DBIHK V1 60808

China Business

Overview

OCRA Worldwide offers cost-effective China Business Services and China market entry solutions and expertise to companies and entrepreneurs wishing to take advantage of the attractive quality-to-cost ratio of Chinese manufacturing operations or seeking to access China's growing market for imported goods and services.

The transformation of China's centrally planned economy into a market-oriented economy has created a business and market environment in China where business regulations are subject to change, business goal posts are constantly being moved and bureaucracy is overbearing. Thus, doing business in China and China market entry are often challenging experiences and coming to terms with Chinese legislation, regulation, taxation and, most importantly, the Chinese way of doing business can be both expensive and time-consuming.

OCRA Worldwide's strength lies in its understanding of and ability to deal with these China business and market entry challenges. Our extensive network of relationships in China, developed over fifteen years of doing business in China, ensures that our clients receive full support in their business activities, be they in China trade, services or investment.

Our connections in China are excellent. Our local presence in China, the Hong Kong SAR and our international outlook make us sensitive to cultural and business differences and enable us to bridge the cultural and business gaps that can so easily hinder business success in China and facilitate our ability to deliver both China business services and China market entry solutions.

Our Services

We offer a portfolio of China business services and China market entry solutions covering every aspect of these processes. Our expertise encompasses a wide-portfolio of services and advice relating to China market entry, typically leading to the establishment of a:

- A Hong Kong or a low or zero tax company, possibly "offshore".
- A Representative Office in China
- A Wholly Foreign-Owned Enterprise ("WFOE") in China
- A Joint Venture in China

Additionally, OCRA Worldwide offers:

Bespoke China Business Services relating to the identification of suitable tax advisers, lawyers, local partners, premises, factories, management, staff and expatriate housing.

Professional Corporate Administration Services - We have the capacity to deliver a turn-key back office function for an operation in Hong Kong or China. These business services encompasses communication services, accounting and handling a broad range of commercial work including documentary credit services and managing an import or export operation.

Whilst our China Business Services and China market entry solutions are broad, many of our clients utilise our services selectively, and this approach is welcomed.

Our clients are diverse. They include major US Corporations, international companies and both owner managed business and entrepreneurs. We have particular expertise in assisting Clients looking to set up business in China relating to hi-tech industries.

So, if you are an executive tasked with investigating your company's China market entry or are otherwise interested in our Hong Kong and China business services, you should contact our offices in Hong Kong, Shanghai or Beijing.

About China

China is the world's fourth-largest country (after Russia, Canada, and US). It has a population of about 1.3 billion and an estimated population growth of 0.87%. Its GDP, based on purchasing power parity, equates to US$ 6 trillion, making it the second largest economy in the world.

In late 1978 the Chinese leadership began moving the economy from a centrally planned economy to a more market-oriented system. Whereas the system operates within a political framework of strict Communist control, the economic influence of non-state organisations and individual citizens has been steadily increasing. The authorities have switched to a system of household and village responsibility in agriculture in place of the old collectivisation, increased the authority of local officials and plant managers in industry, permitted a wide variety of small-scale enterprise in services and light manufacturing, and opened the economy to increased foreign trade and investment.

The result has been a quadrupling of GDP since 1978.

Agriculture and industry have posted major gains, especially in coastal areas near Hong Kong and opposite Taiwan, where foreign investment has helped spur output of both domestic and export goods.

Access to the WTO strengthens China's ability to maintain sturdy growth rates, and at the same time puts additional pressure on the hybrid system of strong political controls and growing market influences. Beijing has claimed 7%-8% annual growth in recent years. However, China faces a set of substantial domestic economic policy challenges - banks, social welfare and agriculture - that will require considerable further effort on the part of the Chinese authorities to ensure continued economic success over the medium term.

China is the largest recipient of foreign direct investment ("FDI") among developing countries and looks set to overtake the US as the largest recipient in the world. The top investors, in decreasing order of investment, are Hong Kong, USA, BVI, Japan, Taiwan, Singapore, Republic of Korea, UK, Germany, France, Holland, Cayman Islands, Macao, Australia, and Canada.

Many foreign firms have been attracted to China by the potentially huge domestic market, despite widespread poverty and unemployment. Other investors have specifically entered China in order to produce goods for export. These firms view China as part of their global production strategies, and seek to take advantage of China's undoubted low labour costs. By 2001, foreign invested enterprises accounted for half of China's exports.

Market Entry Services

How do I form a company or representative office?

