

Kit Chan

6th IP Annual Seminar

Innovations in a Changing IP World

William CW Lam
Partner
Hui & Lam Solicitors



2 August, 2014

Deal Structure and Platform for IP Commercialization-

Mainland China/Hong Kong Chapter



Contents

- 1. Common Deal Structure for IP Commercialization**
- 2. Recent Legislative Changes in Mainland China**



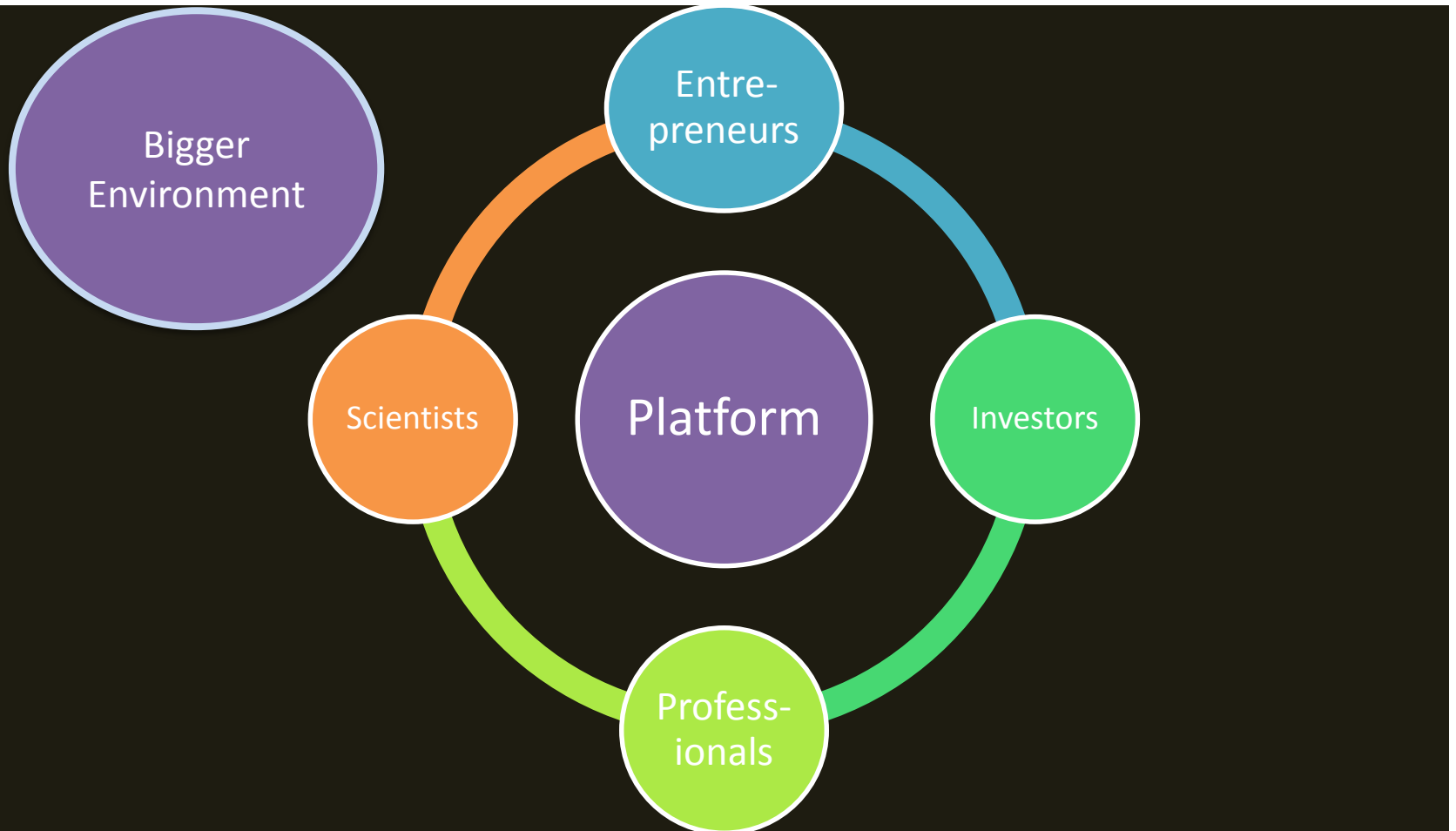
Contents

Contents

3. Recent Legislative Changes in Hong Kong
4. Qianhai Shenzhen



IP Commercialization

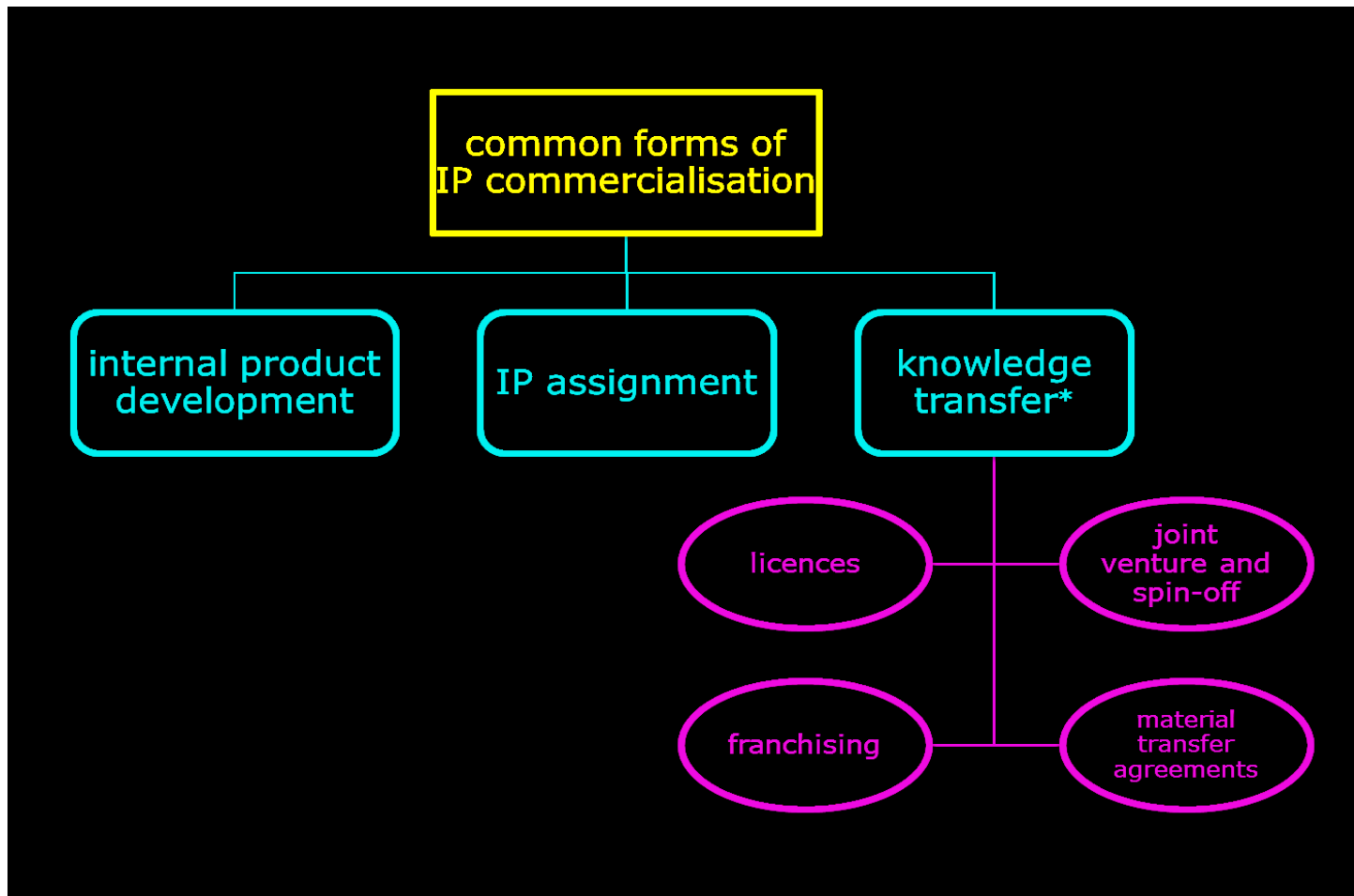


Part i: Common deal structure

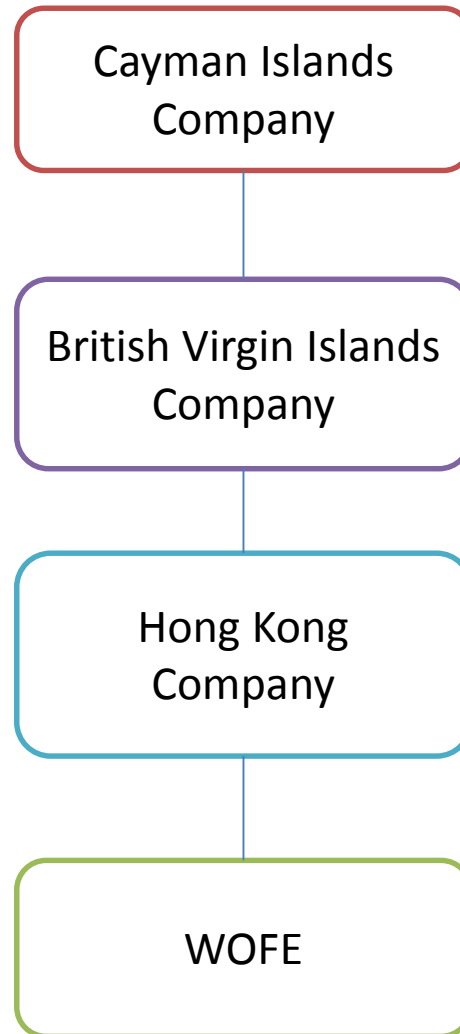
with focus on
acquisition, spin-off
and joint-venture



