



Doing Business in China Through Hong Kong

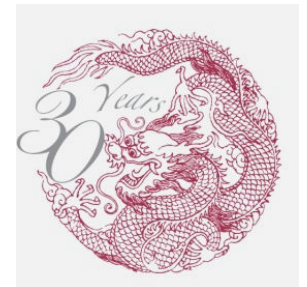
By : Barrett Bingley
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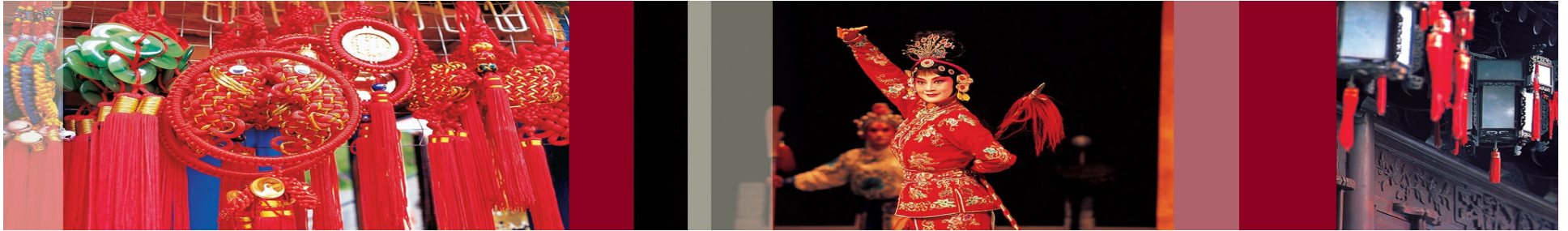
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ICS TRUST (Asia) Limited was founded in 1980 by Ms. Elizabeth L. Thomson, who has been based in Hong Kong since 1977.

- Private Hong Kong-based corporate, trust and commercial services company
- Provides integrated business solutions for corporations doing business in China or using Hong Kong as the gateway to export to China;
- Sets up HKCos, Wholly-Foreign-Owned Enterprises (WFOEs) and Representative Offices (ROs) in China;
- ICS TRUST is a preferred partner of major banks, law firms, and government entities seeking a full end-to-end business system for important clients.



Why Does Hong Kong Matter?

HK's relationship with China

- Hong Kong is a Special Administrative Region (SAR) of China
- 50% world population within a five-hour flight
- About 32% of China's imports and 28% of exports handled via HK
- Largest external investor in China, accounting for US\$223 billion or 45% of total
- Over 300 Chinese companies listed in HK (US\$250 billion market cap).

(cont.)



HK's Relationship with China

- Handles 80% of Pearl River Delta's trade (Shenzhen, Guangzhou, Dongguan, Zhuhai etc.)
- One of the world's busiest container port (+22 mTEUs)
- World's busiest international air cargo hub
- Constant upgrading of infrastructure links, including road, rail and recently, barge.
- Regular use of English, Cantonese and Mandarin



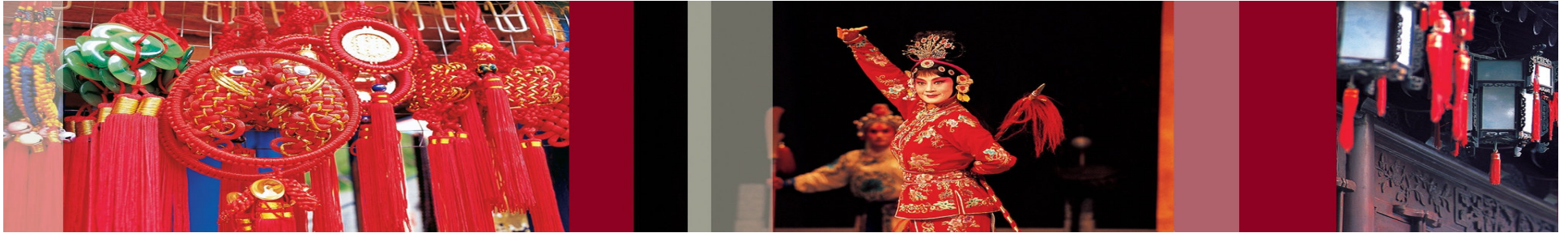
Why does Hong Kong work?

