ltd. case

Coop Far East Ltd. is an international sourcing organization located in Hong Kong that works for Coop Italia, the Italian leading retail company, providing product solutions and services to create value and competitive advantages for the Italian buyers and the final customers.

The company has spent the past 30 years sourcing world-class non-food consumer goods, developing a vast network of specialized manufacturers, thanks to a merchandising team that creates a strong presence on the ground, providing an operational advantage against competitors. With more than 400 suppliers and 700 factories, as well as a vast range of products that go beyond the 5000 mark, Coop Far East offers Hardgoods, Consumer Electronics and Homeware products for the Italian market.

Presenting the historical background of the company, a brief mention to the concept of *cooperative* should be made, as Coop Far East embrace these principles in doing business. A cooperative is an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise. Cooperatives are based on the values of self-help, self-responsibility, democracy, equality, equity, and solidarity (ICA, 1955).

The first steps of Coop Far East in the Asian market have been done together with other European cooperatives: Danish, Spanish, Swiss and Norwegian ones that together with the Italian coop decided to join and enter the Chinese market with a company based in Hong Kong named INTERCOOP, in 1977. It was a common decision to enter the Asian market as the objectives were to be able to do a direct sourcing in China and to have a direct control on the goods produced, obtaining bigger margins when selling the products. Moreover, the production of manufacture goods was moving to the East and consequently, the sourcing should follow the production in order to continue to be competitive.

After few years however, the markets in Europe started to change and the strategic objectives of the cooperatives in INTERCOOP were different: Spanish and Italian markets were more competitive for the cooperatives, while Norway and Denmark cooperatives had a leading position in the markets with almost 60% of the shares.

Italy was not looking for a follow-up office as Norway and Denmark anymore, therefore to remain competitive on the market expert merchandisers and a different approach to the markets were needed and this led to the termination of the collaboration in INTERCOOP in 2012.

After becoming an autonomous company, Coop Far East maintained the cooperative's principles of transparency, legality, solidarity, respect of the human values and of the environment, while always striving to work harder and produce even better results. In the same year, the company decided to move to Shanghai mainly for two reasons: suppliers' location in the South of China and rental and salaries costs cheaper than in Hong Kong. This decision was part of a trend that saw several companies operating in Hong Kong moving to Shanghai for the same reasons and also because, after the crisis of 2007 several companies with offices in Hong Kong has been attracted by the cheaper costs China was offering in terms of rents and workers. However, with the costs growing up and the several bureaucracy issues encountered during the years, Coop Far East decided to move back to Hong Kong in 2016. This decision has been taken after a thoughtful analysis of the managing director, who, considering the growing salary costs, the considerable business expenses to be sustained because of taxes and social security funds higher than in Hong Kong, the increasing rental costs and the Chinese bureaucracy limitations, decided to return to Hong Kong.

Coop Far East has re-located in Hong Kong since 2016 and continues to operate in the Chinese market through a strong connection with suppliers and factories. Objective of the company for the near future is to double or even triple the import volumes to Italy. In fact, the import penetration in the Italian market in the retail sector remains low, however there are strong possibilities to succeeded. One reason is the market trends of developing private label. Several retailers are adopting this strategic decision to face competitors on both online and traditional market channels, developing their own private labels for non-food products, where brands are now losing their attraction (with some exceptions) and China can offer the necessary tools and the competences to develop private labels products with high quality standards, but competitive prices.

To remain in line with the market competitiveness and to continue to offer high quality and competitive products, the company made some strategic changes in the

last few years: an informatics infrastructure has been built to create a system that allows an efficient management of products information, granting high levels of transparency with Coop Italia buyers that can access to it at any time. Secondly, the quality department has been developed to efficiently support the sourcing, to offer to the final customers products that are competitive in term of pricing, but also respect high quality standards. Finally, as a strategic sourcing decision, the company decided to separate merchandisers from order management employees; in this way the company can rely on a high level of expertise of the merchandisers that source the products and strongly cooperate with suppliers and factories and on order managers employees that are fully dedicated to an efficient and punctual follow-up of the orders.