We will examine your proposed business activities in China and advise you of the options available to you under Chinese investment regulations and WTO market access commitments made by China. Other than financial institutions, a foreign company cannot set up a branch office in China. We can also advise on the tax-effectiveness of your shareholding structure and your funding arrangements.

How do I form the entity that I need?

We can assist you with the establishment of a representative office or a wholly foreign owned enterprise ("WFOE") in China. The documentation may differ depending on local requirements. Not all situations will qualify for the establishment of a wholly foreign owned enterprise, but this may change gradually under China's commitments to join the WTO. After a business license is issued for the representative office or wholly foreign owned enterprise, we can assist you to register with the local tax bureaus and confirm its taxation basis or tax preferences. We can also help you to register domain names in China.

What is a WFOE?

For some foreign investors, the prospect of having to partner with a Chinese investor presents too great a hurdle to investing in a China enterprise. Others hesitate to share technology or business strategies. Still others simply lack the necessary contacts.

The Wholly Owned Enterprise (WFOE) Law of the People's Republic of China was adopted at the Fourth Session of the Sixth National People's Congress, effective April 12, 1986. Rules regulating the WFOE were not implemented until December 12, 1990. The WFOE rules require businesses to satisfy certain requirements before being allowed to operate a 100% foreign owned enterprise in China.

These original regulations required that the WFOE:

- Be a manufacturing business
- Be in a business area conducive to the development of China's national economy
- Be capable of gaining remarkable economic results

Meet at least one of the following conditions:

- Use advanced technology and equipment, engage in the development of new products, conserve energy and raw materials, and cause the upgrading of products and the replacement of formerly imported products; or
- Export more than 50% of annual output value of all products.
- On 12th April 2001, in order to eliminate legal barriers that would impede China's joining the WTO, China announced significant changes to the WFOE regulations, including the repeal of the restrictions to WFOEs described above. As a result, the WFOE has become even more popular. Additional changes allowing the establishment of WFOEs for sales or trading companies located in special economic zones, such as certain trade zones around Shanghai, have further enhanced the standing of the WFOE among foreign investors.

The WFOE limited liability company is a separate legal person and offers limited liability protection to the investor. Requirements include:

- Only foreign owner(s). Owner can be a foreign company or a foreign individual person
- Only one director, unless the company forms a Board of Directors, for which three to thirteen directors are required, the sole director or chairman of Board of Directors is the legal Representative, none of whom need be Chinese citizens or residents
- A general manager/president, who is not required to be a Chinese citizen or resident
- A minimum capitalization of approximately US$ 200,000 (this requirement may vary depending upon local regulations).

The process of applying for approval of a WFOE can be complicated. Preparing the WFOE application, leasing space in one of the free trade zones and laying other groundwork can take several months. Once the WFOE application and the Articles of Association of the WFOE are filed with the appropriate Chinese authorities, the authorities will respond to the WFOE application with an approval, denial or a request for additional information.

What are the employer and employee issues?

A foreign assignee in China is required to apply for a Z visa and a residence permit. If the assignee is attached to a representative office, a resident representative card is also required. We can assist your assignees to obtain these documents. Since the top rates of Chinese income taxes are rather high, planning an assignee's remuneration package is very important. Representative offices are required to hire their local staff through a government agency. We can arrange for the recruitment of local staff and payroll administration.

When can my foreign investment enterprise apply to set up a branch?

Your wholly foreign owned enterprise or joint venture can normally apply to set up a branch in another locality in China after it has fully paid up its registered capital. The prerequisites for a branch may be different in different locations. Under current policies, foreign investment enterprises in certain industries or locations will not be approved to establish branches outside of its location. We can assist you in assessing the viability of a branch and applying for the registration of a branch.

Can OCRA Worldwide help me set up a joint venture?

Yes. Historically, the establishment of a Joint Venture has been the most common form of foreign investment in China. We are able to assist our clients in finding their local joint venture partners through our network of contacts.

What other China business services does OCRA Worldwide offer?

Bespoke services relating to the identification of suitable tax advisers, lawyers, local partners, premises, factories, management, staff and expatriate housing.

Professional corporate administration - We have the capacity to deliver a turn-key back office function for an operation in China. This service encompasses communication services, accounting and handling a broad range of commercial work including documentary credit services and managing an import or export operation.