- Preferential treatment from the Chinese authorities
- Well regarded, common law environment
- Educated, “worldly” population
- English as official language
- Free trade, free market, free flow of capital



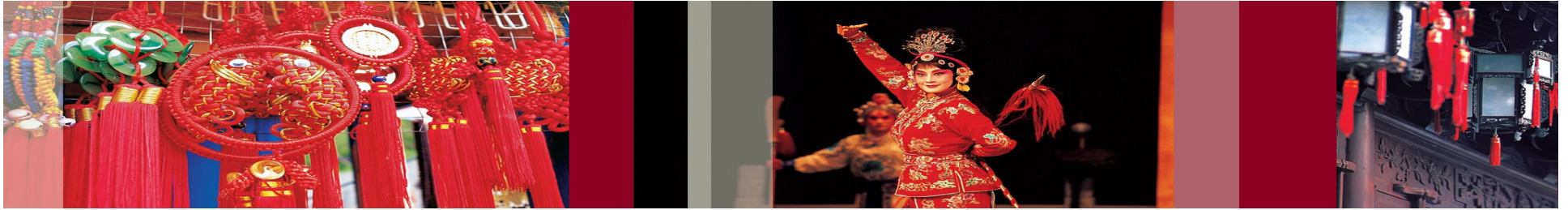
Why does Hong Kong work?

- Visa free access for most countries
- Low and stable taxes
- Excellent communication / physical / medical / educational / financial infrastructures in place
- Exceedingly safe place to live



Hong Kong Legal System

- British Common Law
- English as medium of communication in courts
- Independent Judiciary - no home team advantage
- Vibrant legal profession (solicitors / barristers)
- Many international law firms have offices in HK
- Accountable local administration
- Internationally recognized arbitration and mediation centre



Hong Kong - Business Friendly Banking and Finance

Infrastructure

- Well regulated by HKMA / SFC
- 142 licensed banks plus 82 representative offices of banks from 38 countries
- Liquid, well regulated stock exchange
- Established asset management industry
- Hong Kong offers offshore Renminbi (RMB) settlement

Hong Kong's external orientation

- 6th largest foreign exchange market in the world (based on turnover)
- Complete absence of foreign exchange controls
- More than 55% of domestic banking business conducted in foreign currencies



Protection Lower Risk Profile

IPR

- Enforcement in Hong Kong simpler than in China

Transparency in HK Companies Ordinance

- Laws online - <http://www.legislation.gov.hk>
- Defined rights and privileges
- Protection for minority shareholders, redress through court system

Firewall concept

- A buffer in case of dispute between the parent company and the Chinese venture
- Protection against “Whistleblower” and “Piercing of the Corporate Veil” legislation in China