These determined the strength of the company which is able to act nimbly when taking a decision thanks to its reduced size, but on the same time to respect a structured process and high-quality standards, required when working for a large company.

CONCLUSION

With an analysis of the advantages and disadvantages offered by Hong Kong and comparing them with those found in Mainland China, the thesis presents and discusses the reasons why Hong Kong is the ideal business environment where to set up a company to enter the Asian and specifically the Chinese market.

China remains one of the world's main sourcing and production destination, even considering the slowdown in growth the country is facing, compared to few years ago. The ability of the country to quickly adapt, transformed the PRC from a country that 15 years ago was able to poorly copy products and ideas from western countries, to produce good-quality copied products few years ago, to develop new products and innovation by itself nowadays. Currently China is the leading country not only in terms of economic GDP, but also for investments in robotics and innovation and for the number of registered patents: China already overpassed the USA and Europe in 2013 with more than one third of patents registered and today holds 43.6% of patents in the world (WIPO, 2018).

This demonstrate how the importance of the PRC for sourcing and production remains high, even if in some sectors, textile for example, the production started to move to other South-East Asian countries because of the growing costs for labor China is facing at the moment. However, this does not affect the productivity and the resources China can offer and all the western countries operating in Asia maintains their presence in the PRC.

Italy remains a leading country among the EU-members for trading relations with China, positioning itself at 4th place for both imports and exports. However, the trading balance is negative, with imports exceeding exports for more than 17 billion of euro. In fact, more can be done to improve the commercial relationships between the two countries and it is with this mind that the two governments established the Business Forum Italy-China in 2014 to push the bilateral cooperation in major sectors of interest, such as green economy, sustainable urbanization, agri-food and aerospace.

However, despite the fact that the opportunities between China and Italy are numerous, several impediments remain when actually trying to invest in new businesses in the PRC. While planning the entrance to the Chinese market, several

factors should be taken into consideration. As described until now, China seems a good option where to invest in new business opportunities, with innovation developing and investments in robotics and sustainable economy. However, despite the attracting factors, lots of practical issues are present.

One of the major problem is related to bureaucracy that has long and unclear procedures, with decisions left to the discretion of the officials in charge. This causes a high level of uncertainty of the results and create a *grey area* related to rules enforceability that can also lead to unfair practices by the Chinese authorities.

Moreover, the surveillance exercised by the Communist party is strong with low level of freedom, reflected also by the control on internet connection browsers, apps and communication tools that cause concrete operational problems to the companies.

As mentioned above, salaries and rental costs are growing, however what impact more is the actual corporate cost an investor has to sustain. Lots of taxes are levied, with an average of 25% for income and capital gain taxes, up to 40% for the employees security funds, causing the actual cost of an employee to almost double with respect to the net salary gained.

All these main factors, together with the other presented and analysed in this thesis, suggest Hong Kong as the perfect base where to invest to enter the Chinese market. The region offers a well-developed, tax-friendly business environment, a sustaining government and world-leading infrastructures and services. Thanks to the great autonomy in dealing with international agreements and organizations, the convenient location that allows to reach easily the Mainland China and all the other major Asian markets and the close cooperation with the PRC, Hong Kong offers unique opportunities to foreign investors, being the main gateway to access the Chinese market.

Hong Kong is the freest economy in the world, with an efficient bureaucracy and facilitated taxation. The adoption of international methods in business, the English language diffusion and the environment favorable to innovation ensure continuous and new opportunities for businesses and make this market very attractive for foreign investors willing to enter the Asian markets.

