

## ▶ Licensing Regime in Hong Kong

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# The Hong Kong Licensing Regime

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- ▶ The licensing and registration of persons operating in Hong Kong's securities and futures markets is dealt with in Part V of the Securities and Futures Ordinance (**SFO**) which came into effect on 1 April 2003. The SFO is administered by the SFC.
- ▶ Part V of the SFO establishes a 'single licence' regime whereby a person requires only one licence or registration to conduct different types of regulated activities.
- ▶ The SFO prohibits any person from carrying on a business (or holding himself out as carrying on a business) in a regulated activity unless an appropriate authorisation has been granted or an exemption or exclusion applies.

# Types Of Regulated Activities

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- ▶ Currently, there are 10 types of ‘regulated activities’ in Hong Kong :
  - Type 1: dealing in securities
  - Type 2: dealing in futures contracts
  - Type 3: leveraged foreign exchange trading
  - Type 4: advising on securities
  - Type 5: advising on futures contracts
  - Type 6: advising on corporate finance
  - Type 7: providing automated trading services
  - Type 8: securities margin financing
  - Type 9: asset management
  - Type 10: providing credit rating services

# The Licensed Corporation

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- ▶ For a corporation to be licensed to carry out regulated activities in Hong Kong, section 116 (2) of the SFO requires that it has to be either a company incorporated in Hong Kong or an overseas company registered under Part 16 of the Companies Ordinance having a principal place of business in Hong Kong (i.e. branch company) .
- ▶ In general, Hong Kong branch offices are subject to the same legal and tax consequences as companies incorporated in Hong Kong.
- ▶ In particular, the tax rate applied to profits is the same for local and foreign companies.
- ▶ The main reason for preferring a Hong Kong subsidiary over a branch is that the subsidiary will be completely separate from its parent so that the parent will not be liable for the debts of the subsidiary.

# Exemptions From Licensing Requirements

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- ▶ Under certain circumstances, a particular type of licence may not be required for carrying the relevant type of regulated activities.
  
- ▶ The major applicable exemptions include :
  - incidental exemption
  
  - margin financier exemption
  
  - advising group company exemption

# Exemptions From Licensing Requirements

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## ▶ Incidental exemption :

- \* Licensed for type 1 regulated activity and carry out certain other regulated activities
- If you are licensed for type 1 regulated activity (dealing in securities) and you wish to carry out type 4 (advising on securities), type 6 (advising on corporate finance) and/or type 9 (asset management) regulated activity, you do not need to be licensed for types 4, 6 and 9 provided that these activities are carried out wholly incidental to your securities dealing business.
- The exemption normally applies to stockbrokers who provide investment advice or manage discretionary accounts for their securities clients.

# Exemptions From Licensing Requirements (Cont'd)

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▶ **Incidental exemption** : *(cont'd)*

- \* Licensed for type 2 regulated activity and carry out certain other regulated activities
  - If you are licensed for type 2 regulated activity (dealing in futures contracts) and you wish to carry out type 5 (advising on futures contracts) and/or type 9 (asset management) regulated activity, you do not need to be licensed for types 5 and 9 provided that these activities are carried out wholly incidental to your futures dealing business.
  - The exemption normally applies to futures brokers who provide investment advice or manage discretionary accounts for their futures clients

# Exemptions From Licensing Requirements (Cont'd)

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▶ **Incidental exemption** : *(cont'd)*

- \* Licensed for type 9 regulated activity and carry out certain other regulated activities
  - If you are licensed for type 9 regulated activity (asset management) and you wish to carry out type 1 (dealing in securities), type 2 (dealing in futures contracts), type 4 (advising on securities) or type 5 (advising on futures contracts) regulated activity, you do not need to be licensed for these regulated activities provided that they are carried out solely for the purposes of your asset management business (for types 4 and 5, such asset management business must involve the management of a portfolio under a collective investment scheme).
  - This exemption normally applies to fund managers who place trade orders to dealers or provide investment advice/research reports in the course of managing their clients' portfolios of securities and/or futures contracts.



# Exemptions From Licensing Requirements (Cont'd)

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▶ **Margin financier exemption :**

- If you are licensed for type 1 regulated activity (dealing in securities) you do not need separately be licensed for type 8 regulated activity (securities margin financing) to carry out securities margin financing activities for your clients.
- However, you would need to satisfy a more stringent financial resources requirement in terms of paid-up capital in order to do so.
- This exemption normally applies to stockbrokers who also provide margin financing facilities to their securities clients.

