

# Sponsorship Q&A: Hong Kong

by John McLellan and Weiken Yau, Haldanes

This document is published by Practical Law and can be found at: [uk.practicallaw.thomsonreuters.com/6-631-7698](http://uk.practicallaw.thomsonreuters.com/6-631-7698)

To learn more about legal solutions from Thomson Reuters, go to [legal-solutions.co.uk](http://legal-solutions.co.uk)

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 *Practice note, Sponsorship: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

## Rights of the sponsor

- 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

- 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 are 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

## RESOURCE INFORMATION

### RESOURCE ID

6-631-7698

### RESOURCE TYPE

Country Q&A

### JURISDICTION

Hong Kong



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 that are identical or similar to those for which the mark is registered.
- Such use of the mark causes confusion to the consumers.

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 their own name or address, or the name of their place of business. In addition, 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 that 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 that name or image (section 2, 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, is 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 or regulation provide against ambush marketing?

Ambush marketing generally refers to a company that seeks to "hijack" the publicity of an event (most often a sporting event) without being a sponsor of the same. 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 that 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 are 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 that injures the reputation of a person or a company, the aggrieved party may sue the ambush marketer for defamation (see [Question 2](#)).

Since there are no specific national laws or regulations (apart from those mentioned above) against ambush marketing, specific measures are usually dealt with by the relevant parties contractually.

### Regulatory issues

#### 5. How does national law or regulation 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 on 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; rather, 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.
- Requiring an 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](#)).

Note that there are currently no Hong Kong 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).

**Liquor products.** The sponsorship of liquors is considered “sensitive” under the TV Advertising Code. “Liquor” refers to any liquid that 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 domestic free television programmes between the hours of 4pm and 8.30pm 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/trophies in any children’s radio programme.

**Personal products.** Products of a personal nature, for example, female sanitary products, condoms, deodorants for the genital area, incontinence products and so on, should be presented with care and sensitivity. Depiction of such products must not be overly graphic. Sponsorship associated with condoms should only be factual and should not be shown on domestic free television programmes between the hours of 4pm and 8.30pm.

**Investment products.** The sponsorship of investment products requiring authorisation by the Securities and Futures Commission (SFC), including but not limited to unit trusts, mutual funds, investment-linked insurance schemes and so on, are prohibited unless the sponsorships are authorised by the SFC under the Securities and Futures Ordinance (Cap. 571).

**Claims relating to nutrition or dietary effects of products/services.** No advertisements for products, services and establishments that offer or provide treatment aimed at the achievement of weight loss or reduction of body fat are acceptable unless these advertisements state that their services/products are adjunct to having a balanced/healthy diet to achieve such effect.

#### 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 cannot 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, to safeguard the credibility and integrity of such programmes. However, the TV Advertising Code 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 permitted (see *Question 7*).

**Any radio programme with children’s voices.** According to the Radio Advertising Code, if a sponsor wishes to use children’s voices 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 can be broadcast, except with the prior approval of the CA.

**Products or services resembling certain things/activities.** The Radio Advertising Code states that advertisements for products or services that come within the recognised character of, or specially concerned with, the following are unacceptable:

- Fortune-tellers and the like.
- Undertakers or others associated with death or burial.
- Unlicensed employment services, registries or bureaux.

- Night clubs, dance halls, massage parlours, sauna houses, bath houses or similar establishments where activities involving sexual behaviour of whatever nature are presented.
- Escort services in general and dating services targeting young people under the age of 18.
- Pay per call information services offering adult material of a sexual nature.
- Entities seeking to advertise for the purpose of giving betting tips.
- Betting (subject to authorisation under the Betting Duty Ordinance (Cap. 108)).

**Educational courses.** According to the Radio Advertising Code, advertisers must comply with the following legislation:

- Section 86A of the Education Ordinance (Cap. 279), which covers control of false advertising by unregistered schools.
- Section 34 of the Non-local Higher and Professional Education (Regulation) Ordinance (Cap. 493), which covers restrictions on advertisements relating to regulated courses.
- Section 3 of the Non-local Higher and Professional Education (Regulation) Rules (Cap. 493B), which covers publication of advertisements relating to regulated courses, registered courses, exempted courses and purely distance learning courses.

**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 a 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 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 or regulation 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’s 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.

In relation to commercial advertisements, 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.

#### Current trend

Note that in September 2017, the CA announced that provisions in the TV Advertising Code governing indirect advertising and product or service sponsorship will be reviewed with a view to relaxing the regulatory regime.