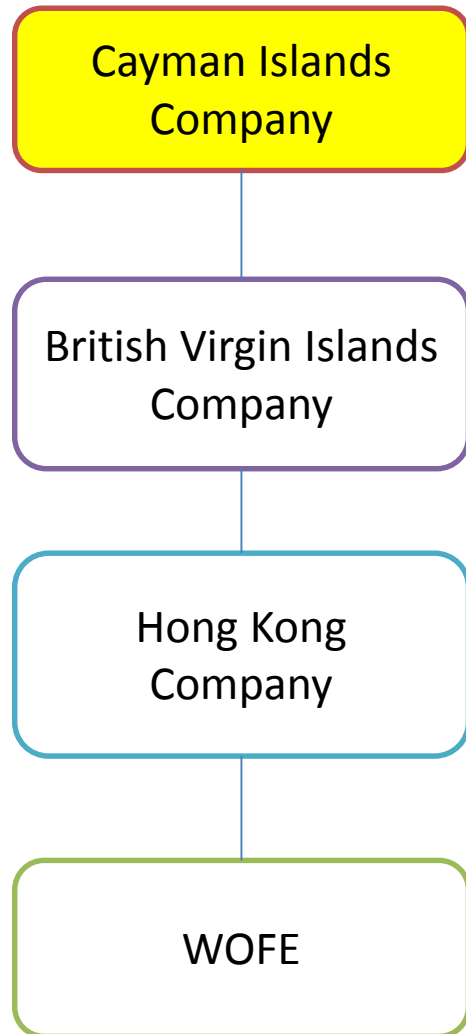
Different Ways of IP Commercialization



Common Deal Structure



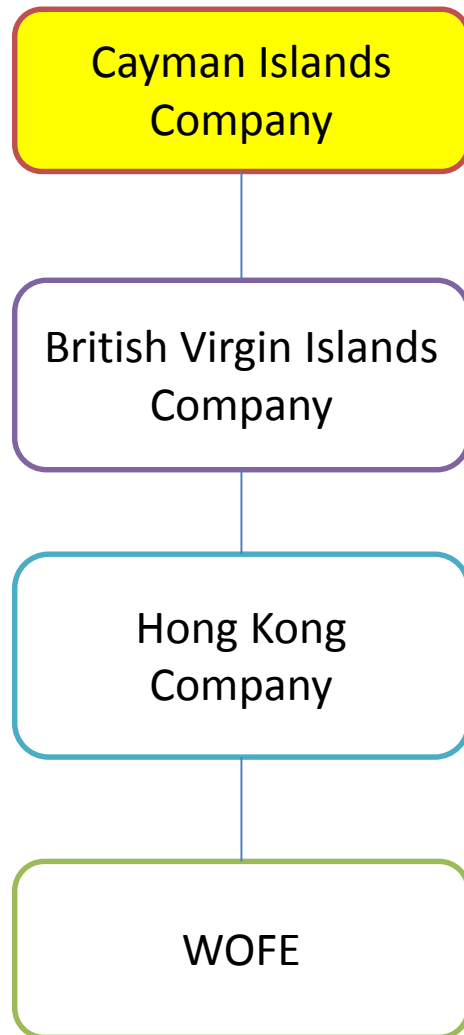
Common Deal Structure



Where is Cayman Islands?



Common Deal Structure

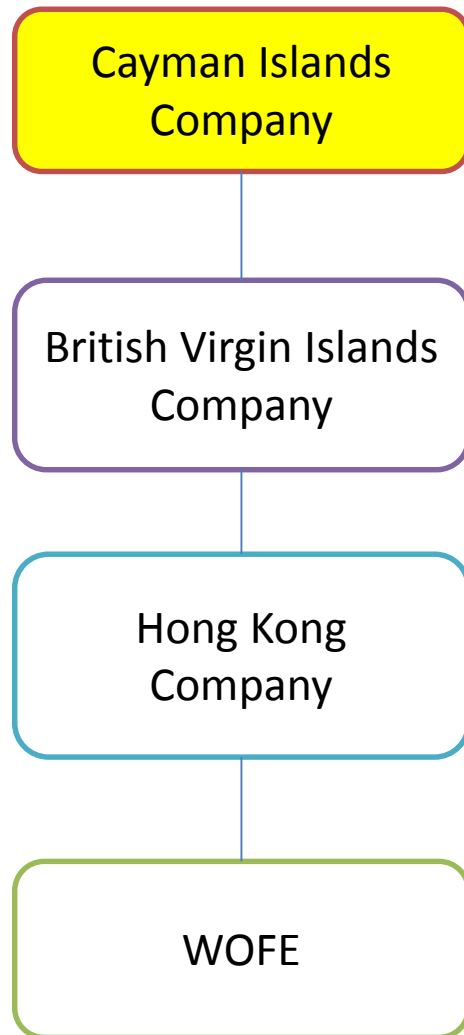


Why Cayman Islands?

- Cayman Islands' companies law is based on English common law and thus similar to the companies law in Hong Kong
- Cayman Islands is one of the recognized jurisdictions for public listing in the Hong Kong bourse.

(Joint policy statement regarding the listing of overseas companies dated 27 September 2013)

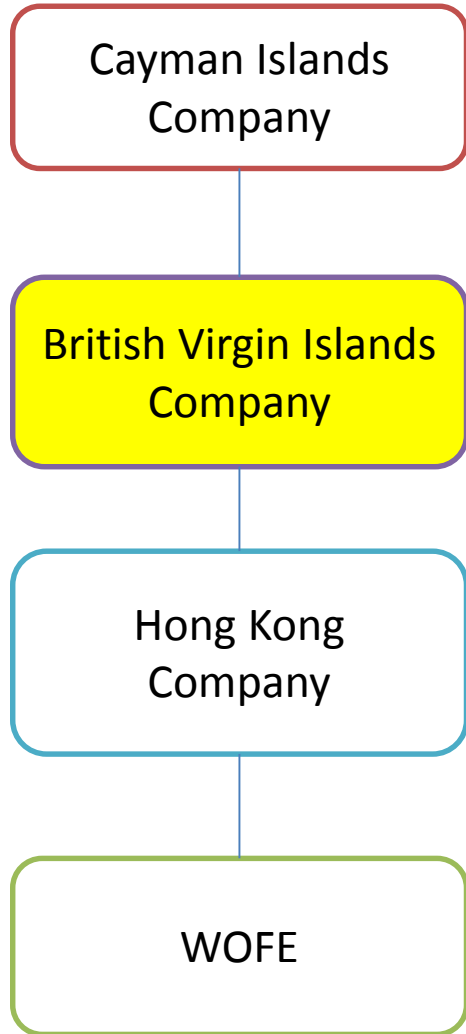
Common Deal Structure



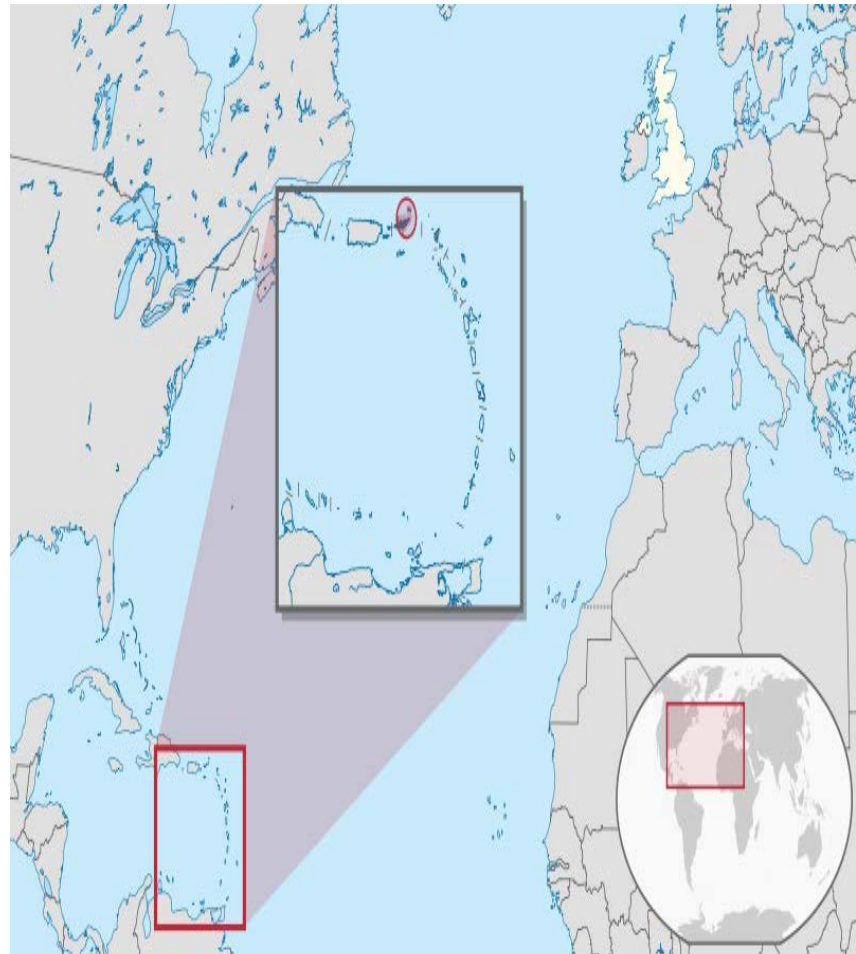
Why Cayman Islands?

- HKEx can refuse a listing if it is not satisfied that the overseas issuer is incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong. (*Listing Rules 19.05(1)(b)*)
- Cayman Islands is also a popular jurisdiction for PE funds and financial institutions.

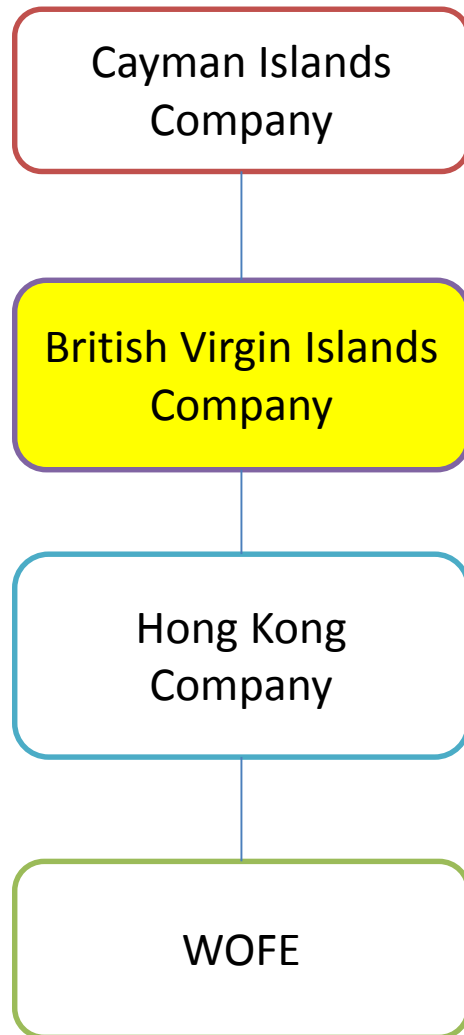
Common Deal Structure



Where is BVI?