The historical background of the region presented in this thesis explains how Hong Kong developed and transformed itself from a strategic port for English colonizers to one of the most important financial and business centers in the world. Thanks to

the *one country, two system* principle, Hong Kong SAR ensures a well-developed system and high degrees of autonomy and internationalization and at the same time strong and close relationships with Mainland China, offering a unique business environment in the world.

When entering the Hong Kong market, a foreign investor receives the necessary support and protection by the government that provides clear and enforceable rules. The Basic Law of Hong Kong, based on the English common law system and on the Rules of Law, sets the same rules for foreign and local investors who can choose among different options offered to set up a business, with almost no limitation.

Considering the company characteristics and the investment goal, one can opt among several type of business entities: private limited company, sole-proprietorship, partnership, joint venture, representative office or branch office.

In order to continue to attract investments there are government offices and facilities specifically dedicated to provide the right support to foreigners willing to invest in the region. Moreover, another important advantage compared to the PRC is the language: the official languages of the region are Chinese and English, with the latter as preferred language for business and contracts that facilitates the foreign investors.

Furthermore, the Hong Kong tax system is one of the most tax-friendly in the world with only three direct taxes imposed: profit tax (16.5%), salary tax and property tax (15%). Also, being a free international port and a world leading financial center, Hong Kong does not impose any tariffs on goods (with just few exceptions) and grants free movement of intangible assets and capital. Financial operations require just few days to be completed and a company has also the possibility to do invoices or any other financial operation in the preferred currency, services that cannot be found in Mainland China.

According to the most recent surveys, the Italian companies that have in Hong Kong the Asian headquarters or the regional offices are 175, but the total number of companies or entities with Italian interests present, or companies with Italian managers, or founded by Italians is over 400; the Italian presence is growing on a yearly basis by 2% on average.

The collaboration between the Italian government and the Hong Kong one is strong, with several Agreements signed to promote the cooperation between the two

countries. The last and most important agreement has entered into force in 2015 and refers to the Double Taxation Avoidance, arrangement that allowed Hong Kong to exit two Italian blacklists related to fiscal privileges and exchange of information, facilitating the operations of Italian companies operating with the Hong Kong SAR.

Even considering the higher rental costs and salaries compared to China, which are the main advantages for the PRC over Hong Kong, the city offers greater advantages and when looking at the overall picture, the region confirms itself as the best option for entering the Chinese market from all the aspects: operational, infrastructural, political and economic.

APPENDIX I

表格 2
FORM 2
《商業登記條例》(第 310 章)
BUSINESS REGISTRATION ORDINANCE (Chapter 310)
《商業登記規例》
BUSINESS REGISTRATION REGULATIONS
商業 / XXX 登記證
Business / XXX Registration Certificate

正本
ORIGINAL

XXXXX
DUPLICATE
XXXXX



業務/法團所用名稱
Name of Business/
Corporation
XX 貨櫃運輸公司
KXX DXX TRANSPORTATION COMPANY

業務/分行名稱
Business/
Branch Name

地址
Address
X/F
XXX GLOUCESTER ROAD
WANCHAI
HK

業務性質
Nature of Business
TRANSPORTATION

法律地位
Status
INDIVIDUAL

生效日期
Date of Commencement
01/04/2003

屆滿日期
Date of Expiry
31/03/2004

登記證號碼
Certificate No.
3XXXXXXX-000-04-03-A

登記費及徵費
Fee and Levy
\$2,600
(登記費 FEE = \$2,000)
(徵費 LEVY = \$600)

商業登記號碼
BUSINESS
REGISTRATION NO.

