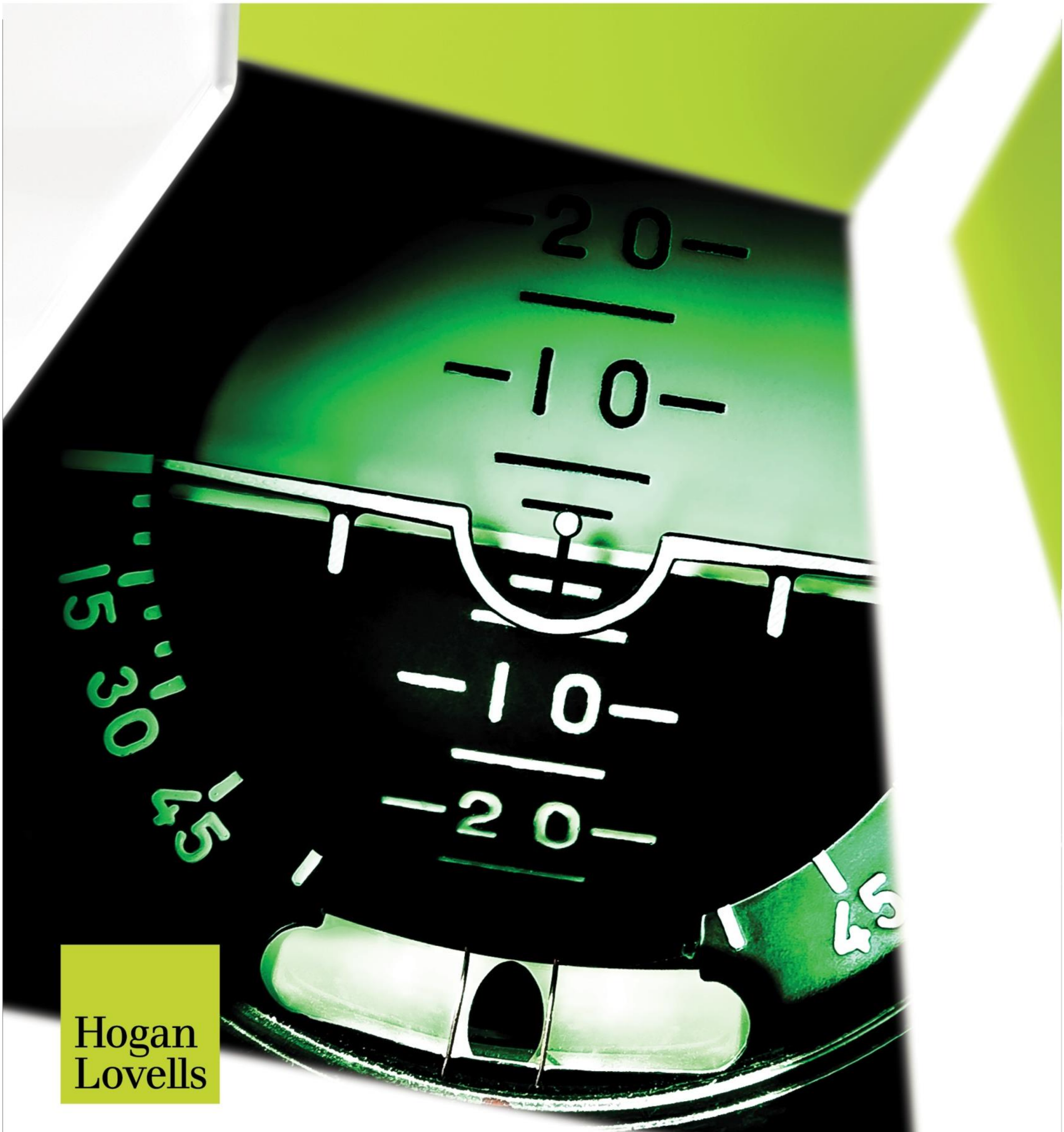

Hogan Lovells

Technology startups in Asia-Pacific: A jurisdictional guide

January 2021

Contents

Technology startups in Asia-Pacific

As we enter a new decade with various uncertainties, there is only one thing that is constant: the adoption of new technologies will continue as individuals and companies embrace and become more reliant on different forms of new technology. In the workplace, the use of technology increases efficiency and allows companies to reach sectors or regions that are previously hard to penetrate. Particularly in 2020, amidst the COVID-19 pandemic and moving things "virtual", there has been a growing need for technology capabilities to evolve and adapt to new working styles in order to keep up with increasing demand. In certain countries where COVID-19 restrictions begin to be lifted, we continue to see the increased use of technology for meetings, conferences, and socials. This is our new "normal".

