

**Update****China****The New Property Law of the People's Republic of China adopted on March 2007 is effected on 1 October 2007**

On 17 October 2007, the State Administration for Industry & Commerce has promulgated and implemented the Regulations on Chattel Mortgage Registration based on the new Property Law and the Guarantee Law.

All enterprises and individual business proprietors are required to register for chattels pledged including production equipment, raw materials, semi-finished products and future rights. The failure to register will render no defence to the claim of a bona fide third party.

To apply for registration of chattel mortgage, one should provide details on: mortgagor and mortgagee's name and address; agent's name; type and secured amount; scope of security; duration of the debt; etc.

See SAIC website: <http://www.saic.gov.cn>

**Hong Kong**

IRD has issued a DIPN 11 (Revised) on Field Audit and Investigation which merged the previous DIPN 11 and 11A and also provides information on Assess First and Audit Later System, and the Audit Trilogy.

**International**

U.S. Securities and Exchange Commission (SEC) is considering whether to allow U.S. companies to report financial results using international standards (IFRS) rather than U.S. generally accepted accounting principles (U.S. GAAP). This is a great step following the proposed rule of allowing foreign companies filing with SEC to use IFRS without reconciled to U.S. GAAP.

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*You are welcomed to suggest interesting topics to us by email to :*

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*We will manage to address your concern in future issues.*

**You need a CPA****Appointment of Valuer for Business Valuation**

In a recent shares valuation dispute, the company involved is engaged in construction work. It was argued before the court that a registered quantity surveyor, instead of a certified public accountant, should be appointed as valuer because : (1) the valuation task might be affected by the absence of proper documentation to support the company's accounts; (2) a quantity surveyor has a better



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understanding on the value of the construction work done and the materials used, and the margin of the profits generated in projects undertaken; and therefore, (3) a quantity surveyor would be able to give a more realistic view of the company's profit and the value of shares.

The court considered that the task of a valuer is to determine the valuation of the shares. This involves considering the projection of profit or loss of the company's projects; analysis and interpretation of the company's accounts; valuation of potential or pending claims by or against the company; etc. A professional accountant experienced in valuation is better suited to the tasks. On the concern over the lack of proper business documentation, the problem can be resolved by allowing the accountant to consult a registered quantity surveyor as and when necessary to do so. (Reference: *Re King Fung Construction Work Co Ltd*, HCMP 375/2005, HCA 2183/2004, 18 October 2007)

## Protective Mechanism on Share Transfer

### Share Transfer Restriction for Business Co-operation

Get a shelf company to start business in Hong Kong is convenient. Most people, after getting a shelf company, will instruct their accountants to allot shares. Most will not pay too much attention to the provisions of the constitutional documents of the company until dispute arises.

In most business ventures, when one business partner (being a shareholder of the jointly invested company), wants to retire or exit from the business, the other shareholders (unless they are willing to buy the shares at a particular price) will not agree to have the shares of the exiting shareholder transfer to outsider. A deadlock of share transfer may then arise.

The articles of association of a company is the contract among the shareholders and the shareholders with the company as well. The Hong Kong Company law requires that the articles of association of a private company must contain restrictions on share transfer.

A common form of restrictions is the pre-emptive right which provides where a company proposes to issue new shares, existing shareholders will have the prior right to be offered on a pro-rata part of the new shares. In case of selling of existing shares, a shareholder who wants to

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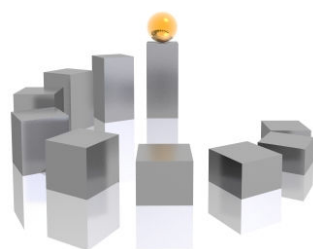
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sell his/her shares should offer them first to the existing shareholders before transfer to outsider. Such clause will trigger the existing shareholders and directors keeping notice of any possible intended transfer in prior.

Another form of restriction is that the directors may, in their absolute discretion and without giving any reason, refuse to register any transfer of shares. This confers an absolute power to the board of directors to decline any application for registration of shares transfer without giving any reason. However, it does not prevent a shareholder sold his shares to other but continues to hold the shares by way of trust. In other words, the third party may still acquire the company's shares as a beneficial owner if he did not intend to apply for registration and agreed the transferring shareholder to continue acting for him (may be a close relative).

Get an agreeable price on or even agreed an mechanism for valuing the shares of a private company might not be an easy job. Some prefer to appoint an independent accountant to value the shares. Sometimes, disputes may happen even on the appointment of such person.

To minimize disputes, a well drafted shareholders' agreement should define the mechanism of exiting business strategy such as on offering and transferring of shares; prohibition on holding shares on trust; mechanism for valuing shares, etc. The agreement may provide more detailed terms without disclosing the matter to public as other constitutional documents.

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See our Business Valuation Service at: [http://darehabere.com/dhe/eta/dhe\\_ta\\_bv.html](http://darehabere.com/dhe/eta/dhe_ta_bv.html)

## Life/Balance

### Aircraft's Retirement Place – Mojave Desert, California

*(by Mr. Eric CK Yeung, a traveler who is very keen on exploring scenic places)*

In August, our sky welcomed a new jumbo jet (Airbus – A380) flying over the Hong Kong Victoria Harbor. More and more new jetliners are launched each year in the market. We anticipate trying the new soonest. However, where do the old and scrapped aircrafts go ?

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Mojave Airport at California is a large open storage area for surplus and obsolete planes. The location lies near the intersection of the 14 and the 58 freeway. If travelling along I-15 North over the Cajon Pass into Victorville, take the 395 exit and keep going up 395, then you can start seeing huge commercial jets way off in distance. The 58 freeway is a shortcut driveway from Las Vegas to San Francisco. Travellers can take this as a stopover and spend some times to look on this special location in Mojave Desert.

From a distance view, it seems to be an active airport where jumbo jets fly in and fly out. The planes themselves are fenced off, but the airport is open to the public. Apart from commercial aircrafts, there are several junked heavy-duty military planes which makes the place looked like a military base. In addition to its proximity to Edwards Air Force Base (well-known by being one of the Space Shuttle landing bases), the US Air Force's test center also provides with its own population of unusual planes. Even it isn't meant to be a graveyard of aircrafts but is a place for retired aircrafts. Various kinds of planes, makes and models, and were all parked out there. *(to be continued)*



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#### Reminder

- 31 Oct 2007 - Deadline for submitting further extension for company's profit tax return (year ended 31 March 2007) that has current year loss.
- 15 Nov 2007 - Extended due date for submitting company's profit tax return for year ended 31 March 2007.

**Tax Holdover :** Consider an application for holding over of payment of provisional profits tax if the assessable profits for the year of assessment are likely to be less than 90% of that of the preceding year of assessment.

**Interim review for 2007/ Budget for 2008 :** October is the right time for most companies to carry out interim review on performance or to plan and budget for next year.

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