Hong Kong Tax System

1. Territorial Tax System

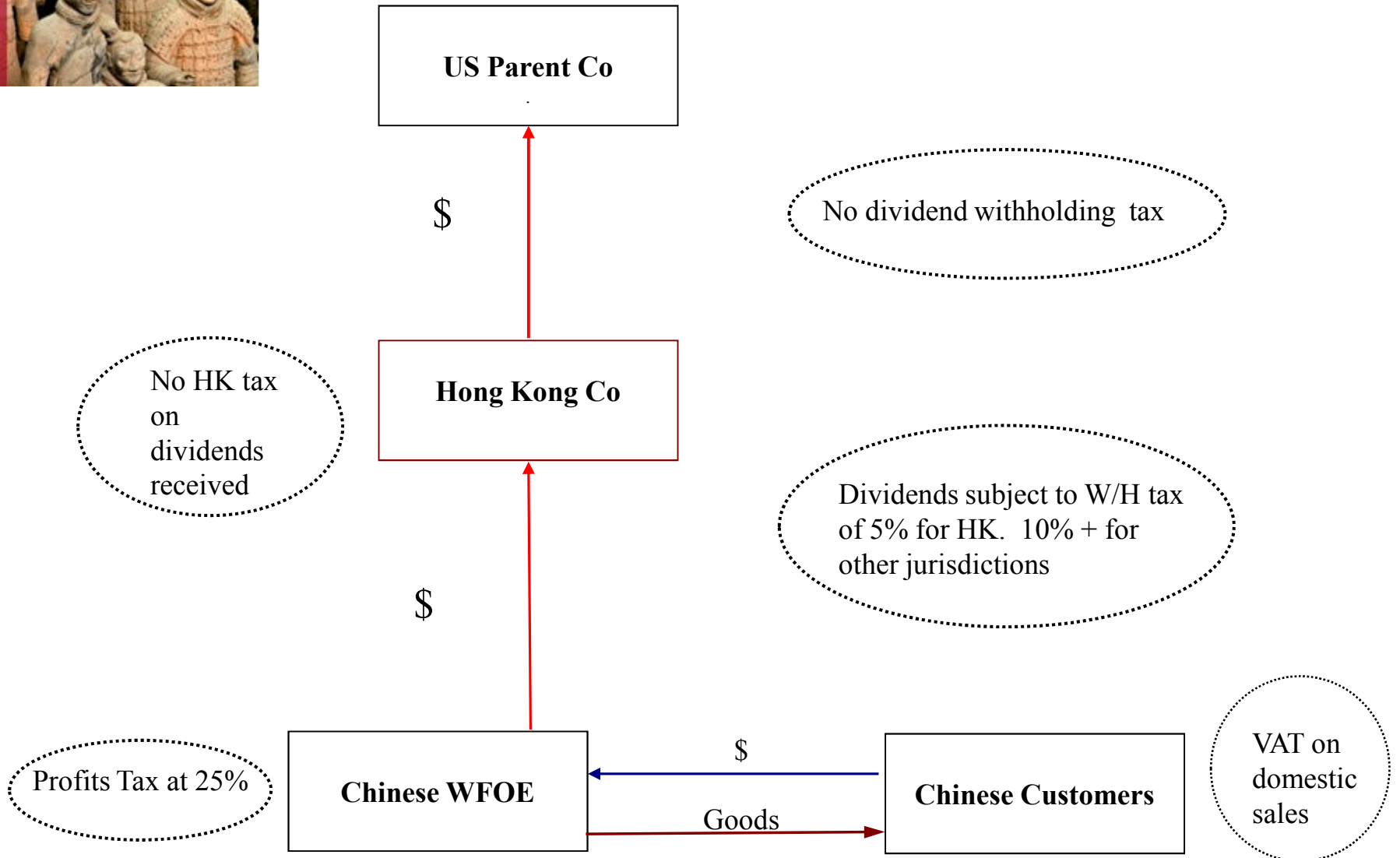
- Profits Tax = Onshore profits = 16.5 % Offshore profits = Zero %
- No capital gains tax
- Inbound dividends not taxed
- No withholding tax on outbound dividends
- No VAT or sales tax
- No estate duty
- AND Government consistently runs a surplus