With fast paced developments in emerging technologies, we have seen a growth in local technology startups established and foreign technology companies setting up their presence in Asia-Pacific countries in the past few years.

This guide aims to provide an overview of the different regulatory landscapes of setting up a technology startup in Asia-Pacific. Focusing on the hot spots: Hong Kong, Singapore, Japan, Vietnam, and Taiwan, we aim to highlight what startups should be thinking about when deciding on where to establish their company, and what sort of government incentives are available.

As compared to a major investments by MNCs in the hot jurisdictions, establishment of technology startups are often of lower value and at their “prototype”, making it a challenge for entrepreneurs to reach out to external legal advisors due to budgetary constraints. On the other hand, we are seeing cutting-edge technology companies start to merge in the hot jurisdictions so we have been recently offering alternative fee structures that we think strike the right balance between ensuring entrepreneurs get the external legal support they need and the need to manage internal stakeholders’ concerns on costs. In short, we are offering volume-based fixed-fee arrangements for technology startups and would be open to exploring and offering similar arrangements to you in the event that you are looking to enter into a new venture in the new year.

Hong Kong

Introduction

With its low tax-rate and free trade policy, Hong Kong is customarily ranked as one of the best places to do business in the world. Under the "One Country, Two Systems" framework, Hong Kong is a special administrative region of China and provides a window to doing business with mainland China. Hong Kong has its own common law legal system, largely derived from the United Kingdom, and operates with a high degree of autonomy from mainland China. An east-meets-west equilibrium.

Doing business in Hong Kong is easy, and setting up a business in Hong Kong is quick, with low set-up costs. The city is business friendly, with free trade policy and little to no barriers on trade. Subject to few exceptions and clearance procedures, there is no restriction on the import and export of goods.

Free trade

Hong Kong operates a free-trade policy and has little to no barrier to trade. Apart from the broadcasting industry, full foreign ownership in Hong Kong companies is allowed. There is also no foreign exchange control, thus, funds from profits or capital accounts can be freely repatriated and remitted overseas. However, as a major international finance hub, Hong Kong has a stringent anti-money laundering (AML) regime, and companies are reminded to comply with ongoing AML reporting obligations.

Company structure and ownership

The most common form of business vehicle is a private limited company. Other forms used by foreign companies include: representative offices, branches of parent companies, sole proprietorships, partnerships, joint ventures, and trusts. Incorporating a limited liability company takes around four working days in Hong Kong, upon the Company Registry's issuance of a certificate of incorporation.

There are no restrictions on nationality of directors, but a requirement that at least one director must be a natural person, and a company secretary who is a Hong Kong resident (or a Hong Kong registered or principal office if the company secretary is a body corporate).

Key points

Legal system	Common law (derived from the United Kingdom)
Foreign investment restrictions	No restrictions, apart from the broadcasting industry.
Exchange control	None
Immigration control	Foreign employees must obtain a proper Hong Kong visa (for example, an employment, dependent, or investment visa) to work in Hong Kong.
Tax	**Income tax**: 0-17 percent (progressive), or 15 percent (flat rate), whichever is lower **Corporate tax**: 16.5 percent **Capital gain tax**: none **Dividends tax**: none **Inheritance tax**: none

Government incentives

Leveraging from the Central People's Government's Guangdong – Hong Kong – Macao Greater Bay Area plan, the Hong Kong government is committed to develop Hong Kong into an innovation and technology hub. In terms of financial support to startups, there are a number of schemes for startups, including:

- Innovation and Technology Fund for Better Living
- CreateSmart Initiative
- Innovation and Technology Fund
- Patent Application Grant
- Retail Technology Adoption Assistance Scheme for Manpower Demand Management
- Trade and Industry Department Funding Schemes
- Technology Business Incubation Programme
- Social Innovation and Entrepreneurship Development Fund

Further, the Hong Kong Cyberport and Hong Kong Science & Technology Park provides office space for technology startups at affordable costs. The two communities are developed primarily for startups, equipping them with the infrastructure, facilities, and incubation opportunities to nurture innovation and growth.

Recent developments

Social unrests in the past year have sparked discussions of whether Hong Kong is still a viable place for startups. While we have yet to see the full impact of social unrests to our businesses, we're confident that Hong Kong remains a great place for startups to consider.