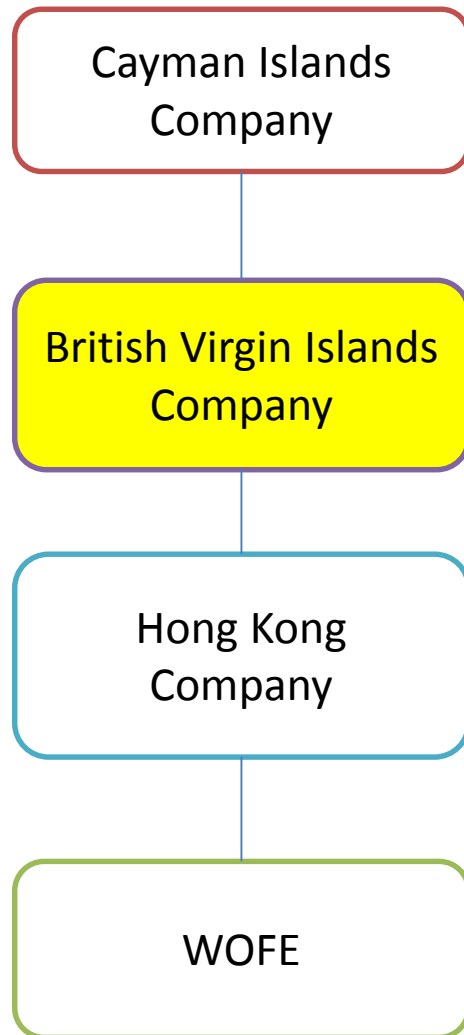
Common Deal Structure



Why British Virgin Islands?

- Simple and Flexible
- BVI's legal system is based on English common law supplemented by local ordinances
- There are no taxes levied on Business Companies with the exception of the annual government licence fee

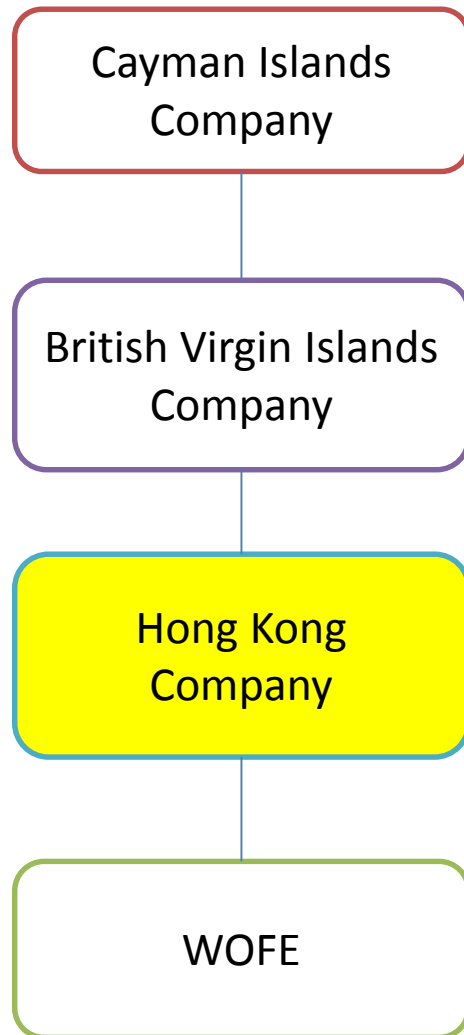
Common Deal Structure



Why British Virgin Islands?

- No stamp duty is payable for share transfer of BVI companies
- There are no requirements for annual returns, annual meetings or audited accounts
- Details of the shareholders do not appear on any public record and thus offers confidentiality

Common Deal Structure



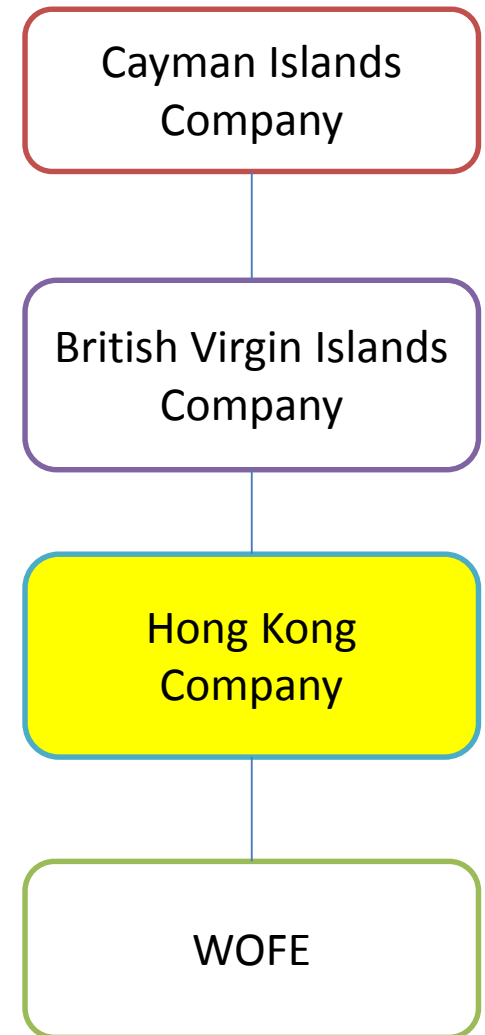
Why Hong Kong?

- Hong Kong adopts the territoriality basis of taxation, whereby only income/profit sourced in Hong Kong is subject to tax
- Hong Kong allows a deduction for foreign tax paid on turnover basis in respect of an income which is also subject to tax in Hong Kong
- Double Taxation Arrangement (Mainland China and HK)

Double Taxation Arrangement

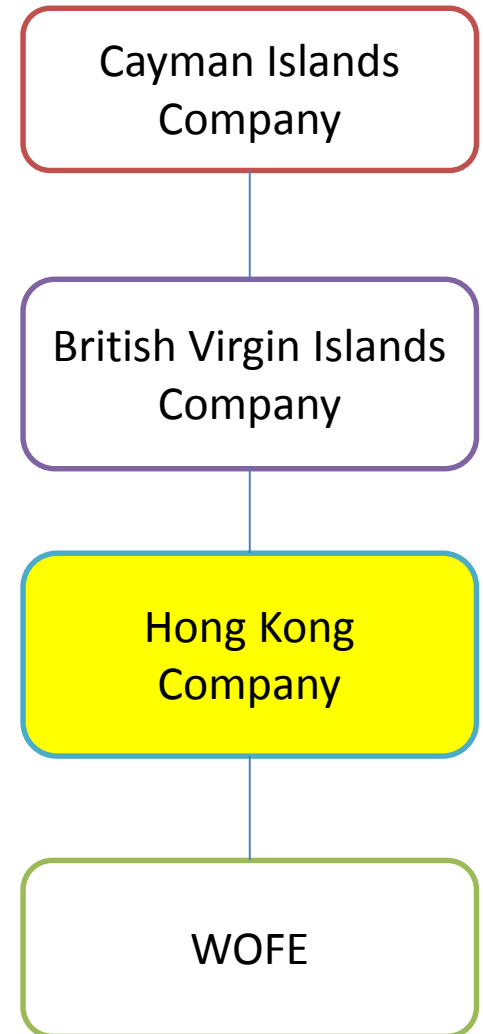
- Rates for **dividends** a Hong Kong **business** receives were cut from 10% to 5%

(for Hong Kong businesses holding at least 25% of the capital of the Mainland enterprise)



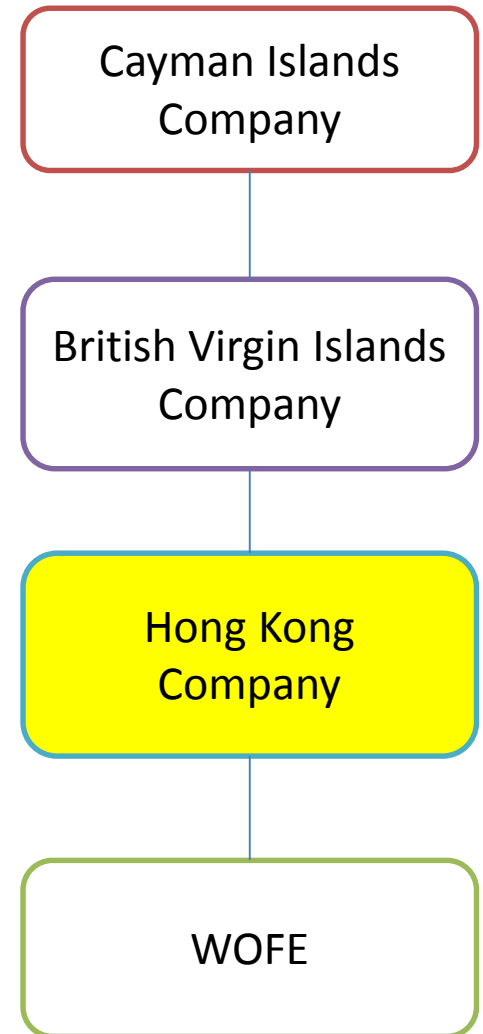
Double Taxation Arrangement

- Top rates for withholding tax for **dividends** a Hong Kong **resident** receives from Mainland investments were halved from 20% to 10%