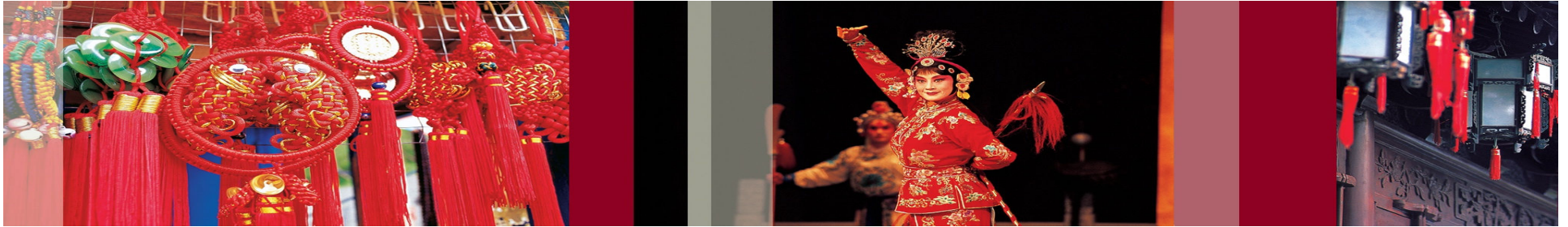
2. Preferential Tax Agreement with China

- Dividends from China to US - 10%
- Dividends from China to Hong Kong - 5%



Profit Flow for ParentCo / Hong Kong / China





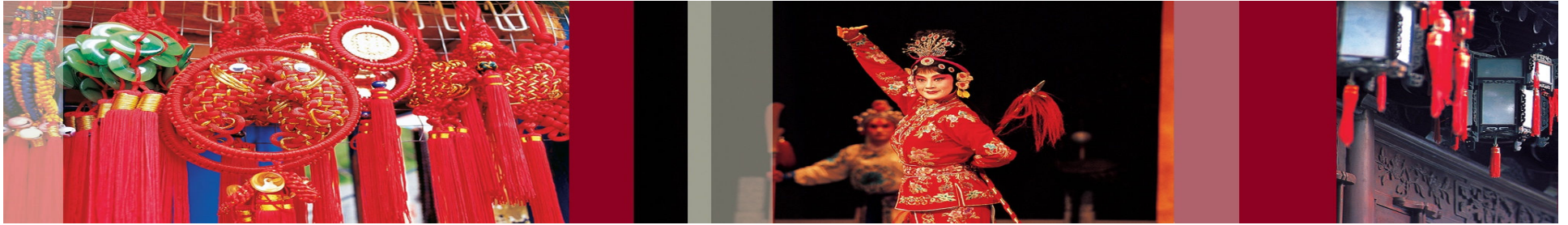
Hong Kong vs. China Tax System

HONG KONG

- Profits Tax: 16.5% or 0%
- Salaries Tax: 15%
- Stamp Duty: up to 4%
- Business Tax: N/A
- VAT: N/A
- Consumption Tax: N/A
- Withholding Tax: N/A
- Capital Gains Tax: N/A
- Estate Duty: N/A

CHINA

- Enterprise Income Tax: 25%
- Individual Income Tax: 5% to 45%
- Business Tax: 5% to 20%
- VAT: 2% - 17%
- Consumption Tax: 3% - 45%
- Withholding Tax: 5-20% (dependent of jurisdiction)
- Capital Gains Tax: 10% - 20%
- Education Surcharge: 3% (new)
- Urban Construction Charge: 1-7% (new)
- Estate Tax: N/A



Hong Kong Tax System

Tax Treaties

- Hong Kong has signed, operational tax treaties with
Belgium Luxembourg Mainland of China
Thailand Vietnam

- Treaties with the following countries are awaiting notification

Austria Brunei Hungary Indonesia Ireland
Kuwait
Liechtenstein Netherlands United Kingdom
Switzerland

- Discussions are ongoing with
France



Flexibility re: China Operations

Geographic location

- Closer to customers / suppliers in China
- Extended business day

Corporate structuring in Hong Kong

- Incorporation 7 working days
- No residency requirements for directors and shareholders
- No requirement for multitude of licenses
- Flexibility in terms of changing nature of business, shareholder mix, capital structure etc.

Restructuring

- Restructuring easier in HK than in China.

