

SPONSORSHIP COUNTRY QUESTIONS: HONG KONG

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Hong Kong-specific information concerning the key legal issues that need to be considered when entering into a sponsorship arrangement.

This Q&A provides country-specific commentary on *Sponsorship: international overview*, and forms part of the *Sales and Marketing International Transaction Guide*.

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RIGHTS OF THE SPONSOR

1. To what extent will a representative appointed by the sponsor to an event's organising committee be liable to a third party who has a valid claim for compensation against the committee?

Breach of contract. If a third party sues the organising committee of an event for breach of contract, as a matter of law, the representative appointed by the sponsor (not being a party to the sponsorship agreement) will not be liable to the third party due to privity of contract.

A third party might be entitled to enforce the sponsorship agreement between the sponsor and the organising committee under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) (CRTPO) which came into effect as from 1 January 2016 if both criteria set out below are satisfied:

- The sponsorship agreement is signed after 1 January 2016.
- The third party as named or described in the sponsorship agreement is explicitly granted the enforcement right or conferred a benefit in the agreement.

In this situation, the liability of the representative appointed by the sponsor for the third party's claim against the committee depends on the terms of the sponsorship agreement. For example, the sponsorship agreement can provide that the sponsor will be jointly liable for the non-compliance of the committee's obligation for the benefit of the third party.

Tortious claim. If a third party sues the organising committee of an event for a tortious claim, a representative appointed by the sponsor would not be liable to the third party, except where the third party could also establish a tortious claim against the sponsor or its representative. An example would be where the sponsor in question is responsible for providing catering services or freebies at an event, and it is later discovered

that the food provided by the sponsor was contaminated or the freebies were unsafe. In this scenario, the attendees of the event may have a tortious claim against the sponsor and the event's organising committee.

INTELLECTUAL PROPERTY RIGHTS

2. What action lies for using an individual's name or image without consent?

Hong Kong does not recognise personality or portrait rights. However, the following actions may be relevant where an individual's name or image is used without consent.

Passing off. An action for passing off may be relevant if all of the following criteria are satisfied:

- A party makes a misrepresentation which induces a third party to believe that the goods or business of the other party is attributed to the first-mentioned party.
- The misrepresentation is calculated to injure the business or goodwill of another trader in the sense that it is a reasonably foreseeable consequence.
- The misrepresentation causes actual or potential damage to the goodwill of the aggrieved party.

Infringement of a registered trade mark. Section 14 of the Trade Marks Ordinance (Cap.559) (TMO) protects the exclusive rights of the owner of a registered trade mark against the use of the mark in Hong Kong without their consent. For example, an individual whose name or image is a registered trade mark in Hong Kong may bring infringement proceedings against another party where both:

- That party uses, in the course of its trade or business, a mark similar or identical to the registered mark in relation to goods or services which are identical or similar to those for which the mark is registered.
- Such use of the mark causes confusion to the consumers.

RESOURCE INFORMATION

RESOURCE ID

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RESOURCE TYPE

Practice note

JURISDICTION

Hong Kong

The acts constituting infringement of a registered trade mark are further defined in section 18 of the TMO.

While the intention or motive of the infringer is not relevant, certain honest practices in industrial or commercial matters are exempted. For example, a registered trade mark is not infringed when a person uses his or her own name or address, or the name of his or her place of business. Also, it is not necessary to prove that the owner of the registered mark suffered any damage.

Defamation. The act of publishing an individual's name or image together with a defamatory statement which injures the reputation of the individual, may amount to defamation. The defaming party may be liable to an award of damages, and/or possibly an injunction to stop further publication of the defamatory statement.

To establish a case for defamation, the plaintiff must prove that the defendant has published, or is responsible for the publication of, defamatory words or materials that are reasonably understood to refer to the plaintiff. There is no need for the plaintiff to prove that the defendant intended to defame or that anyone actually believed the statement to be true. Generally speaking, a plaintiff is not required to prove that they suffered actual damage for the purpose of bringing a defamation action.