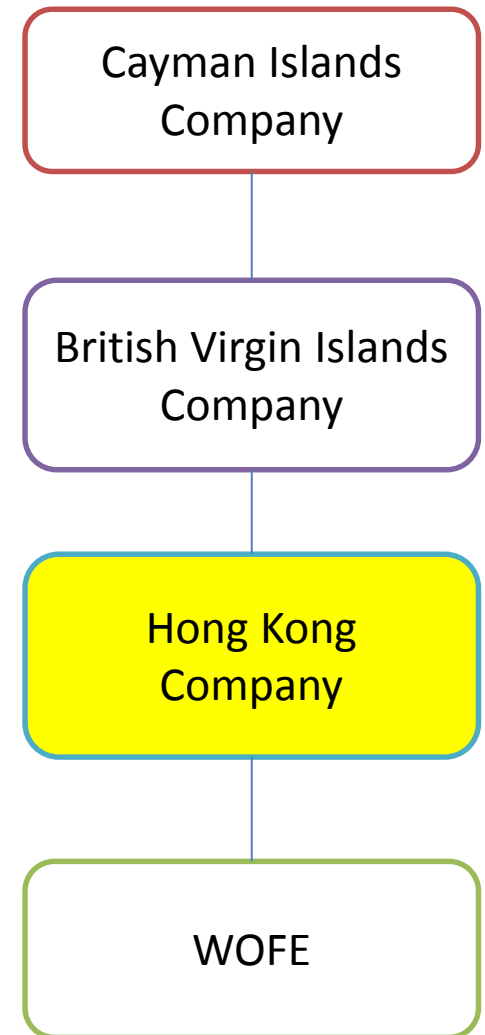
Double Taxation Arrangement

- Top rates for withholding tax for **interest** a Hong Kong **resident** receives from the Mainland fell from 20% to 7%
- those for a Hong Kong **business** fell from 10% to 7%



Double Taxation Arrangement

- Top rates for withholding tax for **royalties** a Hong Kong resident or business receives from the Mainland fell from the respective 20% and 10% to 7%

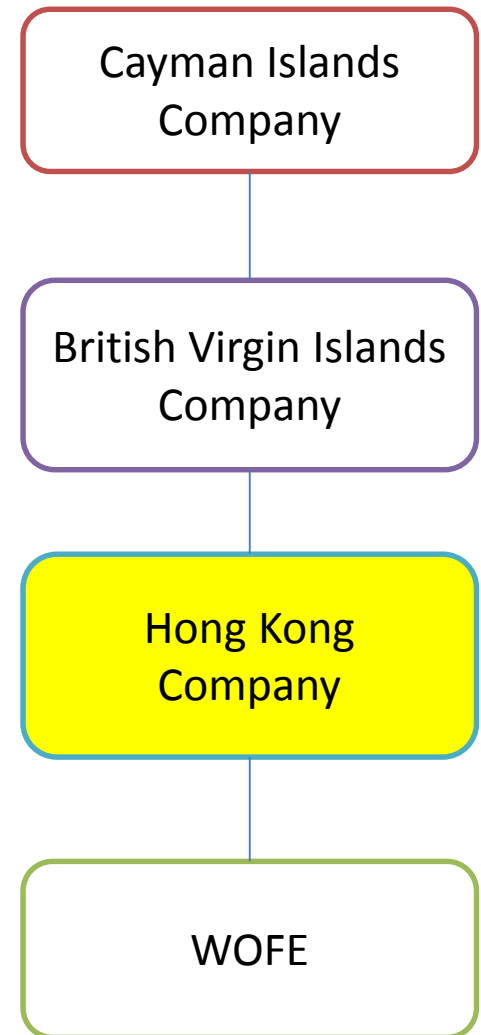


Double Taxation Arrangement

Legislation:-

Specification of Arrangements (The Mainland of China) (Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income) Order

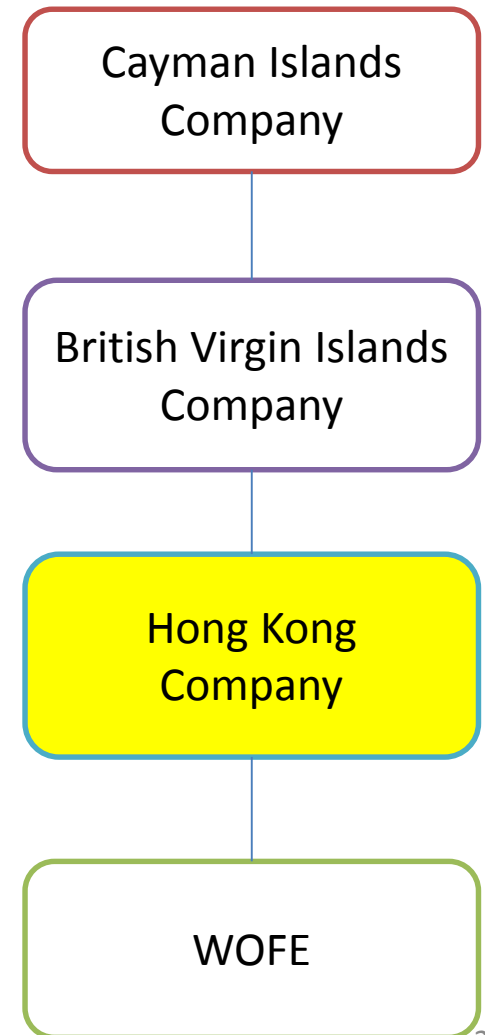
(commencing on 1 January 2007)



Double Taxation Arrangement

Hong Kong Profits Tax: 16.5%

Capital Gain Tax: nil



**Part II:
commercialization of IP rights
in china**

**facilitation of IP
commercialization**

TRADEMARK

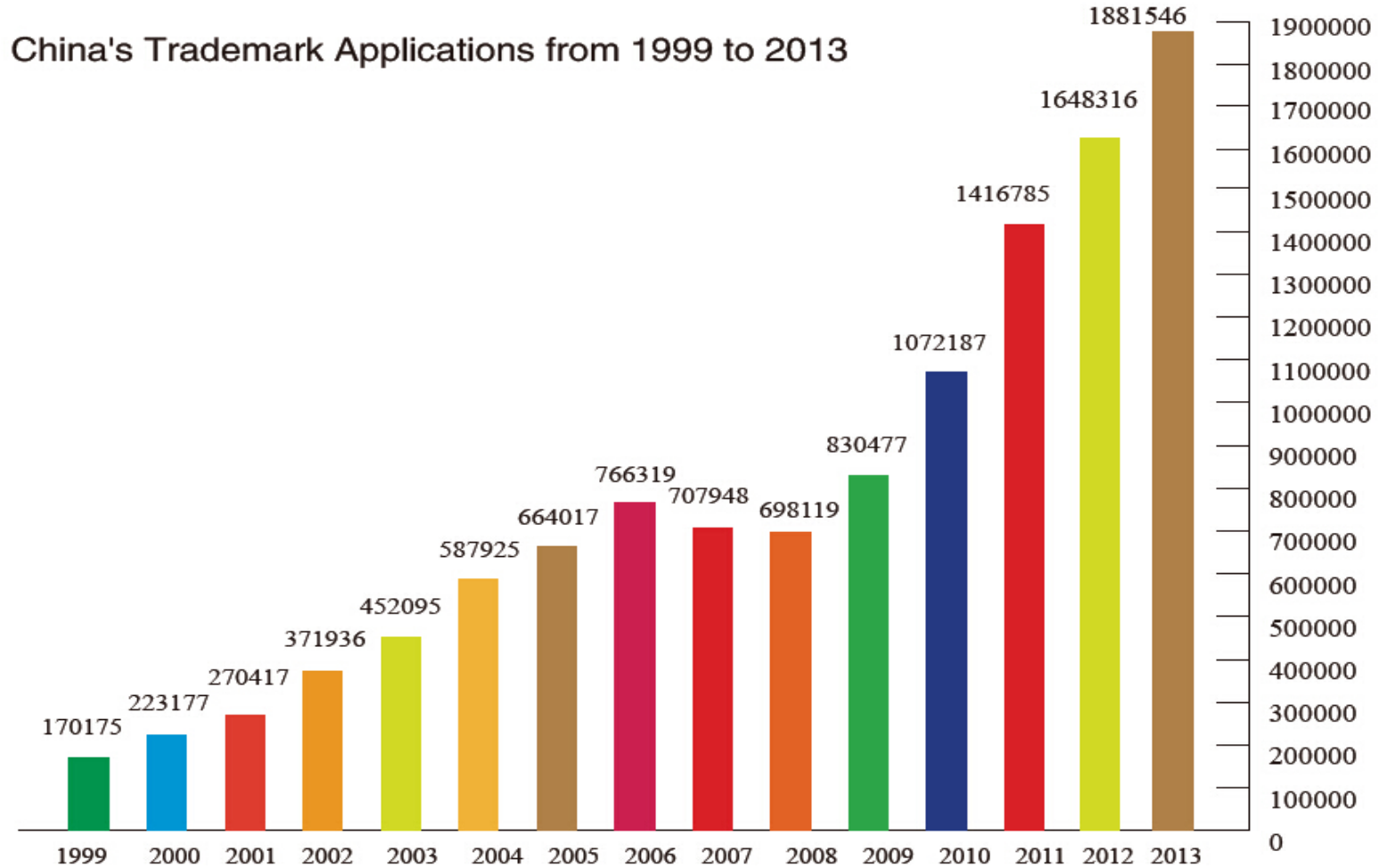
By Dec2013

	China	U.S.A.
Application	13.24 million	0.434 million
Registration	8.652 million	0.193 million
Active Certifications of Registration	7.2379 million	1.904 million

**Annual Development Report on China's Trademark Strategy 2013*

**Performance & accountability report fiscal year2013(USA patent and trademark office)*

TRADEMARK



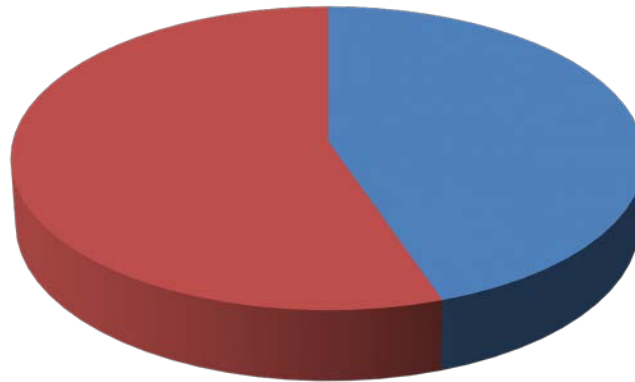
**Annual Development Report on China's Trademark Strategy 2013*