The review came after research conducted by the CA on the regulation of product placement in free television services in other jurisdictions. The CA also conducted a territory-wide opinion survey and held six focus group meetings for the general public. The findings of the research reveal that the key principles underlying the regulation of product placement in Hong Kong are generally in line with those in major overseas jurisdictions. The results of the opinion survey and focus group discussions also indicate that while the viewing public in Hong Kong generally do not find product placement in domestic free television services objectionable, they do consider it necessary to regulate the employment of product placement to preserve the integrity and viewing pleasure of the programme.

As such, both the viewing public and the industry were found to lean towards a relaxation of the existing rules governing product placement to enhance the competitiveness of free television services and to facilitate the overall development of the industry. The CA thus takes the view that there is room to embark on a review of the relevant provisions in the TV Advertising Code governing indirect advertising and product/service sponsorship with a view to relaxing the existing rules in Hong Kong.

The CA will proceed to formulate proposals for amending the relevant provisions, and a public consultation on proposed amendments to the TV Advertising Code will be conducted soon. Whilst the CA's proposals are not yet released as at the date of this update, in the light of the rationale for the proposed changes mentioned above, it is expected that there might be substantive changes to the law and regulation on television sponsorships in the future.

### 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:

- Providing advice.
- Issuing a warning.
- Requiring a 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 reducing the competitors' output, quality, service or innovation).

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 and its potential impact on competition.

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.

As far as *Standard document, Sponsorship agreement: Cross-border* is concerned, the exclusive sponsorship deal between a sponsor and a football club, by itself, does not appear to have an impact described in the preceding paragraph or restricting competition in general; in which case such sponsorship deal is unlikely to be prohibited under Cap 619.

### Sponsoring a charity

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

There are no specific laws or regulations 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 and, 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](http://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 or regulation regulate sponsorship of the arts? Are there any incentive schemes to promote sponsorship of the arts?

---

There are no specific laws or regulations 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](#)).

### Sponsorship agreement

---

#### 14. Are there any obligations of the sponsoring party/club which are typical due to local custom in your jurisdiction?

---

In general, there are no specific obligations of the sponsoring party due to local custom in Hong Kong. The obligations contained in [Standard document, Sponsorship agreement: Cross-border: clause 5](#) are standard obligations that are regularly seen in sponsorship agreements in Hong Kong.

#### 15. Are there any obligations of the sponsor which are typical due to local custom in your jurisdiction?

---

In general, there are no specific obligations of the sponsor due to local custom in Hong Kong.

## Sponsorship Q&A: Hong Kong

The obligations contained in a standard document, *Sponsorship agreement: Cross-border: clause 6* are standard obligations that are regularly seen in sponsorship agreements in Hong Kong.

---

### 16. Would it be normal practice in your jurisdiction to require the sponsor to give warranties and / or representations with regard to its obligations under the agreement?

---

Generally, representations and warranties are common in sponsorship agreements in Hong Kong but there are no specific representations or warranties that the sponsor must give. The specific wording of the representations and warranties offered very much depends on the bargaining power of the contracting parties and the nature of the sponsoring products.

However, note that, other than the standard representations and warranties, such as possession of authority to enter into contracts and carry on the business, sponsorship agreements sometimes also provide for an undertaking from the sponsor not to make illegal, immoral or unethical conducts or remarks (the so-called "reverse morals clause"), which might bring disrepute to, or otherwise hamper, the image of the sponsoring parties.

---

### 17. What limitations and exclusions of liability might be appropriate?

---

Limitations and exclusions of liability are common in sponsorship agreements in Hong Kong. This is a commercial issue to be negotiated based on the bargaining power of the contracting parties. In practice, capping the sponsoring party's liabilities at the level of the Sponsorship Fee (as at *Standard document, Sponsorship agreement: Cross-border: clause 11.4*) is not uncommon in sponsorship agreements in Hong Kong.

---

### 18. Would a clause seeking to exclude pre-contractual statements be enforceable in your jurisdiction?

---

Yes, a clause seeking to exclude and supersede all pre-contractual statements would be enforceable in Hong Kong. It is commonly known as an "Entire Agreement" clause.

---

### 19. Does the law in your jurisdiction dictate which governing law and jurisdiction will apply to the sponsorship agreement?

---

No, contracting parties are free to choose the governing law and jurisdiction that apply to sponsorship agreements.

---

### 20. Are there any products which cannot be promoted or have restrictions placed on their promotion in the context of the sponsorship of football clubs and in sponsorship schemes generally in your jurisdiction?