有效期
VALID
PERIOD

請注意下列《商業登記條例》的規定 (SEE OVERLEAF FOR ENGLISH VERSION)

第 6(6) 條規定就任何業務發出商業登記證或分行登記證，不得當作隱含以下意思：有關該業務或經營該業務的人或受僱於該業務的僱員的任何法律規定已獲遵從。

第 7(2) 條規定任何經營業務人士，倘在現有商業登記證期滿後未有收到繳款通知書，須於 1 個月內以書面通知稅務局局長。

第 8 條規定凡申請登記表格內所列業務詳情有任何變更時或凡某項業務經已結束，任何經營有關業務的人或任何在結束前經營該項業務的人須於該變更發生時或該項業務結束時起計 1 個月內，以書面通知局長。

第 12 條規定各業務須將其有效的商業登記證或有效的分行登記證於每一營業地點展示。

第 15(1) 條規定對觸犯本條例者可施行的罰則，包括罰款 \$5,000 及監禁 1 年。

第 21 條規定須將收取徵費所得的全部款項撥付破產欠薪保障基金。

繳款時請將此商業登記證及繳款通知書完整交出。在付款後，本繳款通知書方成為有效的商業登記證。
PLEASE PRODUCE THIS CERTIFICATE AND DEMAND NOTE INTACT AT TIME OF PAYMENT. THIS DEMAND NOTE WILL ONLY BECOME A VALID BUSINESS REGISTRATION CERTIFICATE UPON PAYMENT.

機印所示登記費及徵費收訖。(請參閱背頁繳款辦法所載內容)
RECEIVED FEE AND LEVY HERE STATED IN PRINTED FIGURES. (Please see payment instructions overleaf.)

IRDB 表格第 01 號 02/04/03 12345678 888888 CHQ \$2,600.00 S
IRDB 101 (5/2000)

有效期
VALID
PERIOD

繳款日期
PAYMENT
DATE

收據編號
RECEIPT
NO.

已繳金額
AMOUNT
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APPENDIX II

Agreement

between the Government of Hong Kong and the
Government of the Italian Republic for the Promotion
and Protection of Investments

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Hong Kong, having been duly authorised to conclude this agreement by the sovereign government which is responsible for its foreign affairs, and the Government of the Italian Republic (hereinafter referred to as the Contracting Parties);

Desiring to create favourable conditions for greater investment of one Contracting Party in the area of the other;

Recognising that the encouragement and reciprocal protection under agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both areas;

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement

(1) “area”:

(a) in respect of Hong Kong includes Hong Kong Island, Kowloon and the New Territories;

(b) in respect of the Italian Republic means, in addition to the areas lying within the land boundaries, the maritime zones over which the Italian Republic has sovereignty or exercise sovereign or jurisdictional rights in accordance with international law;

(2) “companies” means:

(a) in respect of Hong Kong: corporations, partnerships and associations incorporated or constituted under the law in force in its area;

(b) in respect of the Italian Republic: corporations, partnerships, foundations, associations and public institutions incorporated or constituted under the law in force in any part of its area;

(3) “forces” means:

(a) in respect of Hong Kong, the armed forces of the sovereign government which is responsible for its foreign affairs;

(b) in respect of the Italian Republic, Italian armed forces;

(4) “freely convertible” means free of all currency exchange controls and transferable abroad in any currency;

(5) “investment” means every kind of asset, held or invested directly or indirectly, and in particular, though not exclusively includes:

(a) movable and immovable property and any other property rights such as mortgages, liens, pledges or usufructs;

(b) shares in and stock, bonds and debentures of a company and rights derived therefrom and any other form of participation in a company including a joint venture;

(c) claims to money or other assets or to any performance under contract having a financial value;

(d) rights in the Field of intellectual property, technical processes, goodwill and know-how;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

A change in the form in which assets are invested does not affect their character as investments;

(6) “investors” means:

(a) in respect of Hong Kong:

(i) physical persons who have the right of abode in its area;

(ii) companies as defined in paragraph 2(a) of this article;

(b) in respect of the Italian Republic:

(i) physical persons who are its nationals;

(ii) companies as defined in paragraph 2(b) of this article;

(7) “returns” means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees or payment for assistance and technical services.