PATENT

Status of Patent Application in China 2013

In Total: 2.377 million

■ *authorized*
1.313million



PATENT

Status of Patent Grant 2013

China		U.S.A.
1.313 million	VS	0.303 million

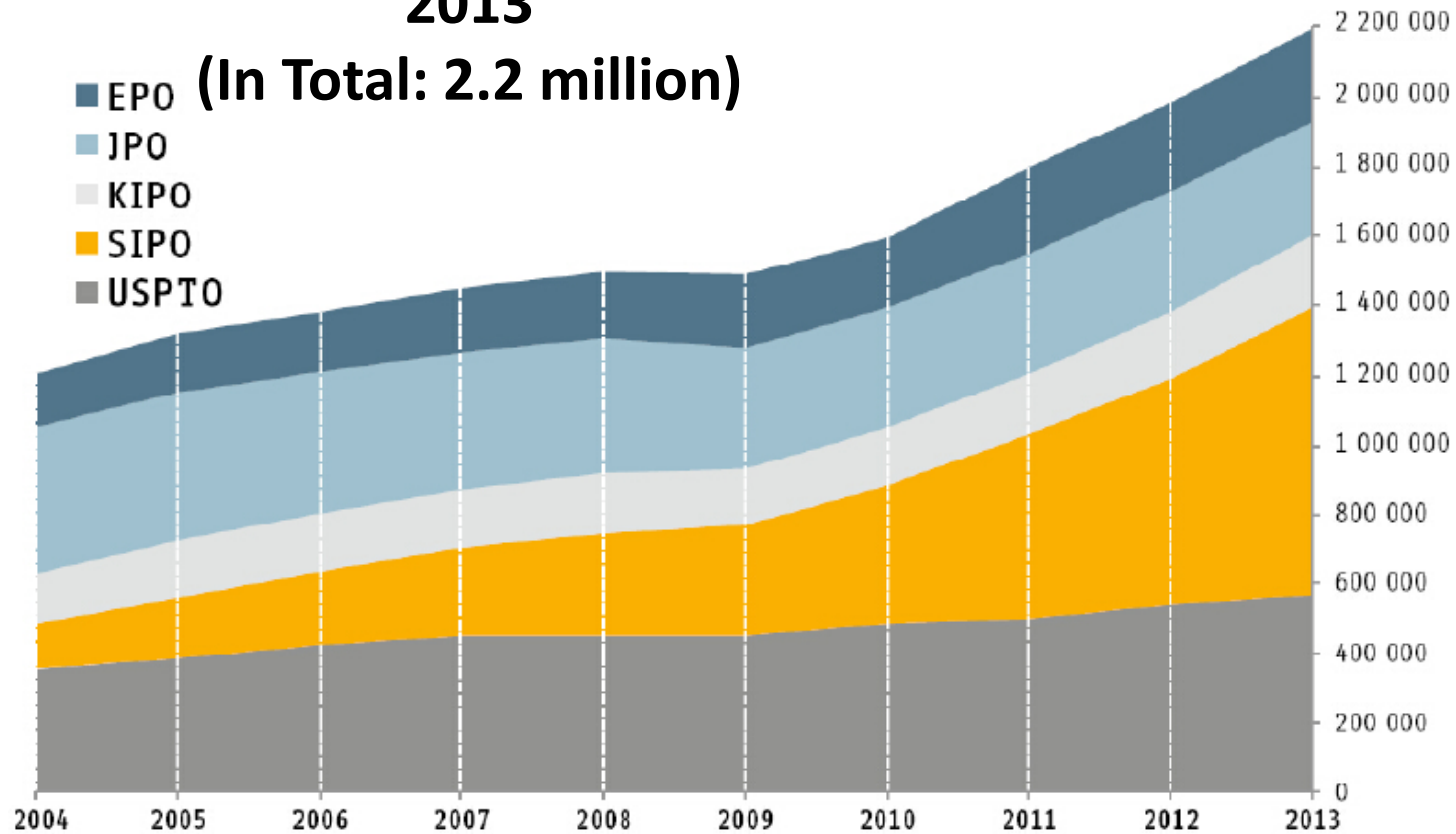
**<http://news.big5.enorth.com.cn/system/2014/01/08/011594419.shtml>*

**A PATENT TECHNOLOGY MONITORING TEAM REPORT(U.S. PATENT AND TRADEMARK OFFICE)*

PATENT

Application of Patent of Invention in Top5 IP Organization of the world 2013

E=Europe
J=Japan
K=Korea
S=China
US=U.S.A.

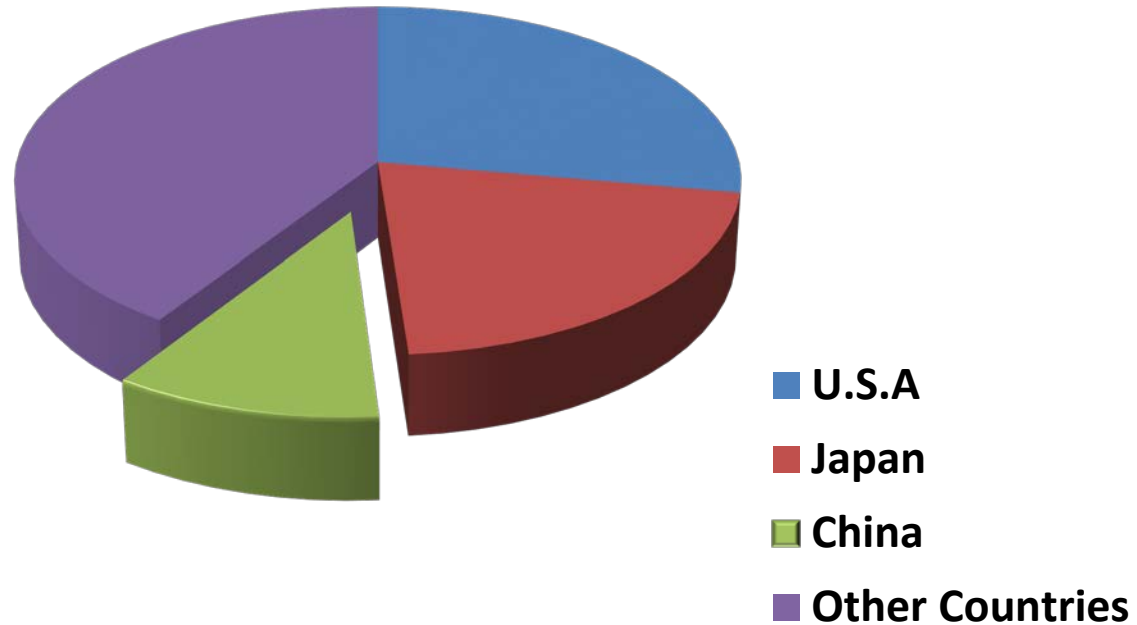


*专利局发布《2013年五局主要统计数据报告》

图 1：五局发明专利申请

PATENT

WIPO International Patent Application 2013 China The 3rd Place of the world



**http://news.xinhuanet.com/fortune/2014-03/13/c_119762566.htm*

Relaxation of Capital Flow



Relaxation of Capital Flow

- **cross border financing**
- **Qianhai Cross Border RMB Loan Management Interim Measures**
- **《前海跨境人民币贷款管理暂行办法》**
- **Qianhai enterprises can borrow RMB from banks in HK which carry RMB business**
- **RMB reserve in Hong Kong: 900 billion**



Relaxation of Capital Flow

- **Shanghai – Hong Kong mutual market access (沪港通)**
- **13 June - Establishment of mutual market access between stock markets of Hong Kong and Shanghai Regulation**
- **《沪港股票市场交易互联互通机制试点若干规定》**
- **Stage I: RMB 50 billion**



Relaxation of Capital Flow

- **Investors in Hong Kong and Shanghai can invest in shares listed in the stock markets of HK and Shanghai**
- **HKEx: market capitalization of HK\$2,883 trillion**
- **Shanghai: market capitalization of about RMB 16 trillion**



Relaxation of Capital Flow

- **Shanghai Free Trade Zone**
- Established on 22 August 2013
- Negative inventory management model is the key element of Shanghai Free Trade Zone
- Areas outside this list will change from approval system to filing system
- [负面清单管理模式](#)



Relaxation of Capital Flow

- **National Equities Exchange and Quotations (NEEQ)**
- **“New 3rd Board”**
- **More than 800 enterprises are listed in New 3rd Board since this year**
- **Aim to be the PRC Nasdaq /OTC**



Relaxation of Capital Flow

relaxation of Guarantee Law 《中华人民共和国担保法》

- Simplify procedures for cross border guarantee
- Registration instead of approval
- IP can be used for guarantee

SAFE Document No. 29

国家外汇管理局

汇发【2014】29号文



Relaxation of Capital Flow

- **Document No. 37 of State Administration of Foreign Exchange**



Relaxation of Capital Flow

- **Mutual recognition of Trusts (HK and Mainland)**
- **The SFC will continue to follow through with the Mainland regulatory authorities on arrangements in relation to the mutual recognition of funds between Hong Kong and the Mainland.**



- **Qianhai**
- **asset management company**
- **PE**
- **leasing companies**



**Part III:
recent legislative changes
in hong kong**

**their impact on IP
commercialization**

The Role of Hong Kong



The Role of Hong Kong

- Hong Kong as a close partner to China in its process of financial reforms



The Role of Hong Kong

- **As a source of funding (IPO, PE, VC and etc)**
- **Number of private equity firms in Hong Kong in 2012: 377**
- **Capital under management (US\$ million) by private equity firms in Hong Kong in 2012: 79,800**
- *HKTDC*



The Role of Hong Kong

- **As a platform (Hong Kong Stock Exchange)**
- Total equity funds raised in the securities market was \$374.3 billion in 2013
- \$166.5 billion was raised through IPOs
- The remaining \$207.8 billion was raised through post-IPO fundraising
- *HKEx*



