

Hong Kong Circle

Hong Kong Economic and Trade Office in Washington D.C. Newsletter

Asia's world city HONG KONG



Bank on Hong Kong for Financial Certainty

Hong Kong corporate structures act as a "firewall" for foreign companies investing in China, according to a Canadian lawyer who heads a 25-year-old Hong Kong-based firm helping foreign investors with corporate structuring and doing business on the Mainland.

Elizabeth Thomson, president of ICS Trust (Asia) Ltd., said her advice to clients, usually small-and-medium sized enterprises (SMEs) with US\$10-\$400 million in annual sales, had been the same since China opened up: go through Hong Kong.

Ms. Thomson's advice continues to be the same in spite of the recent amended Company Law - promulgated in the Mainland on January 1, 2006 - which reduces the minimum required capital and provides flexibility in capital requirements for domestic Chinese companies.

Changes also incorporate the concept of "piercing the corporate veil" in respect of corporate governance.

"I always tell my clients to incorporate a Hong Kong limited liability company to act as a firewall between their mother company and the China operation. Get everything set up in Hong Kong, including the banking facilities, and then establish the wholly-owned foreign enterprise, or WFOE, in China to comply with Chinese legal requirements," Ms. Thomson said.

Protecting assets

She said foreign companies coming to Asia to do business were already successful in their home countries, but there appears to be a trend in China to settle disputes through litigation, especially with partners with "deep pockets" abroad.

"If there is litigation, we want it to start and hopefully stop in Hong Kong and not extend to assets in the U.S., UK, Canada or wherever the companies are from."

Another reason for Hong Kong's effective "firewall" position is its phenomenal tax system.

"We're looking at 0 to 17.5 percent tax and this is often overlooked by business people from abroad. China has at least 33 percent tax and not a lot of people know that China has controls on the flow of money.

"How do you get your money out? As sensible business people, you would want to put money in your pocket, have higher corporate profits and make sure that when you come back on your next trip, your money's in the bank," Ms. Thomson said.

This means that Hong Kong's excellent and long-standing commercial structure with its 189 banks, reliable legal system and phenomenal tax system are among the main reasons why Hong Kong remains a "firewall" for foreign companies doing business in Greater China region.

Ms. Thomson said that foreign companies were not concerned with the amended law and its principle

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of "piercing the corporate veil" allowing them to look past the company structure.

"I don't think any foreign company will take notice of these changes. They will likely say that it's similar to the law in UK or Canada or in any common law jurisdiction.

"Piercing the corporate veil is nothing unusual as it is one of the hallmarks of English common law. What is important to our clients is that the Chinese government is reviewing and amending the laws and that at some point in the future, all laws pertaining to domestic companies and foreign invested enterprises will be the same because China has to comply with WTO regulations in the near future."

Solid structures

She said her advice to foreign companies would depend not so much on China's changes to its corporate laws but on its banking structure.

"To me, banking in China is still an issue. We manage millions of dollars for clients because we're in Hong Kong and they are not here. I am happy to pay expenses in China and to dribble money into China as and when needed. Unless I see more transparency and accountability with the banking system in China, I will continue to advise my clients to do their banking in Hong Kong.

"My new clients who have gone to China and come back to Hong Kong always say the same thing - I feel comfortable in Hong Kong as it's so westernized. China may have the Starbucks and the Italian restaurants but we know our banking works, the professionals are here and the English language is important here," she said.

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