---

Yes, as mentioned in *Question 6*, tobacco companies cannot be a sponsor for any event or product in Hong Kong under the Smoking (Public Health) Ordinance (Cap. 371).

Although there are generally no specific restrictions placed on other products' promotion in the context of the sponsorship of football clubs, liquor products and personal products, as mentioned in *Question 6*, are considered to be "sensitive" under the TV Advertising Code and are subject to various restrictions. Details of their restrictions can be found in *Question 6*.

---

### 21. Which regulatory bodies, if any, should be referred to in the agreement?

---

Generally speaking, there are no specific regulatory bodies to which reference should be made in sponsorship agreements in Hong Kong. However, it might be desirable or necessary to refer to regulatory bodies if the context requires this. For example, it is not uncommon for sponsorship agreements providing for obligations to broadcast commercials to make reference to the CA being the regulatory body of broadcast of commercials on television and radio.

---

### 22. Are there any compliance obligations on either party under your local laws?

---

Although the law does not require that references to the PDPO be included in sponsorship agreements, parties in Hong Kong can choose to include provisions that relate to the processing of personal data and privacy.

---

### 23. Does the sponsoring party/club need to provide any formal authorisation to the sponsor (such as power of attorney or similar document) to enable the sponsor to perform the agreement?

---

No, the sponsoring party/club does not need to provide any formal authorisation to the sponsor to enable the latter to perform the agreement.



**24. Does the agreement need to be in a language other than English for it to be valid and enforceable? Are there any other formalities which could affect the validity and / or enforceability of the agreement under national law?**

No, there is no requirement in Hong Kong for agreements to be written in a certain language to be valid and enforceable.

There are no other formalities required for a sponsorship agreement to be valid and enforceable in Hong Kong.

**25. How does this agreement need to be executed to ensure that it is valid and enforceable? Does it need to be registered with any authority in your jurisdiction?**

### Execution formalities

The agreement must be duly signed by the contracting parties to be valid and enforceable in Hong Kong. It does not need to be witnessed, notarised or apostilled.

### Registration formalities

There is no need for a sponsorship agreement to be registered with any authority in Hong Kong.

### Other formalities

The sponsoring party/club is not required to provide any formal authorisation to the sponsor to enable the sponsor to perform the agreement.

**26. Are there any clauses in the sponsorship agreement that would not be legally enforceable or not standard practice in your jurisdiction?**

No.

**27. Are there any other clauses that would be usual to see in a sponsorship agreement and/or that are standard practice in your jurisdiction?**

In general, the clauses contained in the standard document are also commonly found in sponsorship agreements in Hong Kong.

In some cases, a clause in relation to insurance may be included.

In addition, it may be advisable to specifically refer to the Contracts (Rights of Third Parties) Ordinance (Cap. 623), replacing the current provision excluding third party rights (*Standard document, Sponsorship agreement: Cross-border: clause 17.10*).

## Brexit

**28. From the point of view of your jurisdiction, what points do you anticipate might arise in relation to a sponsorship agreement which either: (i) contains an express choice of English law as the governing law; or (ii) has a UK-incorporated supplier or distributor as a party and is governed by the laws of your jurisdiction, if, during the life of the agreement, the UK were to cease to be a member of the European Union?**

Generally speaking, where the UK ceases to be a member of the European Union (EU) during the life of a sponsorship agreement that contains an express choice of English law as the governing law, the agreement would still be enforceable in Hong Kong (this is the case whether the UK remains a member of the European Economic Area or not).

Similarly, where one of the parties to the agreement is a UK-incorporated entity, the agreement would still be enforceable in Hong Kong if the UK withdraws from the EU during the life of the agreement.

In relation to whether any issues may arise in relation to the UK's change of status, as "Brexit" negotiations are still relatively premature, with no concrete plan announced yet on the exact exit mechanisms, there are a range of legal uncertainties that may not be determinable at this stage. It therefore remains to be seen what legal issues will arise in the future.

*The authors would like to thank trainees Jonathan Tsang and Rachel Lo for their contributions to the update of this piece in 2017.*

### Contributor details

#### John McLellan, Partner

Haldanes

T +852 2868 1234

E [jpm@haldanes.com](mailto:jpm@haldanes.com)

Areas of practice: Company secretarial, corporate and commercial, media and entertainment, and immigration.

#### Weiken Yau, Associate

Haldanes

T +852 2868 1234

E [weiken.yau@haldanes.com](mailto:weiken.yau@haldanes.com)

Areas of practice: Corporate and commercial, and media and entertainment.