

# I. Introduction



Hong Kong has grown from a small fishing port when the colony was founded in 1842 to an international business and financial centre today. Over the past 170 years, the establishment of law and a legal infrastructure to facilitate the incorporation of companies as business vehicles in Hong Kong, the administration of such law and the incorporation system have provided a solid foundation for Hong Kong's development into an international financial and business centre. With changes to the law and the incorporation system over the years making it easier, faster and cheaper to incorporate companies while maintaining standards and integrity, Hong Kong has witnessed a tremendous growth in the incorporation of companies in the major sectors of the economy as well as in other related sectors. The number of companies incorporated has tracked the growth of the economy very closely. Many companies that were incorporated in the early days of the colony are still operating, and some have grown from small local companies into giant global conglomerates. We trace some of the history of the more notable companies in this report. They clearly demonstrate the success of Hong Kong as a location for company incorporation and doing business.

Hong Kong was occupied by the British on 26 January 1841. Although land sales had started in 1841 and trading houses from Guangdong and elsewhere soon appeared on the scene, relations between China and the Western powers remained tense until the end of the Second Opium War, when Britain acquired Kowloon and Stonecutters Island under the First Convention of Peking 1860. Back in the United Kingdom, the Joint Stock Companies Act, which recognised incorporation by mere registration, was not enacted until 1844 when its Companies Registry was also created. This was not done in Hong Kong



directly after the 1844 Act. However, in India, the Indian Companies Act was enacted in 1850 and the Anglicisation of company law then moved East from India to Hong Kong and the Australian colonies in order to serve the interest of the English companies in the colonies. In the United Kingdom, limited liability of companies only arrived with the Limited Liability Act 1855, which was quickly superseded by the Joint Stock Companies Act 1856. The 1856 Act was in turn consolidated into the Companies Act 1862.

Back in Hong Kong, after 1860, the colony developed apace, and a chamber of commerce was formed in 1861, with 62 foreign-owned banks and trading houses as the founding members. A small, but thriving, business community had been established. The early 1860s also saw a financial boom in India and the treaty ports in China, and businessmen in Hong Kong were highly optimistic about their future prospects. In July 1864, some of the leading members of the chamber of commerce formed a committee to found the first local bank, the Hongkong Bank, as a deed of settlement company. This may have been a

factor that led to the introduction of the Companies Ordinance 1865 in Hong Kong: the United Kingdom's 1862 Act provided the basis of the first Hong Kong Companies Ordinance. The Hongkong Bank was registered in August 1865 as a local company under the new ordinance, but re-emerged the next year as the Hongkong and Shanghai Banking Corporation under its own legislation, the Hongkong and Shanghai Bank Ordinance (No. 5 of 1866). However, most foreign houses, for example Dent & Co, Jardine Matheson & Co and Russell & Co, continued to trade in partnerships for an unexpectedly long time, despite the availability of registered companies and limited liability from 1865. Chinese businessmen in Hong Kong also preferred partnerships to registered companies until the 1950s. This was because registered joint stock companies were not recognised in Imperial China until 1904, and a form of limited partnership was known there.

With pressure from the Chinese General Chamber of Commerce, the Chinese Partnerships Ordinance 1911 was enacted in Hong Kong to provide for the



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registration of Chinese partnerships with limited liability. This was followed in 1912 by the Limited Partnerships Ordinance (Cap. 37) (which was based on the English Act of 1907) for non-Chinese partnerships. The Chinese Partnerships Ordinance was repealed in 1971, as only one Chinese partnership had been registered since 1936 and it was felt that the Limited Partnerships Ordinance provided a suitable framework for those partnerships which wished to limit the liability of their members. Unfortunately, when the Chinese Partnerships Ordinance was repealed, no action was taken to amend the Limited Partnerships Ordinance accordingly, to extend its scope to Chinese partnerships. Thus, the statistics in [Annex I](#) show that little use was made of limited liability companies until Hong Kong began to develop as a major commercial and financial centre in the 1950s.<sup>2</sup>

For a long time after the establishment of the colony, Hong Kong remained a small trading port. By 1864, a year before the Companies Ordinance 1865, the population was around 83,000. By 1911, after the New Territories had been leased to Britain under the Second Convention of Peking in 1898, the population was about 450,000. But the 1920s were a good time for Hong Kong and the civil war in China began in 1926. By the end of the 1920s, the population had grown to 840,000. At the end of the Second World War, the population of Hong Kong had dropped to 610,000. But the resumption of civil war in China led to a vast influx of migrants into Hong Kong, and by