The Personal Data (Privacy) Ordinance (Cap. 486) (PDPO). A person's name or image is considered "personal data" if it is practicable to directly or indirectly ascertain the individual's identity from such name or image (*section 2 of the PDPO*). In this case, any use of the individual's name or image, without their consent and outside the lawful purposes for which the personal data is collected will be in breach of the PDPO. The Privacy Commissioner's Office may issue an enforcement notice directing the wrongdoer to stop the unauthorised use of personal data and to take necessary remedial actions. Non-compliance with the enforcement notice is a criminal offence and the infringer will be liable to a fine or imprisonment.

3. Does an intellectual property right or any other proprietary right exist in an event?

Generally, only the expression of an idea is protected under Hong Kong copyright laws, not the idea itself. The Copyright Ordinance (Cap. 528) (CO) recognises and protects the following copyright works:

- Original literary works.
- Original dramatic works.
- Original musical works.
- Original artistic works.
- Sound recordings.

- Films, broadcasts or cable programmes.
- Typographical arrangement of published editions. (For example, the typographical arrangement in any layout, agenda, and plan of an event is protected under the CO.)

AMBUSH MARKETING

4. What remedies does national law provide against ambush marketing?

Ambush marketing generally refers to a company which seeks to "hijack" the publicity of an event (more often a sports event) without contribution of any sponsorship. Ambush marketing in itself is not illegal in Hong Kong. However, if an ambush marketing campaign involves unauthorised use of a trade mark, or design, or tactics which mislead or confuse the public as to the true identity of the sponsor to an event (as in a typical case of ambush marketing), the aggrieved party may be entitled to take the following actions against the ambush marketer:

- **Passing off.** If the ambush marketer makes a misrepresentation which induces a third party to believe that the goods or business of the aggrieved party is attributed to the ambush marketer, and causing actual or potential damage to the goodwill of the aggrieved party, the aggrieved party may sue the ambush marketer for passing off (see [Question 2](#)).
- **Infringement of registered trade mark.** If the ambush marketer uses the registered trade mark without the consent of its owner, the owner may sue the ambush marketer for damages, account of profit, or delivery or disposal of the infringing items (see [Question 2](#)).
- **Defamation.** If the ambush marketer makes any false statement which injures the reputation of a person or a company, the aggrieved party may sue the ambush marketer for defamation (see [Question 2](#)).

Since there is no specific national law (save as mentioned above) against ambush marketing, specific measures are usually dealt with by the relevant parties contractually.

REGULATORY ISSUES

5. How does national law regulate sponsorship?

There are no specific laws or regulations restricting sponsorships in Hong Kong other than those stated in [Question 6](#). Except where such rules or guidelines apply, regulation is therefore subject to commercial negotiations between the sponsor and the organiser of an event.

6. What obligations or standards do national codes of practice or legislation impose upon television and radio sponsorship? Consider, in particular:

- **Restrictions on who can be a sponsor.**
- **Restrictions on what can be sponsored.**
- **Restrictions on the content of sponsorship.**
- **Restrictions on references to sponsors.**
- **Restrictions on advertising prominence.**

Save where references are specifically made to any legislation of Hong Kong, television sponsorship is mainly governed by the Generic Code of Practice on Television Advertising Standards (TV Advertising Code) and radio sponsorship is regulated by the Radio Code of Practice on Advertising Standards (Radio Advertising Code). Sponsorship falls within the definition of "advertisement" under both Codes. The Codes are not legislation, they are administrative guidelines imposed by the Hong Kong Communications Authority (CA) on the holders of TV/radio licences under the relevant laws and regulations.

A breach of these Codes is not a criminal offence, but the CA has the power to impose sanctions, for example:

- Financial penalty.
- Apology and/or correction.
- Suspension or revocation of licence.