Singapore

Introduction

Coined the "start-up factory" in Southeast Asia, Singapore is a great place for startups to consider. Singapore is generally viewed as a very attractive place of establishment for startups, for a number of reasons, including:

- **Ease of doing business** – Singapore is ranked No.2 for "*Best Country in the World to do Business*" by the World Bank's "Doing Business" Report for 2020.
- **High level of protection for intellectual property** – Singapore is ranked second in the world and top in Asia for having the best intellectual property protection in the World Economic Forum's Global Competitiveness Report 2019.
- **Openness of economy and business** – in 2020, Singapore was ranked as the world's most open and free economy by the Heritage Foundation's Index of Economic Freedom. There are no foreign exchange or currency restrictions on the remittance or repatriation of capital or profits in or out of Singapore, and typically no restrictions on foreign ownership.
- **Investment incentives** – the Singapore government provides various forms of financing schemes, grant schemes, and tax incentive schemes to help businesses, particularly startups.
- **Tax** – income of a company (whether tax resident or not) that is accrued in, derived from, or received in Singapore from outside Singapore is subject to income tax in Singapore at a rate of 17 percent. The rate of tax may be reduced under various tax incentive schemes.

Company structure and ownership

The most common entity for those wishing to establish a presence in Singapore is a private company limited by shares, which can be incorporated quickly and easily (typically within one week).

Other common business vehicles in Singapore include branch offices, representative offices, and partnerships. In January 2020, the Variable Capital Companies Act came into force, introducing a new corporate form (a Variable Capital Company) for fund managers to structure investments funds.

A Singapore company must appoint at least one director who is ordinarily resident in Singapore (but who need not be a Singapore citizen), and a company secretary who must be a natural person who has his or her principal place of residence in Singapore.

Incentives and grants

There are multiple grants and subsidies available for technology startups in all stages of their start-up journey. Companies' eligibility for various grants are based on qualifying criteria set by the government, including various programmes run by Startup SG, including "Startup SG Equity", "Startup SG Tech", and "Startup SG Accelerator".

Other schemes and grants apply to all eligible companies, for example, the Digital Resilience Bonus grants SG$10,000 to every eligible company that adopts baseline digital solutions (such as e-payments); the Enterprise Development Grant provides up to 80 percent of qualifying project costs for certain innovation or expansion projects; and the Productivity Solutions Grant encourages companies to adopt information technology (IT) solutions and equipment, again with up to 80 percent of costs covered.

There are also a number of non-governmental schemes for startups. Specifically for artificial intelligence (AI), the A.I.SG programme is expected to involve investment of up to SG $150 million over five years to encourage companies developing AI.

In terms of network support, various angel investor networks are available to facilitate startups in finding high net worth individuals. Government accredited incubators, venture capital firms, and private equity firms are also readily available to nurture and support startups.

Recent developments

In November 2020, the Singapore government launched the Tech.Pass programme, which aims to attract 500 individuals with a proven track record of contributing to the global technology ecosystem. Under the programme, qualified individuals will be able to secure a new type of visa, without a sponsor, to allow them to start and operate more than one company and become an investor, consultant, or mentor for local startups.

Eligible applicants must meet two of the following three requirements:

(i) Monthly salary of at least SG$20,000 (approx. US$14,800).

(ii) Have at least five years' experience in leading a technology company with valuation of at least US$500 million or at least US$30 million funding raised.

(iii) Have at least 5 years' experience in a leading role developing a technology product with at least 100,000 monthly active users or at least US$100 million of revenue.

Key points

Legal system	Common law
Foreign investment restrictions	No restrictions, apart from the broadcasting industry and domestic news media.
Exchange control	None, but the Monetary Authority of Singapore (MAS) imposes restrictions on the amounts of Singapore dollars that can be loaned to non-resident financial institutions.
Immigration control	Foreign employees must obtain a proper work visa to work in Singapore. There are various types of permits for different salary ranges and qualifications, usually requiring a sponsor.
Tax	**Income tax**: 0-22 percent (progressive) **Corporate tax**: 0-17 percent **Capital gain tax**: none **Dividends tax**: none **Inheritance tax**: none

Japan

Introduction

Being the third largest economy with the world's largest electronics goods industry, Japan has seen its technology startup scene growing steadily in the past few years. Backed by a vast amount of big corporations, there's a trend towards developing customised and subscription-based e-commerce.

Company structure

In Japan, the most common business vehicles are the joint stock company (kabushiki kaisha, or K.K.) and the limited liability company (godo kaisha or G.K., available since 2007), both entities limit shareholders' and members' liabilities. Comparing the two, the limited liability company provides flexibility in the internal governance structure and is more compatible for U.S. tax purposes. Limited liability companies also have less reporting obligations as compared with a joint stock company.