Selling

- Allows the choice between FOB Hong Kong / China or home country

Financing

- Easier in Hong Kong

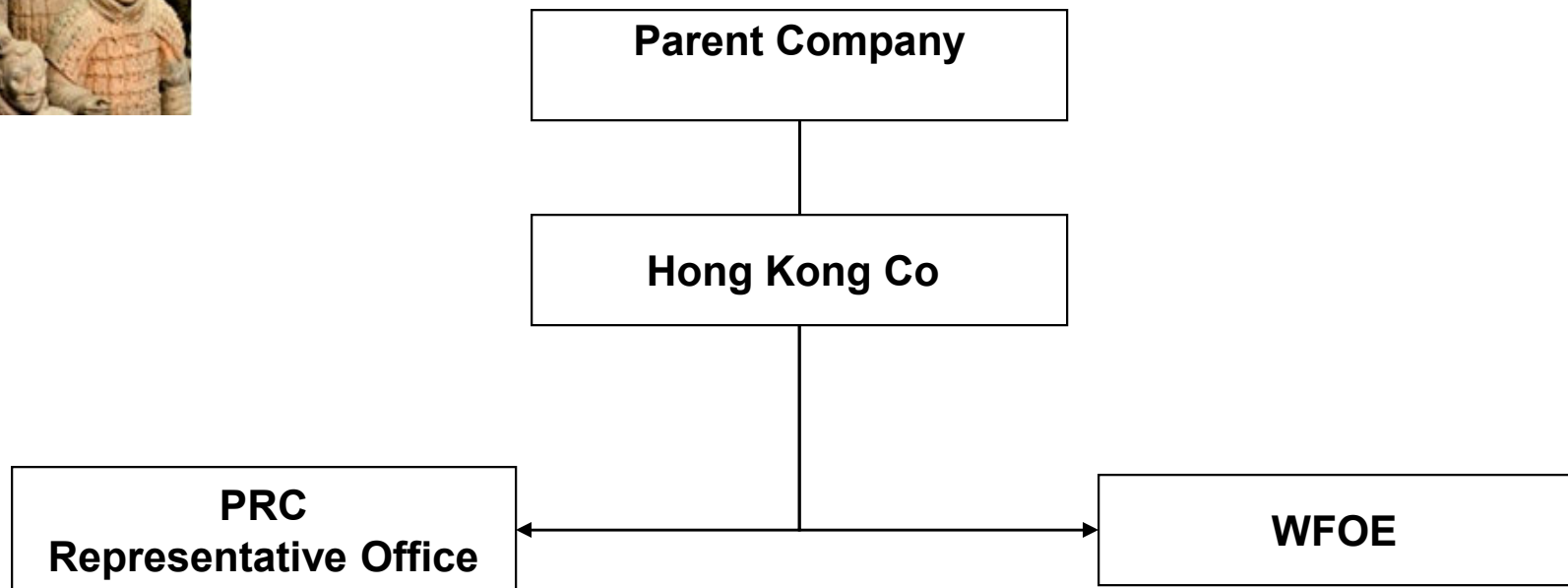


Types of Chinese Business Entities

- Representative Offices (ROs)
- Joint Ventures (JVs)
- Wholly Foreign Owned Enterprises (WFOEs)



Two Main Types of Chinese Entities



1. Branch office only / NOT a billing entity
2. Hire Marketing, Engineers and QC staff
3. Hire Managers to liaise with factories and Head office re purchases / shipment
4. Negotiation of business contacts & strategic alliance agreements with PRC Companies

1. Subsidiary company
2. Can engage in manufacturing, trading and services.
3. Selling domestically where permitted



Using a HK and Chinese Entity for:

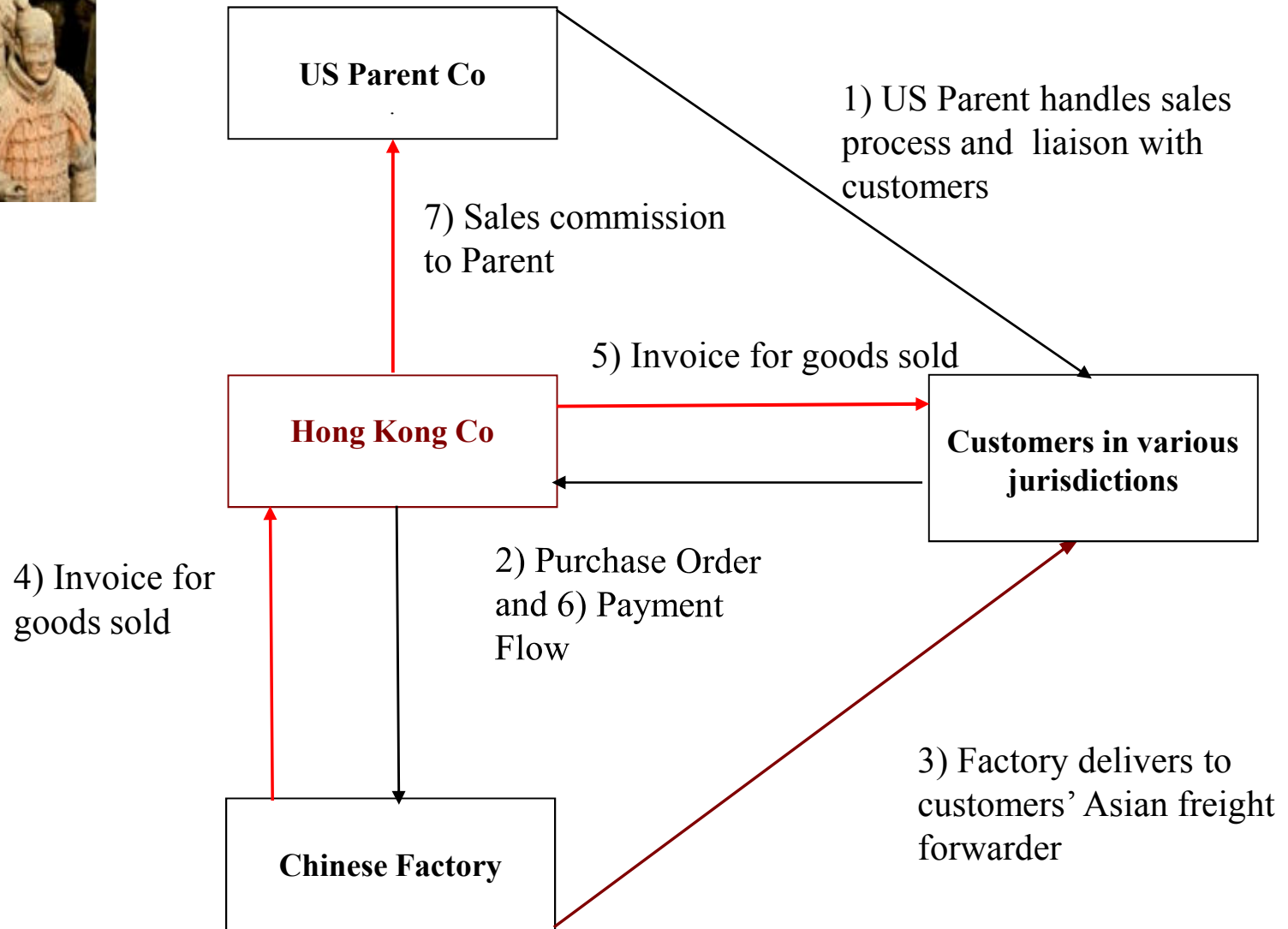
- Marketing your US products in China
- Buying from 3rd party Chinese factories and selling to customers around the world.
- Setting up your own manufacturing facilities in China for export sales.
- Setting up your own company in China for domestic sales/ongoing maintenance of goods or services.