# Exemptions From Licensing Requirements (Cont'd)

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▶ **Advising group company exemption :**

- You are not required to be licensed for type 4 (advising on securities), type 5 (advising on futures contracts), type 6 (advising on corporate finance) or type 9 (asset management) regulated activity if you provide the relevant advice or services solely to your wholly owned subsidiaries, your holding company which holds all your issued shares, or other wholly owned subsidiaries of that holding company.

# Exemptions From Licensing Requirements (Cont'd)

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- ▶ **Dealing with professional investor exemption :**
  - You may not be required to be licensed for futures or securities dealing activity if you act as principal and deal with “professional investors” only.
  - “Professional investor” is specifically defined in Part 1 of Schedule 1 to the SFO
  - However, definition of “professional investor” in the Securities and Futures (Professional Investor) Rules does not apply in this exemption

# Capital Requirements

- ▶ Set out below are the minimum capital requirements for each type of regulated activity (if you apply for more than one type of regulated activity, the minimum paid-up share capital and liquid capital that you should maintain shall be the higher or the highest amount required amongst those regulated activities you apply for) :

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
<b>Type 1 –</b>		
a)in the case where the corporation is an approved introducing agent or a trader	Not applicable	HK\$500,000
b)In the case where the corporation provides securities margin financing	HK\$10,000,000	HK\$3,000,000
c)In any other case	HK\$5,000,000	HK\$3,000,000

## Capital Requirements (Cont'd)

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
<p><b>Type 2 –</b></p> <p>a)in the case where the corporation is an approved introducing agent, a trader or a futures non-clearing dealer</p> <p>b)In any other case</p>	<p>Not applicable</p> <p>HK\$5,000,000</p>	<p>HK\$500,000</p> <p>HK\$3,000,000</p>
<p><b>Type 3 –</b></p> <p>a)in the case where the corporation is an approved introducing agent</p> <p>b)in any other case</p>	<p>HK\$5,000,000</p> <p>HK\$30,000,000</p>	<p>HK\$3,000,000</p> <p>HK\$15,000,000</p>
<p><b>Type 4 –</b></p> <p>a)in the case where in relation to type 4 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets</p> <p>b)In any other case</p>	<p>Not applicable</p> <p>HK\$5,000,000</p>	<p>HK\$100,000</p> <p>HK\$3,000,000</p>

## Capital Requirements (Cont'd)

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
<p><b>Type 5 –</b></p> <p>a)in the case where in relation to type 5 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets</p> <p>b)In any other case</p>	<p>Not applicable</p> <p>HK\$5,000,000</p>	<p>HK\$100,000</p> <p>HK\$3,000,000</p>
<p><b>Type 6 –</b></p> <p>a)in the case where the corporation acts as a sponsor:</p> <p style="padding-left: 40px;">- hold client assets</p> <p style="padding-left: 40px;">-not hold client assets</p> <p>b)in the case where the corporation does not act as a sponsor:</p> <p style="padding-left: 40px;">- hold client assets</p> <p style="padding-left: 40px;">- not hold client assets</p>	<p>\$10,000,000</p> <p>\$10,000,000</p> <p>HK\$5,000,000</p> <p>Not applicable</p>	<p>HK\$3,000,000</p> <p>HK\$100,000</p> <p>HK\$3,000,000</p> <p>\$100,000</p>
<b>Type 7</b>	HK\$5,000,000	HK\$3,000,000
<b>Type 8</b>	HK\$10,000,000	HK\$3,000,000

## Capital Requirements (Cont'd)

Regulated activity	Minimum paid-up share capital	Minimum liquid capital
<p><b>Type 9 –</b></p> <p>a)in the case where in relation to type 9 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets</p> <p>b)in any other case</p>	<p>Not applicable</p> <p>HK\$5,000,000</p>	<p>HK\$100,000</p> <p>HK\$3,000,000</p>
<p><b>Type 10 –</b></p> <p>a)in the case where in relation to type 10 regulated activity, the corporation is subject to the licensing condition that it shall not hold client assets</p> <p>b)in any other case</p>	<p>Not applicable</p> <p>HK\$5,000,000</p>	<p>HK\$100,000</p> <p>HK\$3,000,000</p>

# Licensed Persons

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## ▶ Responsible officers (RO):

- A licensed corporation is required to appoint two ROs who have been approved by the SFC as ROs in relation to each of its regulated activities.
- The same individual, however, may be appointed to be a RO for more than one regulated activity.
- At least one of the ROs must be an executive director (defined as a director who actively participates in, or is responsible for directly supervising, the business of a regulated activity for which a corporation is licensed).
- Every executive director of a licensed corporation must be approved by the SFC as a RO in relation to the regulated activity in which he participates or supervises.