ARTICLE 2

Promotion and Protection of Investments and Returns

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its area, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its area of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 3

Treatment of Investments

(1) Each Contracting Party shall in its area accord investments or returns of investors of the other Contracting Party treatment and protection not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any other State, whichever is more favourable to the investor concerned.

(2) Each Contracting Party shall in its area accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or to investors of any other State, whichever is more favourable to the investor concerned.

(3) This Agreement shall not prevent an investor of one Contracting Party from taking advantage of any law of the other Contracting Party or any other obligations between the Contracting Parties which are more favourable than the provisions of this Agreement.

ARTICLE 4

Compensation for Losses

(1) Investors of one Contracting Party whose investments in the area of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the area of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any other State. Resulting payments shall be freely convertible.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the area of the other Contracting Party resulting from

(a) requisitioning of their property by its forces or authorities, or

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or reasonable compensation. Resulting payments shall be freely convertible.

ARTICLE 5

Expropriation

(1) Investors of either Contracting Party shall not be deprived of their investments nor subjected to any measures having effect equivalent to such deprivation or limiting the enjoyment of the investment in the area of the other Contracting Party except lawfully, on a non-discriminatory basis, for a public purpose related to the internal needs of that Party, and against compensation. Such compensation shall amount to the real value of the investment immediately

before the deprivation or before the impending deprivation became public knowledge whichever is the earlier. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors. Compensation shall include interest at a normal commercial rate calculated from the date of expropriation to the date of payment, shall be made without undue delay, be effectively realizable and be freely convertible.

(2) The investor affected shall have a right, under the law of the Contracting Party making the deprivation, to prompt review by a judicial or other independent authority of that Party, of the investor's case and of the valuation of the investment in accordance with the principles set out in this paragraph.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its area, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs (1) and (2) of this Article are applied to the extent necessary to guarantee compensation referred to in these paragraphs in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6

Transfer of Investments and Returns

(1) Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted right to transfer their investments and returns abroad. This right shall not relieve investors of their obligation to pay taxes.

(2) Transfers of currency shall be affected without undue delay in any convertible currency. A transfer shall be deemed to have been made without undue delay if effected within such period as is normally required for the completion of transfer formalities. Unless otherwise agreed by the investors transfers shall be made at the most favourable rate of exchange applicable on the date of transfer.

ARTICLE 7

Exceptions

(1) The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or to investors of any other State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of Article 3 do not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to any other State by virtue of its membership in customs or economic unions, common market associations, free trade areas, regional or subregional agreements, International multilateral economic agreements, or agreements entered into in order to prevent double taxation or to facilitate cross-border trade.

ARTICLE 8

Subrogation

(1) If one Contracting Party or its designated Agency makes a payment under, an indemnity given in respect of an investment in the area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the indemnified investor and that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as that investor.

(2) The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the

indemnified investor was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payment received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely convertible and transferable in accordance with the relevant provisions of this Agreement.

ARTICLE 9

Application

The provisions of this Agreement shall apply to any investment of an investor of one Contracting Party in the area of the other Contracting Party whether made before or after the date of entry into force of this Agreement.

ARTICLE 10

Settlement of Investments Disputes

A dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment of the former in the area of the latter which has not been settled amicably, shall, after a period of six months from written notification of the claim, be submitted to such procedures for settlement as may be agreed between the parties to the dispute, including recourse to the Courts of the relevant Contracting Party or to other forms of arbitration. If no such procedures have been agreed within that six months period, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as then in force. The parties may agree in writing to modify those Rules.

ARTICLE 11

Settlement of Disputes between the Contracting Parties

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner:

(a) within sixty days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in

relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within sixty days of the appointment of the second;

(b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the International Court of Justice, in a personal and individual capacity, to make the necessary appointment within thirty days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the Vice-President or the most senior member who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal.) each Contracting Party shall submit a memorandum within forty five days after the tribunal is fully constituted. Replies shall be due sixty days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty days after replies are due.