So, if you are an executive tasked with setting up a WFOE, representative office, joint venture or otherwise interested in China market entry or our China Business Services, you should contact us by clicking on the button below:

Hong Kong Business

Overview

Hong Kong is a relatively small place, 1,098 square kilometers. Its economy really is open. No import duties. Companies registered in Hong Kong are treated equally regardless of origins. No tax preferences are given. No industries are sheltered.

In fact, the 2004 Index of Economic Freedom survey, issued by the Heritage Foundation, recently sited Hong Kong as the world's most liberal economy for the tenth year running. Hong Kong is again ranked 1st place in the 2007 Index of Economic Freedom Survey.

When you come to Hong Kong you know exactly what you are getting - low taxes which are precisely the same as every other company in Hong Kong, a business friendly environment, modern infrastructure, and tremendous opportunity.

Hong Kong is taxed on income sourced within Hong Kong with a standard rate of 16%. Earnings outside Hong Kong and capital gains are not taxed. Profits tax is 17.5% and there is unlimited carry over of losses.

Hong Kong has a remarkable business environment but will it last? And what does it offer to international business?

Yes it will last, and for the following reasons:

- The guarantees in the Hong Kong constitution, and
- The deeply engrained, competitive business orientation of the Hong Kong people.
- The guarantees in the Hong Kong constitution reflect decisions taken in the late 1970s and early 1980s when the Chinese leadership made a very conscious decision to provide for the concept of "one country, two systems". The constitution guarantees the essential features of the Hong Kong way of life and Hong Kong as a business centre. In particular:
- the rule of law and an impartial judiciary,
- the open market, with no import duties,
- the low, simple tax regime (no taxes are paid to Mainland China),
- the freely convertible currency; and
- the free flow of information.

So the business friendly environment was written into the constitution. It is something which Hong Kong people believe in passionately. They know that this commitment to market forces is what has taken Hong Kong from a war-shattered economy in 1945 to a thriving community of 7 million people today, with per capita GDP higher than Great Britain's.

Because Hong Kong is an open market the Asian financial crisis hit Hong Kong quite badly. International investors avoided Asia. Money was withdrawn. Hong Kong's completely open financial markets meant a steady exodus of capital, driving up interest rates and driving down stock and property prices by over fifty per cent in some cases. This forced the Hong Kong government and Hong Kong businesses to examine their competitiveness critically and to liberalise and reform the banking, telecommunications and other sectors.

Hong Kong's stock market is the second largest in Asia after Japan and is considerably more liquid, and more familiar to investors than most others in Asia. The banking sector, the ninth largest in the world by some measures, is also among the best regulated. It is well known for high levels of corporate governance, risk management and high capital adequacy ratios. These factors make Hong Kong an ideal place for foreign capital to meet the fund-raising requirements of China's enterprises.

Hong Kong also has "first mover advantage" on the Mainland. Hong Kong entrepreneurs have been developing business contacts on the Mainland since China began its open door policy in 1978.

Now China has entered the WTO, many multi-national corporations may choose to move directly into the Mainland market. Some are already well established there. They have the staff and other resources to attempt such an approach. But for every large multi-national there are hundreds of small to medium sized enterprises without such resources. They are starting to size up the potential of what could become the world's single largest consumer market.

Many opportunities in the Mainland's domestic market will come not only from the prosperous coastal regions and big cities like Beijing and Shanghai, but from the developing inner and western provinces where Hong Kong businesses already have an established foothold.

Closer Economic Partnership Arrangementt (CEPA)

Following the signing of the main parts of the Closer Economic Partnership Arrangement (CEPA), Hong Kong and the Mainland signed the Arrangement on 29th September 2003. Starting from 1st January 2004, the Arrangement is to ensure Hong Kong is “economically interlocked” with the Mainland and that smaller Hong Kong companies will benefit from the opening-up and liberalisation on the Mainland beyond China’s commitments in its WTO accession . CEPA is now coming to the fourth phrase, called CEPA IV, to be enforced on 1 January, 2008. After implementation of 4 phrases, CEPA provides tariff-free access for 100% products of Hong Kong origin (except prohibited articles) imported into the Mainland upon applications by local manufacturers and upon the CEPA rules of origin being agreed and met. On trade in services, the Mainland has agreed to provide preferential treatment to Hong Kong service suppliers in a number of service areas by taking various forms, including relaxation in equity share restrictions, reduction in the entry thresholds such as registered capital and business turnover, as well as relaxation in restrictions over geographical location and business scope. Looking further ahead, CEPA will be an open and developing platform; Hong Kong will continue to engage the mainland authorities on further liberalisation of trade in goods and services in the future

Taxation in Hong Kong

Corporate Taxation

Hong Kong has a territorial basis of taxation. Only local-source trading, property or employment income is taxed, and investment income is not taxed. The corporate profits tax rate is 17.5%; there is no capital gains tax, no withholding tax, no sales taxes, no VAT, no annual net worth taxes and no accumulated earnings taxes on companies which retain earnings rather than distribute them.