## Licensed Persons (Cont'd)

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▶ **Licensed representative :**

- Any individual who carries on one or more regulated activities on behalf of a licensed corporation is required to apply for approval as a “licensed representative” accredited to that corporation.
- A licensed representative may be accredited to more than one licensed corporation.

# Competence Requirements

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- ▶ Generally, proposed ROs must possess the appropriate ability, skills, knowledge and experience to properly manage and supervise the corporation's proposed regulated activities and fulfill four basic elements
- ▶ A proposed licensed representative should possess a basic understanding of the market in which he is to work as well as the laws and regulatory requirements applicable to the industry and he is expected to fulfill three basic elements

# Competence Requirements For ROs

Four basic elements			Can be compensated by
(1)	Academic / industry / qualification	Passed one of the recognised industry qualifications	<ul style="list-style-type: none"> <li>• Degree in accounting, business administration, economics, finance or law; or other degree (with passes in at least two courses in the above disciplines); or</li> <li>• Internationally recognised professional qualifications in law, accounting or finance; or</li> <li>• Passes in English or Chinese, and Mathematics in HKCEE or equivalent plus an additional 2 years relevant industry experience; or</li> <li>• An additional 5 years relevant industry experience</li> <li>• <i>(Applicant may apply for exemption from the recognised industry qualification requirement if he satisfies the exemption criteria)</i></li> </ul>
(2)	Industry experience	Possess 3 years relevant industry experience over the 6 years immediately prior to the date of application	---
(3)	Management experience	Has a minimum of 2 years proven management skill and experience	---
(4)	Regulatory knowledge	Passed one of the recognised local regulatory framework papers	<i>Applicant may apply for exemption from taking the recognised local regulatory framework paper if he satisfies the exemption criteria</i>

# Competence Requirements For A Licensed Representative

Four basic elements			Can be compensated by
(1)	Academic qualification	Passes in English or Chinese, and Mathematics in HKCEE or equivalent	<ul style="list-style-type: none"> <li>• Degree in accounting, business administration, economics, finance or law; or other degree (with passes in at least two courses in the above disciplines); or</li> <li>• Internationally recognised professional qualifications in law, accounting or finance; or</li> <li>• An additional 2 years relevant industry experience for lacking either (1) or (2); or</li> <li>• An additional 5 years relevant industry experience for lacking both (1) and (2)</li> </ul>
(2)	Industry experience	Passed one of the recognised industry qualifications	
(3)	Regulatory knowledge	Passed one of the recognised local regulatory framework papers	<i>Applicant may apply for exemption from taking the recognised local regulatory framework paper if he satisfies the exemption criteria</i>

# Local Regulatory Framework Papers

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- ▶ Subject to exemptions, all ROs and licensed representatives must have passed one of the recognised local regulatory framework papers.
- ▶ Proposed ROs or licensed representatives who are licensed in their own jurisdictions, may be able to be exempt from taking relevant regulatory framework papers in Hong Kong.
- ▶ We normally will review the previous licensing records and the relevant details of the licensing papers so as to assist to assess as to whether any further papers will need to be taken or whether any exemptions can be applied for.

# Senior Management

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- ▶ Senior Management of a licensed corporation includes:
  - ▶ Directors;
  - ▶ Responsible Officers; and
  - ▶ Managers-In-Charge of Core Functions (**MICs**)
  
- ▶ The above three categories are not mutually exclusive.
  
- ▶ “MIC” refers to an individual appointed by a licensed corporation to be principally responsible, either alone or with others, for managing any of the following functions of the corporation:
  - ▶ Overall Management Oversight;
  - ▶ Key Business Line;
  - ▶ Operational Control and Review;
  - ▶ Risk Management;
  - ▶ Finance and Accounting;
  - ▶ Information Technology;
  - ▶ Compliance;
  - ▶ Anti-Money Laundering and Counter-Terrorist Financing.

## Senior Management (Cont'd)

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- ▶ MICs of the **Overall Management Oversight** function or the **Key Business Line** function must be approved as ROs.
- ▶ A corporation applying for a licence must provide **MICs information** and **organisational chart**.
- ▶ Management structure (including the appointment of MICs) should be approved by the board of directors of the corporation.
- ▶ After the grant of a licence by the SFC, the licensed corporation must notify the SFC of any changes in its appointment of MICs or any changes in the particulars of its MICs within 7 business days of the changes. An updated organisational chart may be required.