(5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may, at any stage of the proceedings, propose to the Contracting Parties that the dispute be settled amicably.

(6) The tribunal shall attempt to give a written decision within thirty days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

(7) The Contracting Parties may submit requests for clarification of the decision within fifteen days after it is received, and such clarification shall be issued within fifteen days of such request.

(8) The decision of the tribunal shall be binding on the Contracting Parties.

(9) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the Member of the International Court of Justice in implementing the procedures in paragraph 2(b) of this Article.

ARTICLE 12

Entry into Force

This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.

ARTICLE 13

Duration and Termination

(1) This Agreement shall remain in force for a period of fifteen years. Unless notice of termination has been given by either Contracting Party at least twelve months before the date of expiry of its validity, the Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least twelve months before the date of expiry of the current period of validity.

(2) In respect of investments made before the date of the termination of the present Agreement the provisions thereof shall continue to be effective for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Rome this 28th day of November 1995 in the Chinese, English and Italian languages, all texts being equally authoritative.

APPENDIX III

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (ITALY) ORDER

(Cap. 525, section 4)

[14 August 2010] L.N. 108 of 2010

1. (Omitted as spent)

2. Ordinance to apply between Hong Kong Special Administrative Region and Italian Republic

In relation to the arrangements for mutual legal assistance—

(a) which are applicable to the Government of the Hong Kong Special Administrative Region and the Government of the Italian Republic; and

(b) a copy of which is annexed at Schedule 1,

it is hereby directed that the Ordinance shall, subject to the modifications to the Ordinance summarized in Schedule 2, apply as between the Hong Kong Special Administrative Region and the Italian Republic.

AGREEMENT BETWEEN
THE GOVERNMENT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC
OF CHINA
AND
THE GOVERNMENT OF THE ITALIAN REPUBLIC
CONCERNING
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised by the Central People's Government of the People's Republic of China, and the Government of the Italian Republic,

Desiring to improve the effectiveness of their co-operation in criminal investigations and proceedings, and in the confiscation of criminal proceeds,

Have agreed as follows :

ARTICLE I SCOPE OF ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual legal assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of evidence, articles or documents;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of witnesses and experts;
 - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
 - (g) obtaining production of judicial or official records;

- (h) tracing, restraining, and forfeiting or confiscating the proceeds and instrumentalities of criminal activities;
 - (i) providing information, documents and records;
 - (j) delivery of property, including lending of exhibits; and
 - (k) other mutual legal assistance consistent with the objects of this Agreement, which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement shall include assistance in connection with offences against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.
- (4) Assistance shall not include:
- (a) the surrender of any fugitive offender;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party, without prejudice to the provisions of Article XVII;
 - (c) the transfer of persons in custody to serve sentences.
- (5) This Agreement is intended solely for mutual legal assistance between the Parties and, for the avoidance of doubt, no private person is entitled under this Agreement to make or oppose any request for assistance.

ARTICLE II CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for the Government of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorised officer. The Central Authority for the Government of the Italian Republic shall be the Ministero di Grazia e Giustizia.
- (3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE III LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of the Italian Republic or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;
 - (b) the request for assistance would seriously impair its essential interests;

- (c) the request for assistance relates to an offence of a political character;
 - (d) the request for assistance relates to an offence only under military law, which is not an offence under the ordinary criminal law;
 - (e) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of race, sex, religion, nationality or political opinions;
 - (f) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party;
 - (g) the request for assistance relates to the prosecution of a person for an offence which was committed within the jurisdiction of the Requested Party and is an offence for which, under the law of that Party, the person cannot be prosecuted by reason of lapse of time;
 - (h) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - (i) in the case of requests involving compulsory measures, the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence;
 - (j) the assistance requested consists of actions that would be contrary to the Requested Party's law had the offence to which it relates been the subject of criminal proceedings under its own jurisdiction, except that assistance shall not be refused on the sole ground that the actions would not be permitted at the investigation stage of such an offence under the Requested Party's law;
 - (k) the request for assistance relates to an offence which carries the death penalty under the law of the Requesting Party.
- (2) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (3) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:
- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (4) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (3)(b), it shall comply with those terms and conditions.