The CA may also issue directions in writing to a licensee requiring it to take such action as specified in the notice to remedy the breach (see section 24 of the Broadcasting Ordinance).

It should be noted that, under the laws of Hong Kong, there are currently no laws or regulations on over-the-top (OTT) TV providers.

Restrictions on who can be a sponsor

Tobacco products. A tobacco company cannot be a sponsor for any event or product in Hong Kong as tobacco advertisements are prohibited under the Smoking (Public Health) Ordinance (Cap. 371).

Liquors products. The sponsorship of liquors is considered "sensitive" under the TV Advertising Code. "Liquor" refers to any liquid which contains more than 1.2% of ethyl alcohol by volume, therefore including beers and wines as long as they fall within the definition. Sponsorship associated with liquor should not be shown on the domestic free television programmes between the hours of 4:00 p.m. and 8:30 p.m. each day.

Similar restrictions are also found in the Radio Advertising Code. For example:

- Sponsorship associated with liquor should also not be broadcast within or in close proximity to programmes targeting children or at times when a large number of children are expected to be listening.

- An alcoholic liquor company is prohibited from engaging children to participate in the presentation of liquor-related advertisements, or sponsoring its products as gifts/trophy in any children's radio programme.

Restrictions on what can be sponsored

News programmes, religious service or other devotional programmes. The TV Advertising Code states that news programmes, religious service or other devotional programmes must not be sponsored.

Current affairs programmes. While the TV Advertising Code does not prohibit sponsorship of current affairs programmes, the holder of a TV licence should "exercise care" in the choice of sponsor so as to safeguard the credibility and integrity of such programmes. The TV Advertising Code, however, offers no further guidance as to the factors that the holder of a TV licence should take into account for the purpose of choosing sponsors for current affairs programmes.

Children's TV and radio programmes. Special caution should also be given to the sponsorship of children's TV and radio programmes, and educational TV programmes (see below *Children's and Educational Programmes on TV*).

Restrictions on the content of sponsorship

Children's and Educational Programmes on TV. Under the TV Advertising Code, "educational programmes" refers to programmes with a clear educational purpose usually connected with the pursuit of a formal course of academic studies, but does not include general instructional ("how to do") programmes. With regard to such educational programmes, the holder of a TV licence must exercise special caution and take the following principles into account:

- The programme should not be "too commercialised".
- Title sponsorship is allowed, but advertising slogans and attributes of the sponsor should not be incorporated into the title.
- Product placement (that is, to include a product or service within a programme in return for payment) should not be allowed (see [Question 7](#)).

Any radio programme with children's voice. According to the Radio Advertising Code, if a sponsor wishes to use children's voice in an advertisement (including a sponsored radio programme), they must comply with several requirements and restrictions with regard to presentation. For example, the children should be reasonably well-mannered and well-behaved.

Political sponsorship of radio programmes. The Radio Advertising Code provides that no advertisement (including sponsorship) of a political nature may be broadcast, except with the prior approval of the CA.

Obscene and indecent articles. The public display of obscene and indecent articles (including any sound

recordings, film, video-tape, disc or other record of a picture or pictures) is generally not allowed in Hong Kong. Display of obscene and indecent articles is regulated under the Control of Obscene and Indecent Articles Ordinance (Cap. 390), and the unauthorised public publication of the same is a criminal offence. The Obscene Articles Tribunal has jurisdiction to determine whether an article is indecent or obscene in general. An obvious example would be pornography.

Restrictions on references to sponsors

Both the TV Advertising Code and the Radio Advertising Code provide that all sponsorship must be clearly identified.