## Business Structure

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- ▶ As part of the licensing application, the SFC would require information on the organisation and corporate structure of the applicant.
- ▶ We usually will review your organisation chart (including all corporations and individuals and relevant percentage of holdings up to the ultimate beneficial shareholders) so as to assist us to determine what forms would need to be filed with.



## Office Premises

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- ▶ Licensed corporations are required to have suitable office premises to conduct its regulated activities.
  
- ▶ In assessing whether an office premises is appropriate, the SFC will consider the following:
  - the security of the premises and whether there is a proper segregated office area;
  - whether essential office equipment and telecommunication systems are situated in an area accessible only by the firm's personnel;
  - whether the firm has taken sufficient actions/measures to avoid confusion to its clients due to the co-existence of other forms in the same premises;
  - whether confidential or non-public information and client privacy will be sufficiently safeguarded against unauthorised access or leakage; and
  - whether the premises are always accessible for visit by regulators.

- ▶ The Securities and Futures (Insurance) Rules (“**Rules**”) set out the insurance requirements and the Rules are applicable to all licensed corporations other than one which is (i) not an exchange participant; and (ii) hold a licence subject to condition that it shall not hold client’s assets.
- ▶ Section 4 of the Rules further provides that a licensed corporation governed by the Rules shall take out and maintain insurance for that regulated activity where the SFC has approved a master policy of insurance.
- ▶ For the period from 1 April 2017 to 31 March 2018, there are two master policies of insurance respectively applicable to stock exchange participants licensed for type 1 regulated activity and futures exchange participants licensed for type 2 regulated activity.
- ▶ As far as we are aware, no such policies are applicable to types 4, 5 and 9 regulated activities to date.

## Timing And SFC's Performance Pledge

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- ▶ The current performance pledge of the SFC for the processing of licensed application is 15 weeks.
- ▶ The performance pledge for processing licensing representatives and RO applications are 8 weeks and 10 weeks respectively.
- ▶ The above timing does not include the amount of time required for preparation of the materials.
- ▶ The duration required for preparation will depend on the preparedness and responsiveness of the client and normally this would take approximately 2-4 weeks.
- ▶ The location of the client may have a factor on this timing.

## Recent Licensing Experience

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- ▶ We regularly assist and make submissions to the SFC on behalf of clients for obtaining of licenses to carry out regulated activities in Hong Kong
- ▶ Selected licensing work:
  - recently advised a US headquartered financial-services firm in connection with its establishment of a Hong Kong subsidiary or branch for the set up of a futures contracts dealing practice in Hong Kong and the establishment of its leveraged foreign exchange business in Hong Kong
  - recently advised on the approval for change of substantial shareholder and approval of new nominated responsible officer of a fund management and securities advisory firm following its acquisition by a Thai private banking group
  - recently advised on the approval for change of substantial shareholders following the global merger of our client, an independently-owned private capital investment management firm, with a locally-based private investment group

## Recent Licensing Experience

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- ▶ Selected licensing work (cont'd):
  - recently advised on the approval to carry out asset management and securities advisory services in connection with a US-based group focusing on global energy and investments funds, which we were also advising in connection with its Chapter 21 listing on the Hong Kong Stock Exchange
  - recently advised on the merger of Hong Kong offices of a Taiwanese financial services and securities firm (which we assisted in setting up) with the Hong Kong subsidiary of another listed Taiwanese financial group

## Reference Materials

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- ▶ The SFC has issued various rules, codes and guidelines that is relevant to licensed corporations. Some of these attached for reference and include:
  - Guidelines on Competence (of corporations and licensed individuals);
  - Code of Conduct for Persons Licensed by or Registered with the SFC;
  - Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC;
  - Fund Manager Code of Conduct;
  - Fit and Proper Guidelines
  - Licensing Handbook



- ▶ Charltons' extensive experience in corporate finance makes us uniquely qualified to provide a first class legal service
- ▶ Extensive initial public offering and listing experience
- ▶ Representative offices in Shanghai, Beijing and Yangon
- ▶ **"Corporate Finance Law Firm of the Year in Hong Kong"** awarded to Charltons in the Corporate INTL Magazine Global Award 2014
- ▶ **"Boutique Firm of the Year" / "Boutique Transactional Law Firm of the Year"** awarded to Charltons by Asian Legal Business for the years 2002, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017
- ▶ **"Hong Kong's Top Independent Law Firm"** awarded to Charltons in the Euromoney Legal Media Group Asia Women in Business Law Awards 2012 and 2013
- ▶ **"Equity Market Deal of the Year"** awarded to Charltons in 2011 by Asian Legal Business for advising on the AIA IPO