ARTICLE IV REQUESTS

- (1) Requests shall be in writing. In urgent cases, requests may be transmitted by fax or through Interpol, without prejudice to the right of the Requested Party to seek the original of the request.
- (2) Requests for assistance shall include:
 - (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the purpose of the request and the nature of the assistance requested;
 - (c) where possible, information which is relevant to the identification or location of persons for the purpose of executing the request;
 - (d) a description of the nature of the investigation, prosecution, offence or criminal matter;
 - (e) a summary of the relevant facts and laws;
 - (f) any requirements for confidentiality;
 - (g) details of any particular procedure the Requesting Party wishes to be followed; and
 - (h) details of the period within which the request should be complied with.
- (3) The Requested Party shall use its best efforts to keep confidential a request and its contents except when otherwise authorised by the Requesting Party.
- (4) A request and all documents submitted in support of it shall be accompanied by a translation in an official language of the Requested Party, unless the Requested Party dispenses with this requirement.

ARTICLE V EXECUTION OF REQUESTS

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not contrary to the law of the Requested Party, in accordance with any feasible procedures indicated in the request.
- (3) If the Requesting Party expressly so requests, the Central Authority of the Requested Party shall inform it of the date when and the place where the request will be executed.
- (4) If the Requesting Party expressly so requests, the authorities involved in, and persons affected by, the request for assistance and their legal representatives may be present at the execution of the request if the Requested Party agrees.

(5) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

(6) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

ARTICLE VI REPRESENTATION AND EXPENSES

(1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

(2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

(a) fees of counsel retained at the request of the Requesting Party;

(b) fees of experts;

(c) expenses of translation; and

(d) travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE VII LIMITATIONS OF USE

(1) After consultation with the Requesting Party, the Requested Party may require that, insofar as the law of the Requesting Party permits, information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as the Requested Party may specify.

(2) The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

ARTICLE VIII OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

(1) Where a request is made that evidence be taken for the purpose of an investigation or prosecution of criminal offence or a proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.

- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
- (3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.
- (4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, to the extent not contrary to the law of the Requested Party, appear and question the person giving that evidence.
- (5) If a person who is required to give evidence asserts a claim of immunity, incapacity, or privilege, which is provided for under the law of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for subsequent resolution by the authorities of that Party. If a claim is asserted for immunity, incapacity, or privilege, which is provided for under the law of the Requested Party, it shall be resolved pursuant to the Requested Party's law.

ARTICLE IX LOCATION OR IDENTITY OF PERSONS

The Requested Party shall, if requested, endeavour to ascertain the location or identity of any person specified in the request.

ARTICLE X SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response in the Requesting Party within a reasonable time before the scheduled response.
- (3) The Requesting Party shall transmit a request for the service of a document pertaining to an appearance in the Requesting Party at least forty days before the scheduled appearance.
- (4) Proof of service shall be given :
- (a) by means of a receipt dated and signed by the person served; or
- (b) by means of a declaration made by the relevant authority of the Requested Party that service has been effected and stating the form and date of such service; or
- (c) in any other feasible manner required by the Requesting Party.

The relevant document shall be sent immediately to the Requesting Party.

(5) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of either Party, unless subsequently he voluntarily enters the jurisdiction of the Requesting Party and is there again duly served.

ARTICLE XI PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

(1) The Requested Party shall provide copies of documents which are publicly available under its law.

(2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

ARTICLE XII CERTIFICATION AND AUTHENTICATION

Evidence, documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

ARTICLE XIII TRANSFER OF PERSONS IN CUSTODY

(1) A person in custody in the Requested Party whose presence is requested in the Requesting Party as a witness pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party within the period indicated by the Requested Party or at any earlier time when his presence in the Requesting Party is no longer required. The Requested Party may, upon the request of the Requesting Party, extend the period for returning the person in custody.