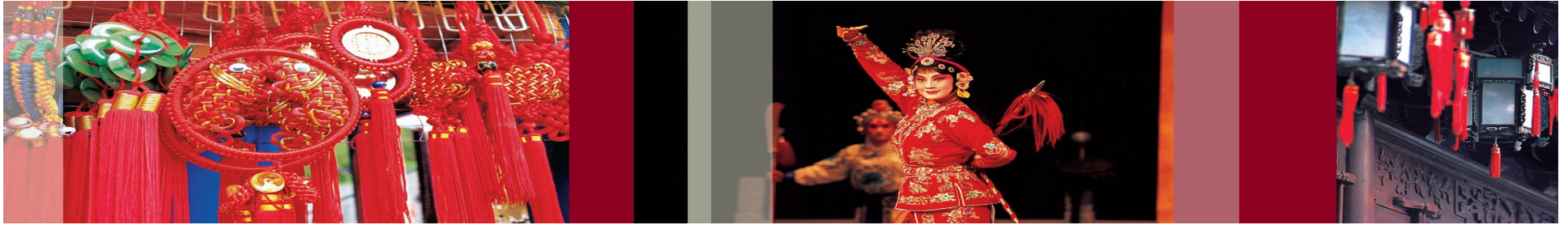
Advantages of a two tier Structure:

- Revenue recognition in either HK or China
- Tax arbitrage between HK and China
- Significantly greater flexibility for corporate actions and financing



HK as an Import / Export Centre





China Myth Busting

Registered Capital Requirements

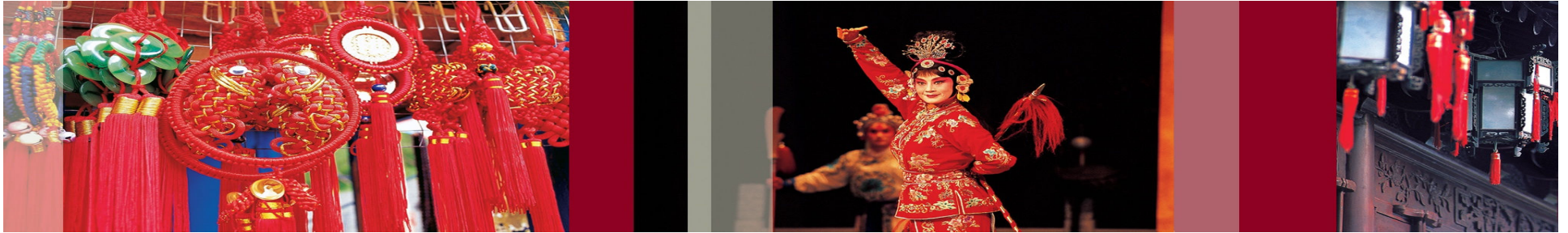
Myth - You must lock up a large amount of capital to start a company in China.

Reality - You must inject a certain amount of capital, and as soon as its registered you can make use of it in China.

Repatriation of Profits

Myth - Your profit is stuck in China, difficult to get out.

Reality - Quite standardized procedures for application to the State Administration of Foreign Exchange to repatriate profits in in the form of a dividend or service payments to parent company.



China Myth Busting

China has no IP protection

Myth - You have no recourse if your IP is infringed.

Reality - To have a chance, you must follow the proper procedures early on, before you have a problem. Example: For trademarks, China is a first-to-register jurisdiction.

Myth - There is no need to go through Hong Kong anymore, you can go direct into Shanghai, Beijing etc.

Reality - Technically true, but going through Hong Kong is much more advantageous.



IP Update

Stats:

- In 2009, Chinese authorities received 977,000 patent applications, up 18% from the previous year.
- 33,000 cases brought to the Chinese Intellectual Property Courts in 2009, 4000 or so involved foreign companies.

Meaning: The Chinese are starting to get serious about IP protection because there is something to protect. But its still a massive issue.

Timing: We know trademarks, patents, copywrite and domain names can be registered...eventually. Trademark registration time has come down to 18-24 months from up to 3 years. Complex patents are taking longer to register as the number of applications goes up.



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