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- ▶ Excellent links and networks with law firms worldwide.
- ▶ Julia Charlton was named the “**Capital Markets Lawyer of the Year – Hong Kong**” in the Finance Monthly Global Awards 2014.
- ▶ Julia Charlton was named a “**Leading Lawyer**” by Asia Law & Practice for the years 2002, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015 and 2016.
- ▶ Julia Charlton was also named a “**Leading Advisor**” by Acquisition International for 2013.
- ▶ “**Asian Restructuring Deal of the Year**” 2000 awarded to Charltons by International Financial Law Review for their work with Guangdong Investment Limited.
- ▶ Finalist for China Law & Practice’s “Deal of the Year (M&A)” 2007 for their work on Zijin Mining Group Co Ltd.’s bid for Monterrico Metals plc.



## Practice Areas

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- ▶ Capital markets
- ▶ Corporate and commercial
- ▶ Securities
- ▶ Mergers and acquisitions
- ▶ Investment funds: China and offshore
- ▶ Derivatives
- ▶ Restructuring
- ▶ Venture capital
- ▶ Investment



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# Practice Areas

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## ▶ **Capital Markets**

- Global offerings and GDRs
- IPOs and Placings
- Listing on the Hong Kong, Shanghai, Shenzhen, London and Luxembourg stock exchanges

## ▶ **Corporate and Commercial**

- Mergers and Acquisitions
- Joint ventures
- Stock exchange advisory
- Corporate governance
- Stock options
- Employment law

## ▶ **Securities**

- Compliance and disclosure
- Dealing and advisory authorisations in Hong Kong and Mainland China
- Options

## ▶ **Investment Funds: China and Offshore**

- Authorised and unauthorised funds
- Stock exchange listing (including Hong Kong, Dublin, London, Cayman, Bermuda stock exchanges)
- Closed-end and open-ended structures
- Hedge funds

## ▶ **Mergers and Acquisitions**

- Hong Kong Code on Takeovers and Mergers
- Public offerings
- Reverse takeovers
- Private acquisitions
- Due diligence in China and elsewhere in Asia

## ▶ **Derivatives**

- Structuring listed and unlisted derivatives
- Placings on Hong Kong and Luxembourg listed warrants and other structured products
- Compliance and regulatory

## ▶ **Restructuring**

- Schemes of arrangement
- Workouts
- Corporate recovery
- Asset injections

## ▶ **Investment**

- China investment regulations
- Structuring a major foreign direct investment projects
- Evaluation and due diligence

## ▶ **Private Equity and Venture Capital**

- Optimum PRC and offshore structures
- Preferred stock financing
- PRC regulations
- Exit Strategies

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# The Charltons Team

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The team is composed of individuals with the following knowledge and skills:

- ▶ A detailed knowledge of Hong Kong law and practice in relation to securities and licensed corporations.
- ▶ Extensive experience of providing legal services for Hong Kong and overseas clients, including corporate banks and licensed corporations.
- ▶ Extensive experience of communicating with the Securities and Futures Commission (**SFC**) including arranging and attending with the SFC for new applicants.
- ▶ In depth knowledge of the relevant securities law, and relevant rules, codes and guidelines issued by the SFC from time to time.

## Team Profile : Julia Charlton

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### Julia Charlton – Partner

- ▶ Julia, LL.B (1st class Honours), A.K.C (Kings College, London) was admitted as a solicitor in England & Wales in 1985 and has practised as a solicitor in Hong Kong since 1987.
- ▶ Julia is a member of the Listing Committee of the Stock Exchange of Hong Kong Limited and the Takeovers Panel and the Takeovers Appeal Panel of the SFC.
- ▶ Julia was named a “**Leading Lawyer**” by Asia Law & Practice for the years 2002, 2003, and 2006 to 2016.
- ▶ Julia was named a “**Leading Advisor**” by Acquisition International for 2013.
- ▶ Julia was also named the “**Capital Markets Lawyer of the Year – Hong Kong**” in the Finance Monthly Global Awards 2014.
- ▶ Julia has extensive experience in China work and is a Mandarin speaker.



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# Contact Us

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