(2) Where a person in custody who is transferred pursuant to this Article becomes entitled under the law of the Requested Party to be released from custody whilst he is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release.

(3) A person who does not consent to be transferred under this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE XIV TRANSFER OF OTHER PERSONS

- (1) If the Requesting Party considers that the personal appearance of a witness or expert in the Requesting Party is necessary it shall so inform the Requested Party. The Requested Party shall, if satisfied that arrangements for that person's security will be made by the Requesting Party, request the witness or expert to appear and advise the Requesting Party of the reply from the witness or expert.
- (2) Where a request is made pursuant to this Article the Requesting Party shall advise the approximate amounts of allowances payable, including travelling and accommodation expenses.
- (3) A person who declines to appear as witness or expert, when requested under this Article, shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE XV IMMUNITY

- (1) A person who consents to transfer pursuant to Article XIII or XIV shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, nor be subject to civil suit to which the person could not be subjected if he were not in the Requesting Party.
- (2) Paragraph (1) shall not apply if the person, being free to leave, has not left the Requesting Party within a period of fifteen days after being notified that his presence is no longer required or, having left the Requesting Party, has returned.
- (3) A person who consents to give evidence under Article XIII or XIV shall not be subject to prosecution based on his testimony, except for perjury or any comparable offence related to the giving of false evidence under the law of the Requesting Party.
- (4) A person who consents to transfer pursuant to Article XIII or XIV shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

ARTICLE XVI SEARCH AND SEIZURE

- (1) The Requested Party shall carry out requests from the Requesting Party for search, seizure and delivery of any material which:
 - (a) there are reasonable grounds to believe is in the Requested Party; and
 - (b) is relevant to a proceeding or investigation relating to an offence the maximum penalty for which is at least two years' imprisonment under the law of the Requesting Party.

(2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

(3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

ARTICLE XVII PROCEEDS OF CRIME

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

(2) Where pursuant to paragraph (1) suspected proceeds of crime are found the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds such assistance shall be given by whatever means are permitted by the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.

(4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

(5) Requests made for the purpose of this Article shall:

(a) indicate, as much as possible, the description and location of the proceeds of crime and of any other property liable to preventive measures and confiscation, and their connection with the person charged with, or convicted of, the offence;

(b) be accompanied, where appropriate, by a copy of any order for preventive measures made by the judicial authorities of the Requesting Party, or of the order of confiscation made by a court of the Requesting Party and the certification that it is final.

ARTICLE XVIII SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

ARTICLE XIX ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.

(2) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Rome, Italy this twenty-eighth day of October 1998 in the Chinese, English and Italian languages, each text being equally authentic.

SCHEDULE 2

MODIFICATIONS TO THE ORDINANCE

[s. 2]

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows—

“(e) the request relates to the prosecution of a person_ *

(i) * for an external offence in a case where the person_

*

(A) * has been convicted, acquitted or pardoned by a competent court or other authority in the place, ** or Hong Kong;* or

(B) * has undergone the punishment provided by the law of that place or Hong Kong*,

in respect of that offence or of another external offence constituted by the same act or omission as that offence;

(ii) in respect of an act or omission that had occurred in Hong Kong and could no longer be prosecuted in Hong Kong by reason of lapse of time;*

2. Section 17(3)(b) of the Ordinance shall be modified to read as follows—

“(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* has remained in Hong Kong otherwise than for

—

(i) the purpose to which the request relates; or

(ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Attorney General** Secretary for Justice* to be a criminal matter in relation to which it is desirable that the person give assistance.”.

* The words underlined are added. (The underlining is for ease of identifying the modification).

** The words crossed out are deleted. (The crossing out is for ease of identifying the modification).

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