There are a number of full or partial exemptions from profits tax:

- Interest on a loan made available to the borrower in a foreign jurisdiction is not deemed Hong Kong source income and is therefore not taxable.
- An entity whose business is to grant rights to use a trademark, copyright, patent, know how or other types of intellectual property pays a flat profit tax of 5.25% (or 30% on 17.5%) of the payment received with all related expenses being non tax deductible. If the recipient of the payment is a related offshore licensing company the Hong Kong company must withhold and hand over 17.5% of the fee paid over.
- Income from the international operations of shipping companies is exempt from tax unless the ships are operating in Hong Kong waters or proximate to the same in which case only that proportion of income earned in Hong Kong is subject to local tax of 17.5%. Shipping profits meeting the conditions of the double taxation agreement with the USA are exempt from profits tax in Hong Kong.
- Dividend income received by a Hong Kong parent company from either a resident or foreign subsidiary is not deemed income in the holding company's hands and is thus not subject to an assessment to profits tax.
- Interest or capital gains made on qualifying medium debt instruments are taxed at 8.75%.

- The re-insurance of offshore risks is taxed at 8.75% of assessable profits
- Life insurance businesses are assessed at 5% of the value of the premiums arising in Hong Kong.
- For airline companies, irrespective of whether or not the company is managed and controlled from Hong Kong assessable profits are the proportion of income arising within Hong Kong (from the uplift of passengers and freight locally) to the proportion of worldwide income. Under a number of international aircraft double taxation agreements the government has agreed to include income arising abroad for taxation in Hong Kong where that income is exempted abroad under the agreement. Likewise profits meeting the conditions of the double taxation agreements are exempt from profits tax locally.
- The sale of goods on consignment from Hong Kong on behalf of a non resident is subject to a tax of 1% of the turnover without any deductions unless the non resident can produce accounts to show that he would have paid less profit tax than consignment tax in which case a normal rate of tax will apply .The selling of goods on consignment is deemed to be the equivalent of creating a permanent establishment.
- Profits remitted to a Hong Kong parent which represent the profitable disposal of its shareholding in a resident or non resident subsidiary are not assessed to tax in the territory both because the gains are capital gains and because (in the case of a non resident company) income arising outside the jurisdiction is exempt from tax under the principle of territoriality.
- The profitable disposal by a Hong Kong entity of foreign real estate is not assessed to tax in the territory both because the gains are capital gains and because of the principle of territoriality. This includes a disposal effected by means of the Hong Kong entity selling 100% of the shares in a company whose sole asset is the foreign real estate.
- The transfer by a Hong Kong entity of capital assets to a foreign or resident subsidiary or branch at market value and at a profit is considered a capital gain and thus does not attract tax in Hong Kong (unless the assets are classified as revenue assets).

- Rental income from foreign real estate is not assessable income in Hong Kong for profit tax purposes. (However depreciation & interest payments on loans made to finance the real estate tax are not deductible in the territory).
- Interest income received by a resident or non resident business entity on deposits lodged with a financial institution is exempt from profits tax (by way of exception if the deposit was made by a "financial institution" then any interest received by the financial institution is deemed trading income for profits tax purposes and taxed accordingly).
- The following sources of trading income are exempted from profits tax
- Interest received or capital gains made on the purchase, retention or sale of a Government bond issued under the Loans (Government Bonds) Ordinance;
- Exchange fund debt instruments;
- Hong Kong dollar denominated multi-agency debt instruments;
- Specified investment schemes which comply with the requirements of a government supervisory authority are exempt from tax. Specified investment schemes include investments in unit trusts and mutual funds.
- The repayment by a foreign subsidiary to its Hong Kong parent of the principal of loan capital or share capital is free of tax in the territory including where the repayment is by way of a capital reduction or a final dividend distribution in a liquidation.

Personal Taxation

Personal taxation is among the lowest in the world at around 16%. Individuals pay no tax on investment income or capital gains, whether resident or not.

