

# Sponsorship Q&A: Hong Kong

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This Q&A provides country-specific commentary on *Practice note, Sponsorship: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

## RESOURCE INFORMATION

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### RESOURCE TYPE

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### JURISDICTION

Hong Kong PRC

## 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 may 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 (*section 3(1), CRTPO*).
- The third party as named or described in the sponsorship agreement is explicitly granted the enforcement right or conferred a benefit in the agreement (*sections 4(1) and (2), CRTPO*).

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.

Note, however, that parties can contract out of the CRTPO by express provision in a contract at which point the CRTPO will not be applicable (*section 4(3), CRTPO*).

### 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.

### Liability as shadow directors

If an organising committee is vested with decision making power by the board of an organising company, members of the organising committee may be found to be acting as "shadow directors". Under section 2 of the Companies Ordinance (Cap. 622), a "shadow director" means a person in accordance with whose directions or instructions the directors, or a majority of the directors, of the body corporate are accustomed to act. As with directors, therefore, shadow directors must exercise reasonable care, skill and diligence. A member of the organising committee (as a shadow director) may therefore be found liable for any loss and damage caused by their failure to exercise reasonable care, skill and diligence.

## 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.

### 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 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.

### Passing off

Even if a trade mark is not registered in Hong Kong, an individual may be able to bring an action in passing off. Passing off is concerned with misrepresentations made by one trader which damage the goodwill of another. In order to succeed in a claim for passing off, a claimant must establish all of the following:

- The claimant has acquired a reputation or goodwill connected with the goods or services it supplied in the mind of the buyers and such goods or services were known to the buyers by some distinctive get-up or feature.
- The defendant has, whether or not intentionally, made misrepresentations to the public leading them to believe that the defendant's goods or services were the claimant's.
- The claimant has suffered, or in aqua timet action is likely to suffer, damage because of the erroneous belief engendered by the defendant's misrepresentation

(*Re Ping An Securities Ltd (2009) 12 HKCFAR 808.*)

If the court is satisfied that a passing off action is established, an injunction may be granted to restrain the act complained of, and the defendant may be required to pay damages to the claimant for the loss or damage suffered.

### 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. In Hong Kong, the law of defamation is governed by the common law as modified by the provisions of the Defamation Ordinance (Cap. 21). A defamatory statement may be made orally, in which case it constitutes the tort of slander, or in writing, in which case it constitutes the tort of libel. 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 claimant 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 claimant.

There is no need for the claimant to prove that the defendant intended to defame or that anyone actually believed the statement to be true. Generally speaking, a claimant 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?

No intellectual property right or other proprietary right exists 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) 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 Copyright Ordinance.)

Any elements connected to an event that fall into any of the above categories (for example, theme music, artwork, and so on), will be protected by copyright laws.

## Ambush marketing

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

Ambush marketing generally refers to a campaign or action 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:

- **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*).
- **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*).
- **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 in 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). Sponsor identification or references to products or services in the course of a programme are governed by Chapter 9 "Programme Sponsorship" of the TV Advertising Code. 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, Broadcasting Ordinance*).

Note that there are currently no Hong Kong laws or regulations which address so called "over-the-top" (OTT) TV providers.

### Restrictions on who can be a sponsor

In general, no sponsorship in respect of products / services / establishments should be accepted if not compliant with the TV Advertising Code.

**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).

**Alcoholic beverages.** 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 in proximity to children's programmes at any time, or on any domestic free television programmes between the hours of 4pm and 8.30pm each day.

Drinks containing 1.2% or less of ethyl alcohol by volume are not classified as "liquor"; but if they contain more than 0.5% of ethyl alcohol by volume (regardless of how such drinks are presented), they must not be advertised in children's programmes.

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 an 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), it must comply with several requirements and restrictions with regard to presentation. For example, the children should be reasonably well-mannered and well-behaved, and cannot participate in the presentation of advertisements for alcoholic liquor or tobacco related products.

**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.

**Unacceptable products or services.** 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.
- Unlicensed employment services, registries or bureaux.
- Night clubs, dance halls, massage parlours, sauna houses, bath houses or similar establishments in which hosts or hostesses are employed for the primary purpose of attracting or entertaining customers or in which floor shows or other live performances or 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.** The broadcast frequency and duration of a sponsor's message, name and logo (sponsor identification) is 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 (also commonly referred to as "product placement"), including the following principles:

- An announcement containing the wording "The following programme contains indirect advertising" must be made to clearly inform viewers of the inclusion of product / services sponsorship in the programme before the programme starts.



- The sponsor of the product or service featured must be clearly identified in the front and/or end sponsor credits of the programme; but such identification must not exceed ten seconds in length where one sponsor is involved; and 30 seconds where there is more than one. Front sponsor credits must precede, and must not be integrated within any part of, the programme. End sponsor credits may be integrated with but must not precede the rolling end credits of a programme.
- The exposure or use must be presented in a natural and unobstructive manner having regard to the programme context and genre, and in a manner whereby there is no direct encouragement of purchase or use of product(s) or service(s).
- Religious services or other devotional programmes, news programme and programmes, announcements or other material included at the direction of the CA from time to time must not be sponsored.

### 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

On 4 July 2018, the CA announced its decisions to relax the regulation of indirect advertising in television programme services and to lift the prohibition on the broadcast of advertisements for undertakers and associated services. The revised TV Advertising Code and Radio Advertising Code were published on 27 July 2018.