The Role of Hong Kong

- **Cross border financing**
- **Offshore RMB Business in Hong Kong**
- **RMB deposits and outstanding RMB certificates of deposits totaled RMB1.169 trillion (April 2014)**
- **outstanding RMB bonds issued in Hong Kong amounted to RMB388.9 billion (May 2014)**
- *HK government (financial services)*



The Role of Hong Kong

- **As a reserve of talents/expertise**
- **Qianhai: Overseas “talents” and “professionals in short supply” working in Qianhai will receive an Individual Income Tax (“IIT) rebate from the Shenzhen municipal government**
- **their effective income tax burden will be equalised to what they should pay if work in overseas**



The Role of Hong Kong

- **As a testing ground of new transaction schemes**
- VIE
- Red Chips
- H Share
- bond issue

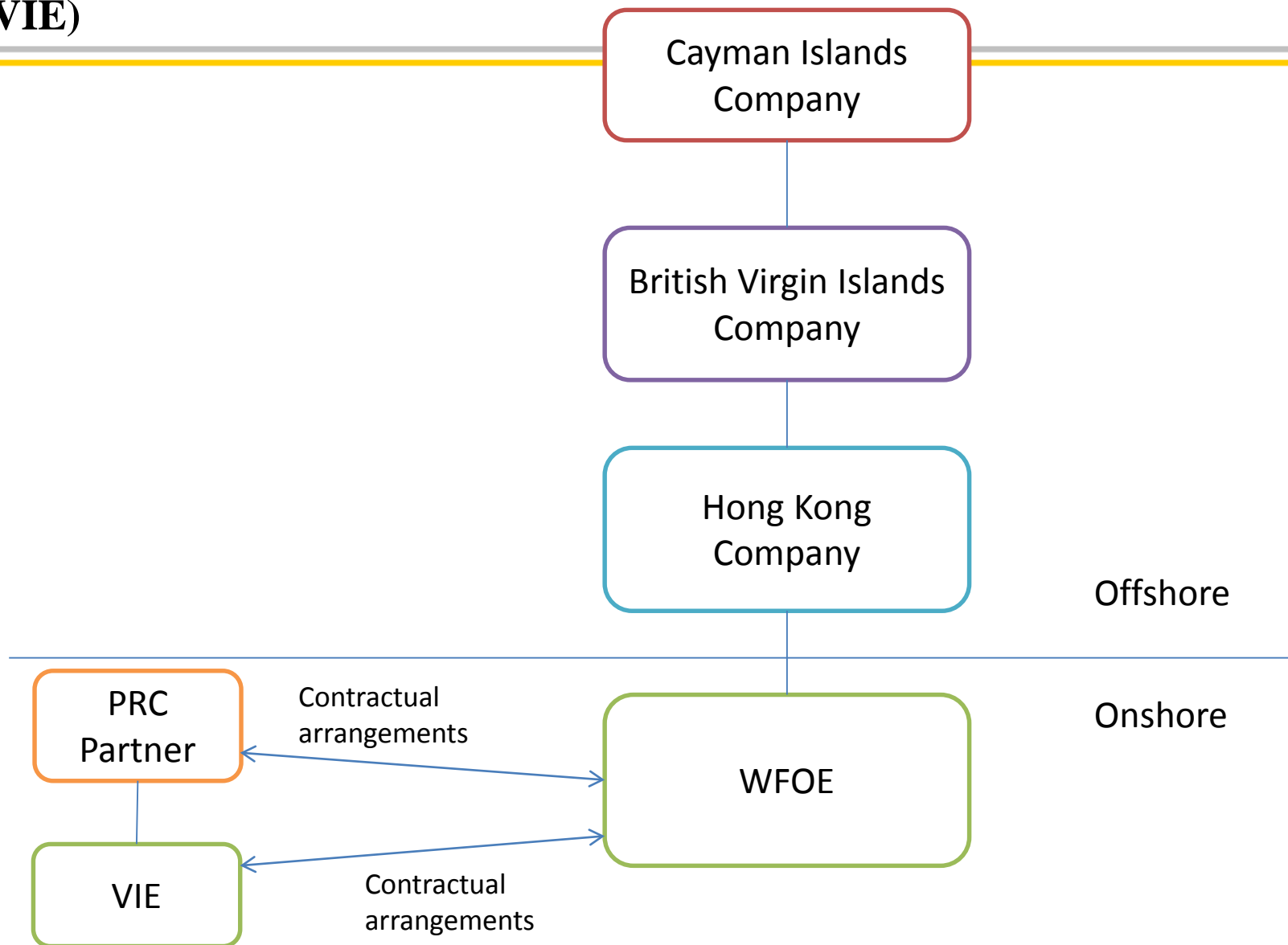


The Role of Hong Kong

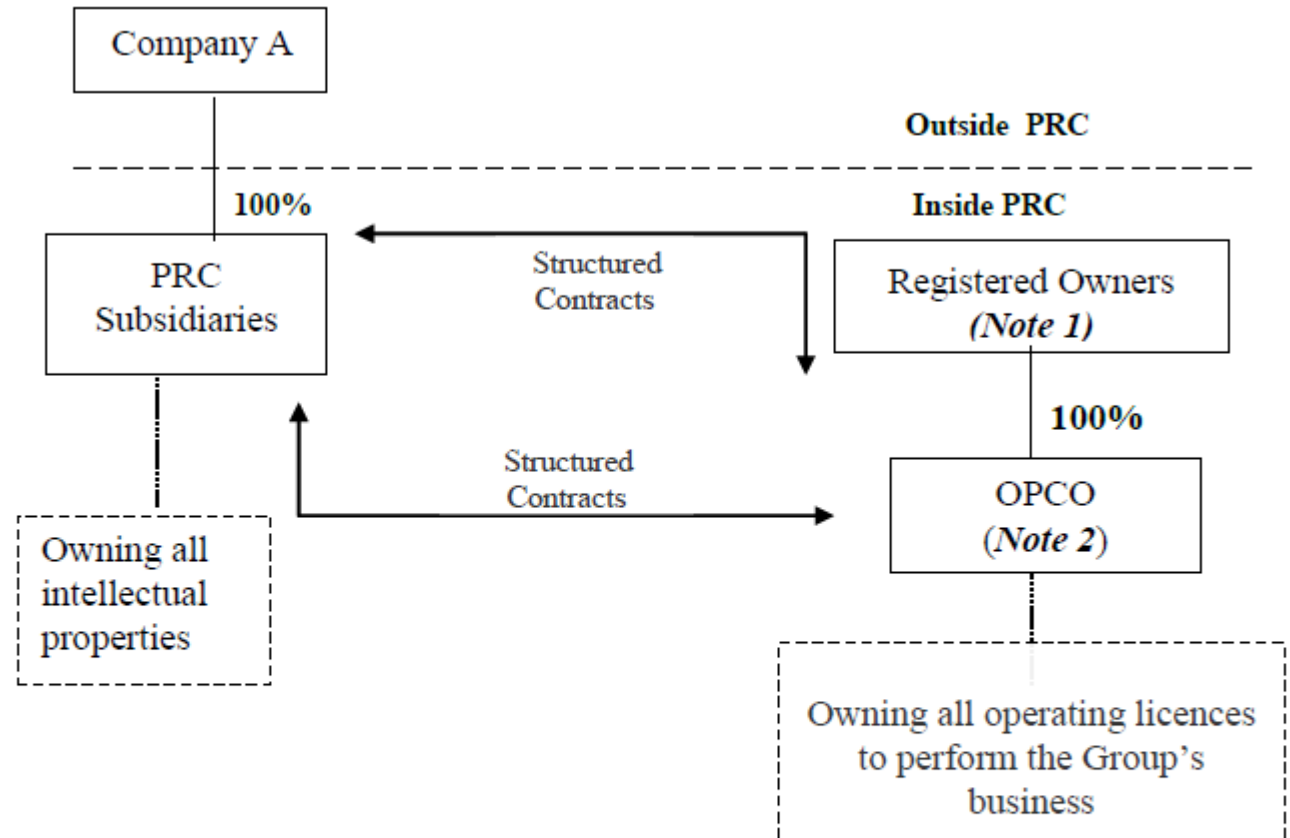
- **As a modernized regime of regulators**
- **Securities and Futures Commission (SFC)**
- **Hong Kong Exchange (HKEx)**



Variable Interest Entity (VIE)



HKEx Listing Decision (HKEx-LD43-3)



Note 1: The Registered Owners were PRC nationals and controlling shareholders of Company A

Note 2: The OPCO was incorporated in the PRC

HKEx Listing Decision (HKEx-LD43-3)

Summary of Facts

- Company A was incorporated outside Hong Kong.
- The Group operated a business in the PRC, and PRC regulations applicable to its industry sector limited foreign investment.
- Therefore, the Group did not possess the licenses required to operate its business in the PRC.
- However, the Group adopted Contractual Arrangements designed to give it the various rights.
- The Contractual Arrangements were binding on Company A, the PRC Subsidiaries, the OPCOs and the Registered Owners.

HKEx Listing Decision (HKEx-LD43-3)

The Issue Raised for Consideration

- Whether, in view of the fact that, in the conduct of its business in the PRC, Company A was a party to the Contractual Arrangements between or among Company A, the PRC Subsidiaries, the OPCOs and the Registered Owners, Company A was unsuitable for listing due to legal questions associated with the Contractual Arrangements?