Restrictions on advertising prominence

Advertisements on TV. Under the TV Advertising Code, undue prominence of a sponsor is prohibited. The broadcast frequency and duration of sponsor's message, name and logo (sponsor identification) is also strictly regulated, for example:

- There should be no more than one sponsor identification appearing in the programme at any time.
- Each sponsor identification and the sponsored material should make reference to one sponsor.
- The size of sponsor identification should not exceed 5% of the entire television screen.
- Sponsor identification for title sponsorship and any combination of the "sponsorable material" should not appear too frequently to the extent that the viewing enjoyment would likely be adversely affected. "Sponsorable material" includes:
 - superimposition of information on local date, time and weather;
 - superimposition of an in-programme promotion; and
 - a text message within a travelogue or cuisine programme, or a travelogue or cuisine segment within a magazine programme, providing programme-related information.
- Each sponsor identification should not exceed 15 seconds for every programme segment or programme without breaks of seven minutes or more.

Advertisements on radio. Any reference to a sponsor should not appear too frequently and should not interfere with the audience entertainment or interest in the programme. No "undue prominence" should be given in any programme to a sponsor's:

- Product.
- Service.
- Trade mark.
- Brand name.
- Logo.

7. How does national law control product placement and editorial sponsorship?

TV programmes

The TV Advertising Code contains detailed guidelines on programme sponsorship, including the following principles:

- Indirect advertising (that is, the blending of a television programme and advertising material or the embedding of advertising material within a programme) is prohibited.
- Sponsored programmes must be clearly identified. Such identification should not be overly distracting or interfere with the audience entertainment or interest in the programme.
- Product placement should be justified editorially and should not be gratuitous or interfere with the audience viewing pleasure.

Radio programmes

The Radio Advertising Code does not specifically address product placement and editorial sponsorship. However, the Code requires advertisements to be clearly distinguishable from the programmes themselves. If a radio programme is sponsored, supplied or suggested by a sponsor, a clear announcement should be made to that effect.

Print media

Print media in Hong Kong are expected to follow the Journalists' Code of Professional Ethics published by the Hong Kong Press Council, a self-regulatory body set up by the newspaper industry. The Journalists' Code requires journalists to uphold the general principles of truth, fairness, objectivity, impartiality and comprehensiveness.

Insofar as commercial advertisements are concerned, the Hong Kong Press Council only handles complaints relating to intrusion of privacy or articles of a prurient, indecent or sensational nature against local newspapers. Product placement itself is not prohibited, nor in any way regulated, by the council.

8. What procedures exist for complaining against sponsorship? What sanctions can be imposed for infringements of sponsorship codes or laws?

TV and radio programmes

Complaints against television and radio broadcasters should be submitted to the CA, which determines whether there are any possible breaches of the legislation, licence conditions or codes of practice. If so, the complaint may be referred to the Broadcast Complaints Committee for consideration and recommendation to the CA, which may impose appropriate sanctions including:

- Advice.
- Warning.
- Correction and/or apology.
- Financial penalty.
- Suspension of licences.

Print media

The Hong Kong Press Council handles complaints relating to intrusion of privacy or articles of a prurient, indecent or sensational nature against local newspapers (see [Question 7](#)). Although the council has no binding power, it can direct that:

- The respondent newspaper or its editor, publisher, contributor or freelance writer be reprimanded.
- The respondent newspaper publishes the directive or a summary of the findings of the proceedings of the Complaints Committee.
- The respondent newspaper gives a written apology to the complainant and publishes the apology in its own newspaper.

COMPETITION LAW

9. How does national competition law affect the terms of a sponsorship agreement, for example, the grant of exclusivity?

The Competition Ordinance (Cap 619) prohibits agreements and concerted practices that restrict competition and any business with substantial market power from abusing its market power by engaging in anti-competitive conduct. Under Cap 619, the CA and the Competition Commission have joint jurisdiction to enforce Cap 619 in the telecommunications and broadcasting sectors. For other sectors, the Competition Commission is the primary investigative body and regulator. As Cap 619 has only been in force since December 2015, it remains to be seen how this relatively new legislation will be enforced by the Competition Commission.

