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## IN CONTENTION

### Hong Kong's New Competition Ordinance

On June 22, 2012, after a lengthy consultation and legislative process, Hong Kong's Competition Ordinance (the "**Ordinance**"), was finally passed into law. Prior to this, Hong Kong did have some form of antitrust/competition law but it was limited to the telecommunications sector.

The principles underlying the Ordinance have been promoted by the Consumer Council of Hong Kong as far back as 1995. The Ordinance was passed despite strenuous opposition and concerns expressed by many sectors of the business community, including small and medium-sized enterprises (SMEs), which were alarmed at the potential regulatory and compliance obligations.

No definite date has been set by the Hong Kong Government for the implementation of the Ordinance, however it is not anticipated that the Ordinance will come into force until 2014 at the earliest, due to the need to establish the relevant statutory bodies, and to prepare the enforcement guidelines provided for in the Ordinance.

In summary, the main features of the Ordinance are as follows:

- the establishment of a Competition Commission to investigate and prosecute contraventions of the Ordinance, and a Competition Tribunal to adjudicate such prosecutions
- a "First Conduct" Rule - prohibiting anti-competitive agreements and practices
- a "Second Conduct" Rule - prohibiting the abuse of market power
- an adoption of the anti-merger regime currently found in the Telecommunications Ordinance (applicable to the telecommunications sector only)
- limited exemptions for agreements which meet certain policy criteria, and for SMEs
- sanctions, including fines of up to 10% of the Hong Kong turnover of the relevant undertaking
- disqualification orders against responsible directors

Notwithstanding the above, as a policy decision, almost all governmental and statutory organizations have been exempted from the substantive provisions of the Ordinance.

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Hong Kong is one of the last of the developed economies to introduce such a law. The Ordinance will bring Hong Kong in line with other Asian countries such as China, Japan, Korea and Singapore which have had competition laws for some time.

Although the Ordinance is unlikely to be implemented for a while, companies doing business in Hong Kong would be well advised to start reviewing their operations now. In particular, corporations will need to consider the implications of the new law for future M&A transactions.

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