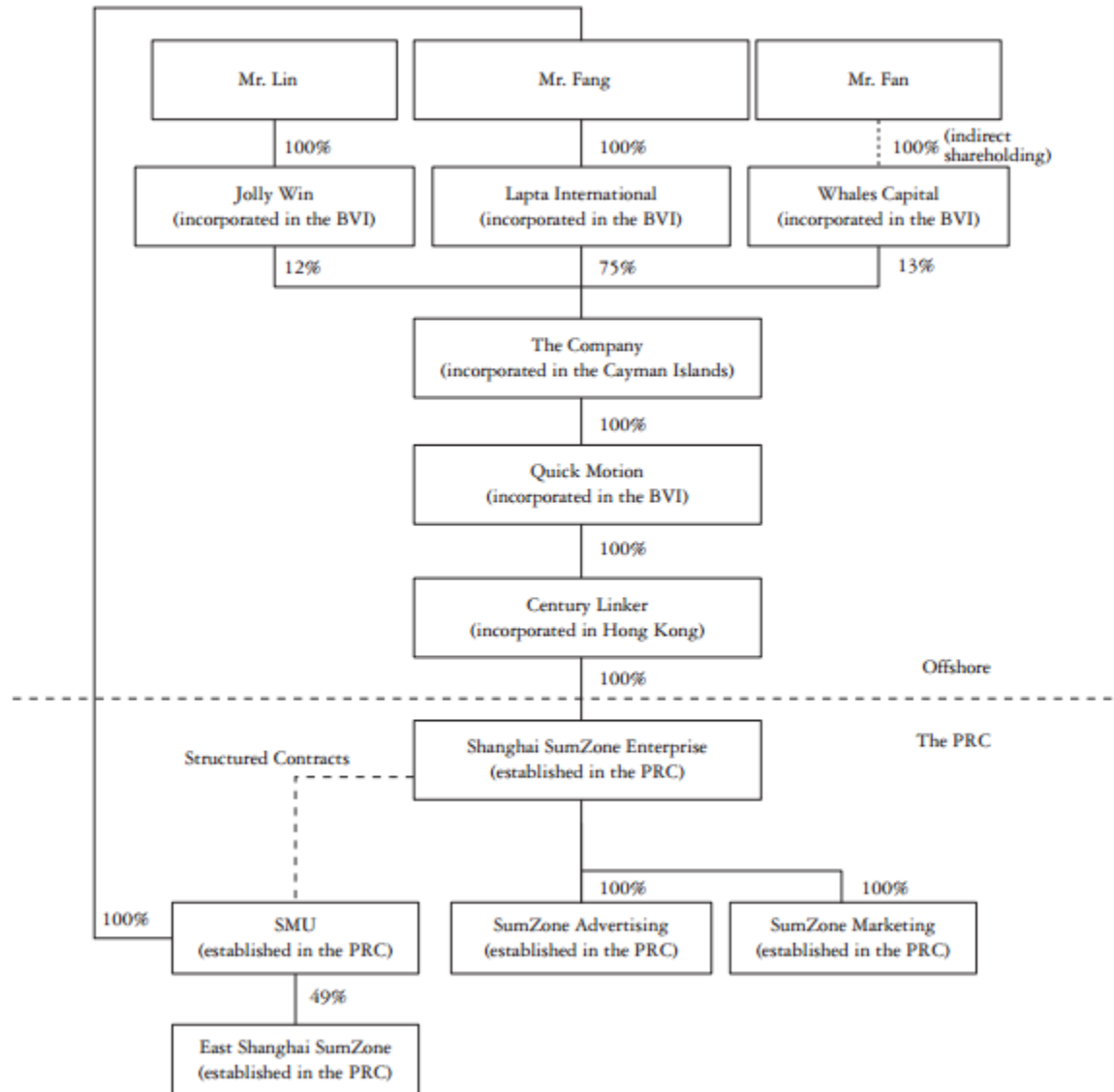
HKEx Listing Decision (HKEx-LD43-3)

The Decision

The Exchange continued to adopt a disclosure-based approach in considering Company A's listing application.

- Based on the material facts and the PRC legal opinion as submitted, the Exchange determined that Company A had demonstrated the legality of the Contractual Arrangements and its ability to ensure the sound and proper operation of the Contractual Arrangements.
- Subject to appropriate disclosures in the listing document of the Contractual Arrangements and the risks associated therewith, the Exchange determined that Company A was suitable for listing.

Branding China Group Limited (08219)

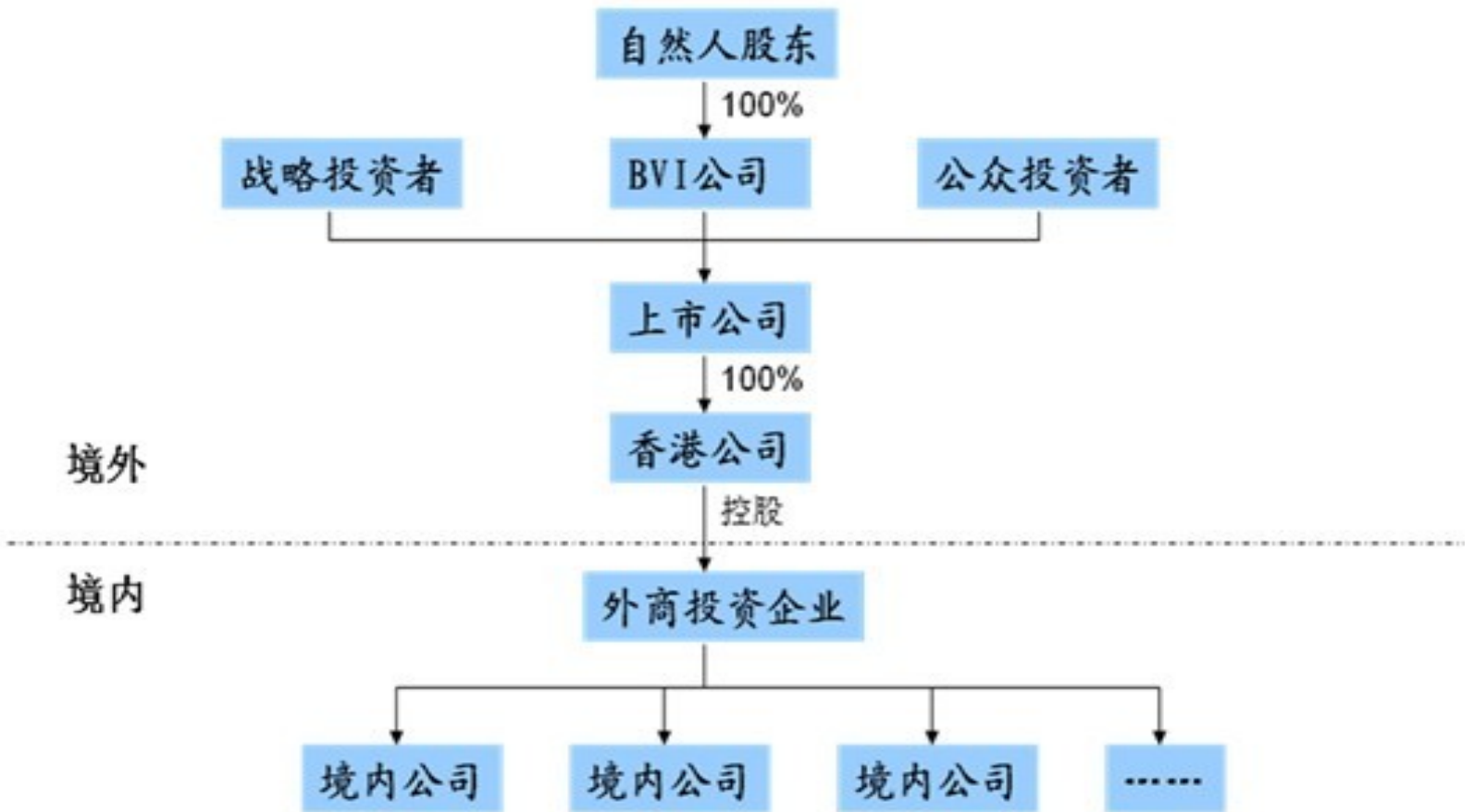


Red Chips

- Red chips are companies listed on the HKEx and controlled by Mainland entities, by way of direct or indirect shareholding and/or representation on the board of directors.
- Red-chip companies are incorporated outside Mainland China.

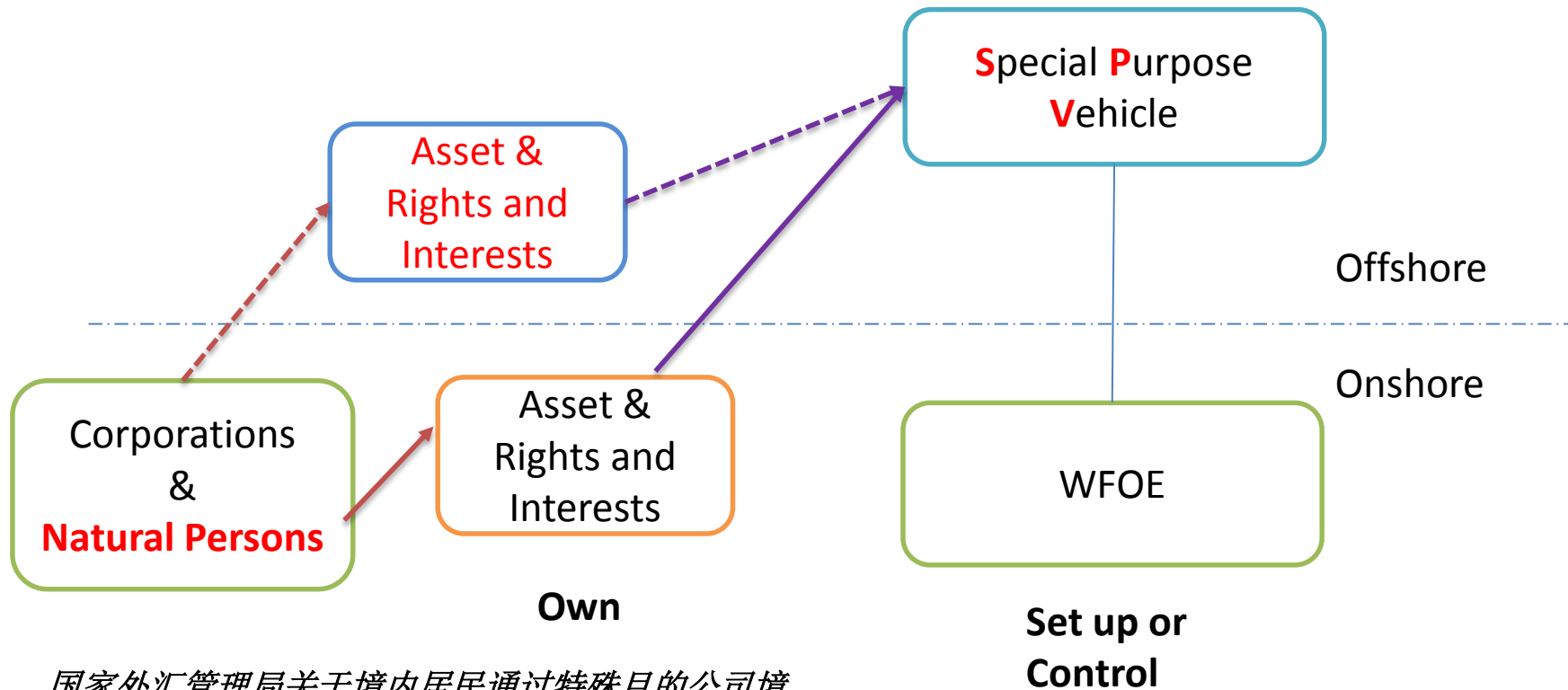
(Source: HKEx website)

Red Chips



Red Chips

Under New Rule of Foreign Exchange



国家外汇管理局关于境内居民通过特殊目的公司境外投融资及返程投资外汇管理有关问题的通知（汇发【2014】37号）

New Rule on Foreign Currencies of SPV

What's New?