There are no special rules for foreign employees of Hong Kong businesses; the territorial principle governs salaries tax with the consequence that salaries tax is only levied on income “arising in or derived from a Hong Kong employment”. The definition of income includes wages, salaries, bonuses, commissions, payments by the employer into a pension fund for the employee and gratuities. It does not include either a pension from a source outside Hong Kong or compensation for loss of employment.

The territorial principle of only taxing income arising or derived from a trade within Hong Kong results in reduced or nil tax being levied in a variety of situations. Thus:

- Income paid in Hong Kong but which relates to services rendered outside the islands is exempt from salaries tax if the fiscal authorities are satisfied that tax has already been paid on that income in a foreign jurisdiction.
- An individual with Hong Kong source employment who works abroad but renders services in Hong Kong for less than 60 days in any tax year is exempt from salaries tax in the jurisdiction.
- A non-resident with foreign source employment who works abroad but renders services in Hong Kong for more than 60 days in any tax year is assessed to tax on that proportion of his income as is represented by the number of days he worked in Hong Kong as a proportion of 365.
- Tax is not payable on that proportion of income earned in relation to work done outside Hong Kong by the Hong Kong based employee of a non resident corporation on a contract governed by the laws of a foreign jurisdiction, where the employees are paid outside Hong Kong and are taxed in that jurisdiction and where the employee's activities are not limited to working within the territory.

Double Taxation Agreements

Hong Kong has arrangement with a number of jurisdictions for double taxation relief of shipping or airline income. It has also comprehensive double tax agreements with Belgium, Thailand and the Mainland of China respectively to relieve taxation on income, for instance, dividends, interest and royalties. The Hong Kong Inland Revenue Department allows a deduction for foreign tax paid on a turnover basis in respect of income which is also subject to tax in Hong Kong. Therefore, businesses operating in Hong Kong do not generally have problems with double taxation of income.

Setting up a Business in Hong Kong

Do I form a local company, a representative office or do I register a foreign company?

We will examine your business activities and advise you on where your company might have a taxable presence. We can provide you with a comparison of the tax implications of your operations using different forms of entity (subsidiary, representative office or foreign corporation) and advise you on the most tax-efficient way to structure your operations. We will consider the appropriateness of using offshore structures in the context of your business.

How do I form the entity that I need?

We can assist you with the establishment of the Hong Kong company, representative office, the registration of an offshore company or the acquisition of a shelf company in Hong Kong or offshore. We can help you register with the Hong Kong Companies Registrar, Inland Revenue Department and other regulatory authorities.

We can help you apply for a Hong Kong business licence if required for your industry (eg financial services and telecommunications industries) and also register domain names in the region. You may also need a business address but have not found suitable premises, we can provide you with a business address.

How do I administer my Hong Kong Company?

OCRA Worldwide's core business is professional corporate administration. We have the capacity to deliver a turn-key back office function for an operation in Hong Kong or China. This service encompasses communication services, accounting and handling a broad range of commercial work including documentary credit services and managing an import or export operation.

We provide:

- Company formation services.
- Domiciliation.
- Professional directors and nominee shareholders.
- Company secretarial services.