The decision to permit and regulate indirect advertising came after the CA's review of the relevant provisions governing indirect advertising, as well as the views collected through consultation with the industry and the public, including a territory-wide opinion survey, focus group discussions and a one-month public consultation exercise. The CA also considered the approach adopted in major overseas jurisdictions.

### 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 will be referred to the Broadcast Complaints Committee for consideration (*section 11(1), Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)*). Upon receipt of a complaint referred to it, the Broadcast Complaints Committee will make recommendations to the CA (*section 11(4)(d), Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391)*), which may impose appropriate sanctions including:

- Providing advice.
- Issuing a warning.
- Requiring a correction and/or apology.
- Financial penalty.
- Suspension or revocation 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 its object or effect is to prevent, restrict or distort competition in Hong Kong. Examples of agreements preventing, restricting or distorting competition include:

- Price fixing.
- Market sharing.
- 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, charities still need to comply with anti-corruption laws such as the Prevention of Bribery Ordinance. Any person (including charitable organisations and sponsors) who wishes to conduct fundraising activities is highly recommended, as good practice, to take account of the following guidelines:

- Good Practice Guide on Charitable Fund-raising (jointly issued by the Social Welfare Department, Home Affairs Department and Food and Environmental Hygiene Department in August 2018).
- Best Practice Checklist for Management of Charities and Fund-raising Activities (issued by the Independent Commission Against Corruption in 2015).
- Guidance Note on Internal Financial Controls for Charitable Fund-raising Activities (issued by the Social Welfare Department in November 2004).

Moreover, charities are required to apply for specific permits or licences from the government for certain fundraising activities, for example:

- For flag days and setting up donation boxes, a Public Subscription Permit from the Social Welfare Department is required.
- For on-street selling, a Temporary Hawker Licence from the Food and Environmental Hygiene Department is required.
- For lotteries, a Lottery Licence from the Home Affairs Department is required.

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

### Sponsors paying funds to charities

Sponsors can deduct donations to tax-exempt charities (that is, those recognised under section 88 of the Inland Revenue Ordinance (Cap.112)) from their net assessable income or profit when calculating salaries tax or profits tax (*sections 16D and 26C, Inland Revenue Ordinance (Cap. 112)*). A list of such 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)).

However, not all payments to a charity would automatically be recognised as a donation. According to case law, "donation" is restricted to a voluntary transfer of money, which is not made as a result of a contractual obligation, and where the donor cannot receive any material benefit or advantage by way of return.

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's 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 may qualify as the business's outgoings and expenses, which can be deducted from the business's net assessable profits.

### Charities receiving funds from sponsors

Charitable institutions registered with the Inland Revenue Department as tax-exempt charities are exempt from profits tax. If the charitable institution carries on a trade or business, the following conditions must be met in order for its profits to be exempted from tax:

- The profits from the trade or business must be applied solely for charitable purposes.
- The profits must not be substantially expended outside of Hong Kong.
- Either:
  - the trade or business is exercised in the course of carrying out the express objects of the charity; or
  - the work carried out in connection with the trade or business of the charity is mainly carried out by those people for whose benefit the charity has been established.

(Section 88, Inland Revenue Ordinance (Cap. 112).)

### 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 for the purpose of generating profits, the expenses can be deducted from the business's 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. The obligations contained in *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 engage in illegal, immoral or unethical conduct or make such remarks (the so-called "reverse morals clause"), which might bring disrepute to, or otherwise injure, the image or reputation of the party in receipt of sponsorship.



### 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. 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.

### 19. 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).

There are generally no specific restrictions placed on other products' promotion in the context of the sponsorship of football clubs. However, alcoholic beverages 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*.

### 20. 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 may be desirable or necessary to refer to regulatory bodies if the context requires. For example, it is not uncommon for sponsorship agreements providing for obligations to broadcast commercials to make reference to the CA, which is the regulatory body regulating the broadcast of commercials on television and radio.

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

There are no compliance obligations that are specific to a sponsorship agreement in Hong Kong, but parties need to observe and comply with the regulations and legislation that are in force in Hong Kong. For example, if during the performance of the contract, parties collect personal data from individuals, they will need to comply with local privacy law as provided for in the Personal Data (Privacy) Ordinance (Cap. 486). Moreover, parties also need to comply with the anti-money laundering legislation in Hong Kong, for example not to commit money-laundering offence under section 25 of the Organized and Serious Crimes Ordinance (Cap. 455).

### 22. 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.

### 23. 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.

### 24. 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.

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

As with other common law jurisdictions, the Hong Kong court would refuse to give effect to a contract if its object or performance would be contrary to law or public policy, for examples, when the contract is entered into with an objective of committing a fraud or for tax evasion.

If the contract is only partly illegal and those illegal provisions can be severed from the contract, the court may still give effect to the remaining parts of the contract. However, the severance must not change the nature of the contract so as to turn it into a transaction wholly different from the one intended by the parties, it also needs to accord with public policy.

### 26. 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 *Standard document, Sponsorship agreement: Cross-border* are also commonly found in sponsorship agreements in Hong Kong.

In some cases, a clause in relation to insurance may be included to ensure that both the sponsor and the club will be covered by insurance in respect of the liabilities that might potentially arise out of the engagement.

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*). For example, for the sake of clarity, parties may expressly state that the application of the Ordinance should be excluded.

## Brexit

### 27. 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, if 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.

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 ongoing within the British Parliament and the EU, with no agreeable 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.

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