- The Owner/Controller : **Natural persons** could be the owner/controller of the SPV
- Purpose of the SPV: Could be **investing** and financing
- Original Capital of the SPV:
The assets , rights and interests of the corporation onshore
or the assets , right and interests **offshore** which are owned by the Chinese residents

Red Chips

	Jun 2014	Jun 2013	End 2013
No. of H shares	194	176	182
No. of Red chips Stocks	129	121	122
No. of Mainland private enterprises	514	446	493
Market capitalisation (% of market total)	56.9%	55.9%	56.9%
Turnover value (% of equity turnover)	68.9%	69.7%	71.6%

(Source: HKEx Monthly Market Highlights - June 2014)

Red Chips

Examples:-

(1) Honworld Group Ltd (2226)

- Principal Activities: Manufacture of cooking wine, soy sauce, vinegar and other products.
- Listing Date: 28/1/2014

(2) China Fordoo Holdings Ltd (2399)

- Principal Activities: Menswear brand management and marketing, design and product development, ordering process, procurement of raw materials, self-production and outsourced production and sales and distribution.
- Listing Date: 16/7/2014

Initial Public Offering (IPO)

- There were 52 newly listed companies for the first six months of 2014, an increase of 126 per cent when compared with the 23 for the same period last year.
- Funds raised through IPOs for the first six months of 2014 was \$81,137 million, an increase of 104 per cent when compared with \$39,697 million for the same period last year.

(Source: HKEx Monthly Market Highlights - June 2014)

Regulatory Regime in HK



Hong Kong
Exchanges and
Clearing Limited
(HKEx)

Securities and
Futures
Commission
(SFC)

Regulatory Regime in HK

- **Role of HKEx**
- Operates a securities market and a derivatives market in Hong Kong and the clearing houses for those markets.
- To ensure orderly and fair markets and that risks are managed prudently, consistent with the public interest and, in particular, the interests of the investing public.

(Source: HKEx website)

Regulatory Regime in HK

- **Role of SFC**
- SFC is an independent statutory body set up to regulate the securities and futures markets in Hong Kong.
- It derives a broad range of investigative, remedial and disciplinary powers from the Securities and Futures Ordinance (SFO) and a subsidiary legislation.
-
- SFC works to ensure orderly securities and futures market operations, to protect investors and help promote Hong Kong as an international financial centre and a key financial market in China.

(Source: SFC website)

Regulatory Regime in HK

Securities and Futures Ordinance (SFO) s303(1)

- A person who commits an offence under Part XIV of SFO is liable-
 - (a) on conviction on indictment to a fine of \$10,000,000 (HK\$10 million) and to imprisonment for 10 years; or
 - (b) on summary conviction to a fine of \$1,000,000 and to imprisonment for 3 years.
- Example: false trading, price rigging, insider dealing etc.

New Legislations – Hong Kong Sponsor Regulatory Regime

Sponsor Regulatory Regime

- Consultation was launched by the Securities and Futures Commission (SFC) on a number of proposals designed to enhance Hong Kong's sponsor regulatory regime on 9 May 2012.
- The two broad areas for consultation are:-
 - (i) the regulatory regime for sponsors' conduct; and
 - (ii) legislative amendments relating to sponsors liability.
- The key obligations of sponsors are consolidated in a new paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and became effective on 1 October 2013.

New Legislations – Hong Kong Sponsor Regulatory Regime

Proposals to be adopted include:-

- (a) a sponsor is required to be formally appointed by a listing applicant for a minimum period of two months before submission of a listing application;
- (b) sponsor fees are required to be specified in a sponsor's terms of engagement and be based solely on a sponsor's role as such and not on unrelated services;
- (c) a financial adviser who is appointed to advise a listing applicant is required to fully co-operate with, and should not adversely affect, the sponsor in discharging its duties; and
- (d) a sponsor is required to notify the regulators under specified circumstances including where the sponsor ceases to act for a listing applicant.

OLD COMPANIES ORDINANCE (1950)



NEW COMPANIES ORDINANCES (2014)

New Legislations – Hong Kong

New Companies Ordinance (Cap. 622)

New Companies Ordinance (Cap. 622)

- The new Companies Ordinance and the subsidiary legislation have commenced operation on 3 March 2014.
- It aims to achieve four main objectives:-
 - to enhance corporate governance;
 - to ensure better regulation;
 - to facilitate business; and
 - to modernise the law.

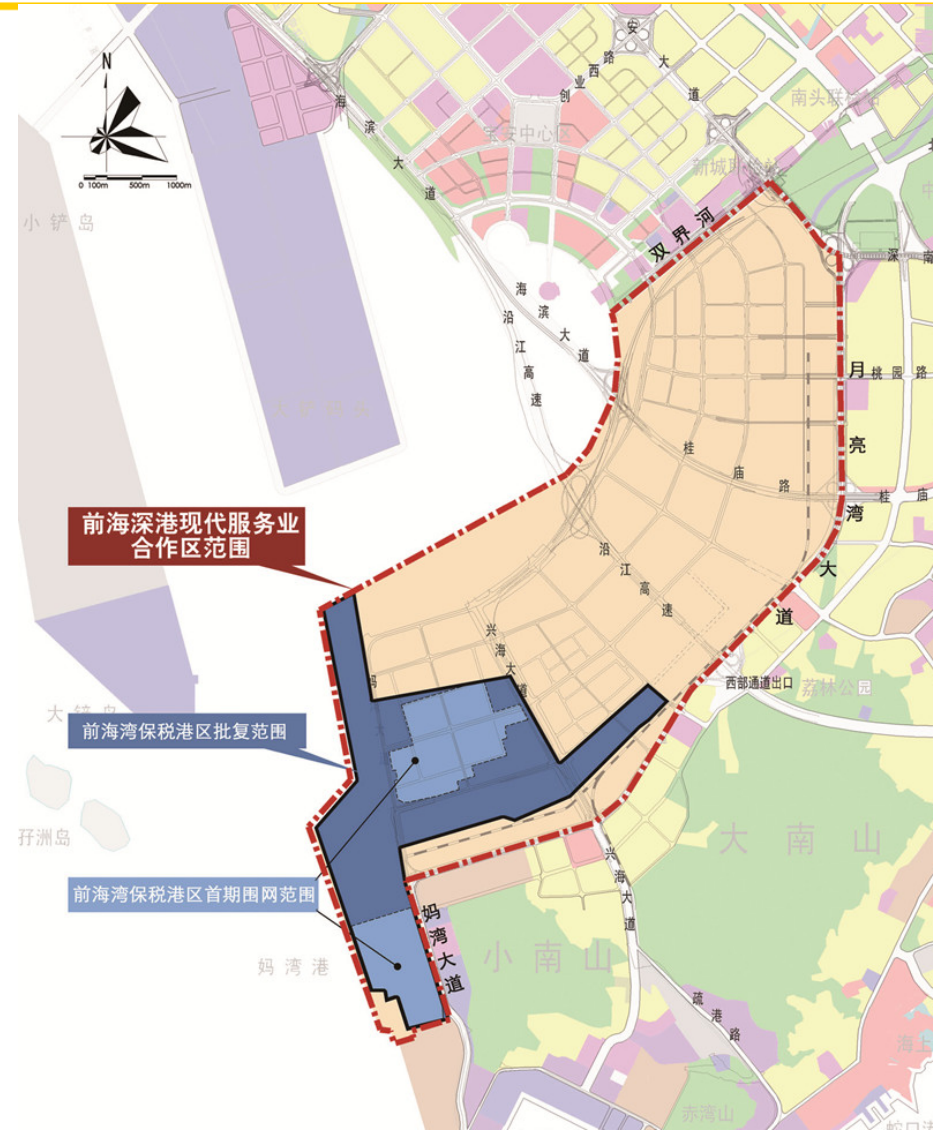
Part IV: Qianhai Shenzhen

**its policies in
facilitation of IP
commercialization**



Where is Qian Hai (bigger map???)

- Full Name:
Qianhai Shenzhen-Hong Kong
Cooperation Zone on Modern Services
Industries
- Priority industries of Qianhai
Financial Services
Modern Logistics Services
Information Services
Science and Technology Services and
other Professional Services



Qianhai – Policy

Reply of the State Council on the Relevant Policies Supporting the Development and Opening-up of the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone

《国务院关于支持深圳前海深港现代服务业合作区开发开放有关政策的批复》（国函〔2012〕58号）

Section 7: To support the establishment of innovative financial institutions in Qianhai.

（七）根据国家总体部署和规范发展要求，支持前海试点设立各类有利于增强市场功能的创新型金融机构，探索推动新型要素交易平台建设，支持前海开展以服务实体经济为重点的金融体制机制改革和业务模式创新。

Opportunities in Qianhai for IP Industry

- To provide a platform for IP transactions and to regulate such transactions
- To facilitate IP transactions by e-commerce
- To promote IP transactions through the financial policies in Qianhai

The End

Q&A