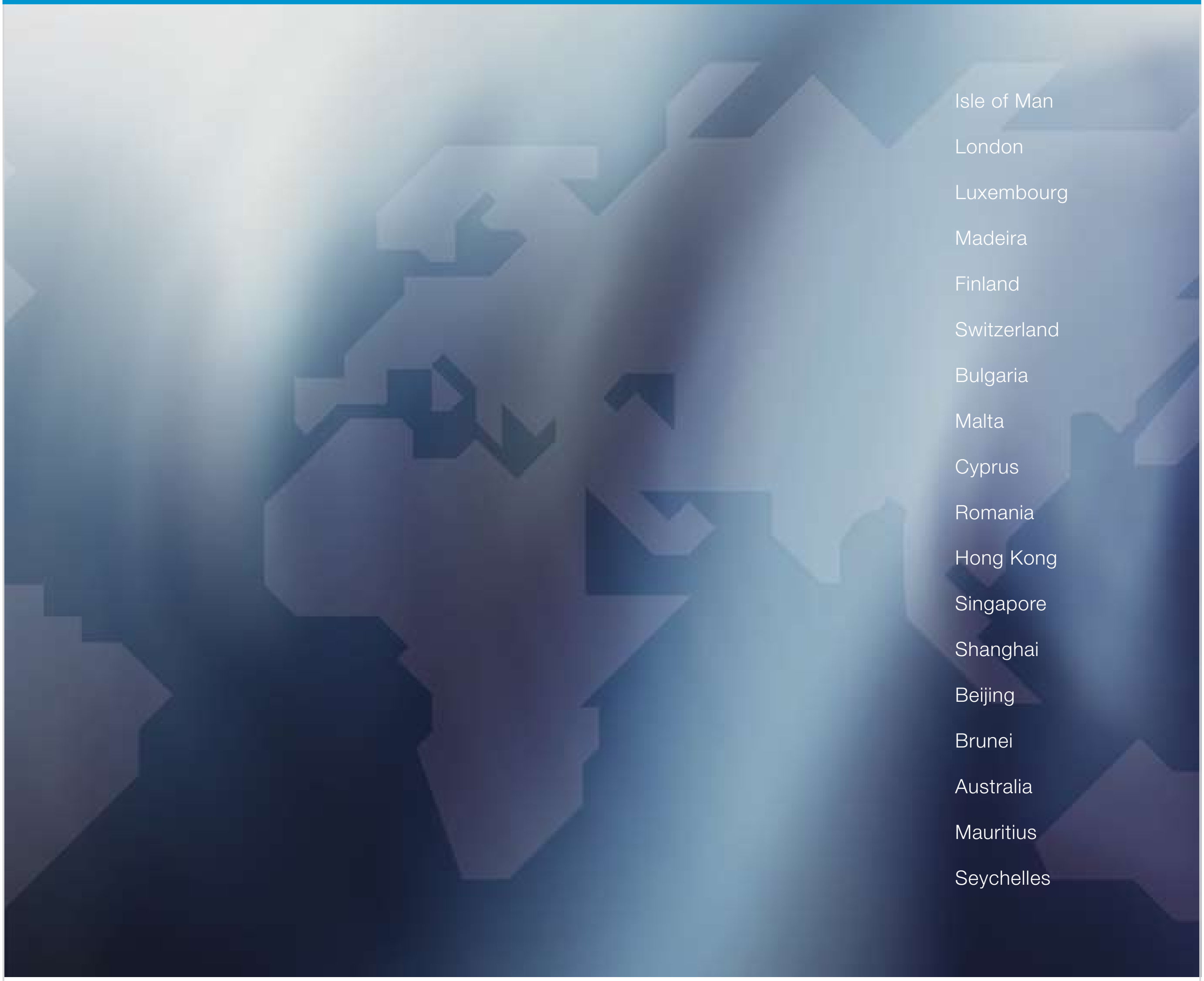
- Company administration services.
- Assistance in the day to day management of the company.
- A turnkey administrative service for client companies.
- Assistance in opening and operation bank accounts.
- Trading and letter of credit services.
- Accounting, financial reporting and consolidation.
- The preparation of management and statutory accounts.
- Arranging audits.
- Arranging for the provision of legal and taxation advice and opinions.
- Intellectual property. Trade mark, patent and royalty work.

What are the employer and employee issues?

The employer needs to obtain visas for all expatriate employees unless they have right of abode in Hong Kong. This must be obtained before the employee comes to Hong Kong. The employer sponsor can apply for the employee's visa at the Chinese Visa Office in the place of residence of the employee or from the Hong Kong Immigration Department. We can help employers apply for visas.

We can also advise on other employment issues such as preparation of the employees' Hong Kong and overseas tax returns, preparation of the employer's tax return, drafting of employment contracts and other employment issues.

So, if you are an executive tasked with setting up in Hong Kong, Hong Kong company formation or otherwise interested in the trading and fiscal advantages of operating in Hong Kong, you should contact us by clicking on the button below:



Who to Contact

The OCRA Worldwide Group has a presence spanning every continent in the world with offices in 20 locations. We are open 24/7 around the world, speak many languages and are in tune with the world's many cultures, but above all else 'our business' is about people and we have people to serve you!

If you have read this document and found something that relates to your circumstances, then be assured that we are dedicated to the delivery of business solutions designed to reduce costs and maximise profits.

The consulting office for doing business in this country follows on the next page. Should you prefer to deal with another of our offices, please visit our website at www.ocra.com for a full listing of office contact details.

Who to Contact at OCRA Hong Kong and China

Hong Kong

Bart Dekker, LLM

Our China Business Team is headed by Bart Dekker who is a Group Director and based in Hong Kong. Bart Studied international law at the University of Amsterdam and gained experience in fiscal engineering and corporate structuring with an international banking group. He specialises in the utilisation of Hong Kong for international business and matters relating to China. He oversees our activities in China, SE Asia and Australia.

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