1950 the population had grown to two million. During the following decade, Hong Kong took off as a major trader, sparked off by the Korean War, a construction boom to house the ever-growing population, and an increase in the manufacturing sector to supply the growing consumer markets of the United States of America and Europe. Further waves of immigrants from China arrived in 1956 and 1962, and by 1960 the population had grown to three million. Although local events affected confidence in the colony from time to time, for example, the 1952 riots in Kowloon and further riots in 1956, by 1962 the colony was booming, assisted by the Vietnam War. The number of companies in Hong Kong increased rapidly.<sup>3</sup>

As Hong Kong had become a significant industrial and commercial centre by 1960, the Companies Ordinance 1932 became outdated. Meanwhile, in the United Kingdom, the Jenkins Committee was about to report (in 1962) on the reform of the Companies Act in the United Kingdom. The Hong Kong government decided not to copy the English Act, but to set up the Companies Law Revision Committee in 1962 to revise the Companies Ordinance. The Committee was suspended to wait for what became the United Kingdom Companies Act 1967 when its chairman, the Registrar General, was tied up with matters relating to the bank collapses in early 1965. The Committee was reconstituted in 1968. However, the Committee then was diverted to consider whether legislation for the prevention of fraud in relation to investments was required as a result of the collapse of Investors

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<sup>2</sup> Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001), pp 1-5.

<sup>3</sup> Ibid, pp 5-7.



Overseas Services and other funds. After its first report in 1971 on the Protection of Investors, which led to the Protection of Investors Ordinance 1974 and the Securities Ordinance 1974, the Committee was able to revert back to its work on company law, and published its second report on company law in 1973 with recommendations for changes to the law. Although some of the recommendations did result in amendments to the Companies Ordinance, most of them were not formalised in a White Paper until 1981 which resulted in the Companies (Amendment) Ordinance 1984. The 1984 Amendment Ordinance was largely based on the United Kingdom 1948 Consolidation Act.

By 1980, Hong Kong had become a major industrial and commercial centre with a population of over five million. In the United Kingdom, as a result of its joining the Common Market, its company legislation was influenced by European Community directives on matters irrelevant to Hong Kong. In 1984 a Standing Committee on Company Law Reform (SCCLR) was set up pursuant to the recommendation of the Second Report published by the Companies Law Revision Committee. Whilst the Standing Committee dealt with a wide variety of issues, and many of its recommendations led to amendments to the Companies Ordinance, it did not look at the ordinance overall. Since the Companies Ordinance was based on the United Kingdom 1948 Act, with many subsequent piecemeal amendments, by 1994, when Hong Kong had emerged as a significant international

financial centre, the then Financial Secretary, Sir Hamish Macleod, announced that the time had come for a thorough review of the ordinance, in order to ensure that it reflected “today’s business environment”. In November 1994, the government appointed Mr Ermanno Pascutto as the reviewer, and his Consultancy Report was published in March 1997. His report was in turn considered by the SCCLR, which issued a report on the consultancy report with many recommendations and two consultation papers on corporate governance reform. Many of the SCCLR’s recommendations resulted in amendments to the Companies Ordinance.<sup>4</sup>

A comprehensive exercise to rewrite the Companies Ordinance (Cap. 32) was launched in mid-2006, with the aim of modernising Hong Kong’s company law and further enhancing Hong Kong’s status as a major international business and financial centre. Following five rounds of public consultation and continuous exchanges with stakeholders over the years, the Companies Bill was finalised and introduced into the Legislative Council on 26 January 2011. A Bills Committee to scrutinise the Bill was formed under the chairmanship of the Honourable Paul Chan Mopu, MH, JP, in February 2011. After 44 meetings lasting a total of over 120 hours and consideration of over 200 papers or submissions, the Bills Committee completed its scrutiny of the Bill in June 2012. On 12 July 2012, the Companies Bill was passed by the Legislative Council.

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<sup>4</sup> Lawton & Tyler, Division of Duties and Responsibilities between the Company Secretary and Directors in Hong Kong - Final Report (HKICS: April 2001), pp 7-13.