In relation to the possible effect on sponsorship agreements, the central question is whether a sponsorship agreement would likely restrict other competitors from competing with the sponsor (by profitably raising the competitors' product or service price or reduce the competitors' output, quality, service or innovation). In this respect, an exclusive sponsorship deal may be closely monitored by the Competition Commission for its potential impact on competition. While the Competition Commission acknowledges that an exclusive deal will not harm competition in most cases, it also expresses in its Guideline on the Second Conduct Rule that an exclusive deal will be a concern if it locks up a significant part of the market for a significant period of time. Whether the grant of

exclusivity in the context of sponsorship contravenes Cap 619 will therefore depend on the scale and length of the particular sponsorship deal.

A sponsorship deal may fall foul of Cap 619 if it potentially entails the regulation of market sharing, or amounts to:

- Price fixing.
- Predatory pricing.
- Tying and bundling.

SPONSORING A CHARITY

10. How does national law regulate the sponsorship of a charity?

There are no specific laws governing the sponsorship of a charity. However, any person (including charitable organisations and sponsors) who wishes to conduct fundraising activities must apply for permits or licences from the government as required by law, for example:

- **Public Subscription Permit** for flag days and setting up donation boxes.
- **Temporary Hawker Licence** for activities involving on-street selling.
- **Lottery Licence** for fundraising activities through a lottery.

With the relevant licences and permits, fundraising event organisers are required to follow specific guidelines, including:

- Reference Guide on Best Practices for Charitable Fund-raising Activities.
- Guidance Note on Internal Financial Controls for Charitable Fund-raising Activities.
- ICAC's Best Practice Checklist for Management of Charities and Fund-raising Activities.

11. What tax treatment does national law give the payment or receipt of sponsorship funds to or by a charity?

Payment of sponsorship funds by the sponsor

Donations to tax-exempt charities can be deducted from the net assessable income/profit under salaries tax and profits tax. However, not all payments to charity would automatically be recognised as a donation, as a result the payment would not be deductible. As a matter of law, "donation" is narrowly defined and is restricted to a voluntary transfer of money, which is both:

- Not as a result of a contractual obligation.
- Not in view of any material advantage in return.

In addition, the Inland Revenue Department only recognises the charities registered with the authorities for tax purposes. A list of tax-exempt charities can be found on the government website, see www.ird.gov.hk/eng/tax/ach_index.htm.

As a matter of principle, any outgoings and expenses incurred by a business for the purpose of generating profits can be deducted from the business' net assessable profits for the purpose of profits tax. As such, if a business's sponsorship is aimed at generating profits in Hong Kong, the related sponsorship funds might qualify as the business's outgoings and expenses, which can be deducted from the business' net assessable profits.

Receipt of sponsorship funds by a charity

Charitable institutions are exempt from profit tax. To enjoy tax exemption, the relevant organisation must be both:

- Established exclusively for charitable purposes.
- Registered with the Inland Revenue Department.

If the organisation carries on a trade or business, the profits from such trade or business are exempt only if, among other requirements, the profits are applied only for charitable purposes.

SPONSORSHIP OF THE ARTS

12. How does national law regulate sponsorship of the arts? Are there any incentive schemes to promote sponsorship of the arts?

There are no specific laws governing sponsorship of the arts. However, for tax purposes, deductions may apply to the net assessable income/profits when either:

- The sponsorship qualifies as a donation to a tax-exempt charity.
- The aim of the sponsorship is to generate profits in Hong Kong (see [Question 11](#)).

TAX

13. How does national law treat the payment or receipt of sponsorship funds? Are sponsorship expenses incurred by a sponsor tax deductible?

See [Question 11](#) for how the law treats the payment or receipt of sponsorship funds.

The conditions set out in [Question 11](#) apply to sponsorship expenses if the expenses are paid to a tax-exempt charity as a charitable donation. In addition, if the sponsorship expenses are aimed to generate any expenses for the purpose of generating profits, the expenses can be deducted from the business' net assessable profits (see [Question 11](#)).

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