Government incentives

The Japanese government provides a number of tax and other incentives to support foreign companies who set up businesses in Japan, including:

- Angel Tax System
- Tax Incentives to Promote Open Innovation scheme.
- Other capital investment tax incentives.
- Tax credit for employment promotion.
- Incentives regarding special zones.
- Tax deductions for research and development, or future investments.
- Favourable immigration treatment for foreigners in startup companies.

Key points

Legal system	Civil law
Foreign investment restrictions	In general, there are no prohibitions on foreign ownership of Japanese companies. However, a potential investment by a foreign investor in the equity interests of companies in certain designated sectors (including: broadcasting, telecommunications, and aviation) require pre-transaction approvals from the Japanese government. Foreign investors may also be subject to post-transaction reporting requirements.
Exchange control	Yes. The Foreign Exchange and Foreign Trade Act imposes reporting obligations for payments over JP¥30 million made or received by Japanese residents to or from non-Japanese residents.
Immigration control	Foreign employees must obtain a valid working visa. Each visa specifies a status of residence which determines the area of work the employee can engage in.
Tax	**Income tax**: 5-45 percent **Corporate tax:** 30.62 percent (comprising of local corporation tax, local corporation inhabitant tax, and enterprise tax) for domestic corporation whose capital amount is JP¥100 million or more in Tokyo.

Recent Developments

Through collaboration with the J-Startup program, the Japan External Trade Organization (JETRO), New Energy and Industrial Technology Development Organization (NEDO), and the Japanese Ministry of Economy, Trade and Industry (METI) are striving to support startups in Japan.

Vietnam

Introduction

Vietnam's startup scene has been growing rapidly in the past few years. In particular, areas such as Hanoi and Ho Chi Minh City have seen exponential growths in their IT ecosystems and mushroom growths of startups.

Company structure and ownership

In Vietnam, a company may take the form of a limited liability company (with one or more members) or a shareholding company. Foreign-owned companies are subject to more onerous licensing procedures and enhanced investment conditions in certain sensitive business sectors, but there are generally no restrictions on foreign ownership for most tech startups. However under the labour law, local Vietnamese officials have broad discretion in allowing or rejecting foreign workers.

Government incentives

There are a number of incentives schemes set up to support technology startups, including:

- SpeedUP
- Startupcity.vn
- Vietnam – Finland Innovation Partnership Programme
- Saigon Silicon City Centre
- Mekong Business Initiative
- National Technology Innovation Fund

In response to the COVID-19 pandemic, the Vietnamese government has launched a new incentive programme in October 2020 to encourage startups in telecommunications businesses, information technology, automation, and other related industries. Under the scheme, qualified startups will be subject to fewer administrative procedures, and may benefit from subsidies on land leasing, exemptions from infrastructure usage fees, and preferential loans and tax treatments. Startups set up in the Hao Lac Hi-Tech Park are eligible to have their land leases exempted for 50 years.

Key points

Legal system	Civil law
Foreign investment restrictions	There are certain foreign investment restrictions requiring companies to register or satisfy conditions. This includes: limitation on foreign ownership, business sector restrictions, form of investment requirements, or geographic restrictions for foreign companies.
Exchange control	Yes, there are regulations for transactions in foreign currencies. Capital inflow is largely unregulated, but outflows of capital require notification and approval from the State Bank of Vietnam.
Immigration control	Foreign employees must obtain a valid work permit to work in Vietnam, except for those qualified for an exemption. A visa or a temporary residence card is required for foreigners entering Vietnam for work.
Tax	**Income tax**: 5-35 percent **Corporate tax**: 20 percent* **Capital gain tax**: subject to corporate tax. **Inheritance tax**: 0-10 percent *Companies located in Hao Lac enjoy a 10 percent corporate income tax rate for 30 years.

Taiwan

Introduction

In the past few decades, the Taiwanese government has taken a more dynamic approach in promoting Taiwan as an artificial intelligence and internet-of-things hub by established multiple initiatives and programmes to support technology startups. As a manufacturing powerhouse, startups leverage on Taiwan's high internet penetration and an attractive customer base who are readily willing to accept new products and services. In recent years, we've also seen an increase in venture capital investment, coupled with reinvigorated innovation, leading to many entrepreneurs setting camp here.

Recent changes to regulations

Improved policy support such as the passing of the Financial Technology Development and Innovative Experimentation Act, Unmanned Vehicles Technology Innovative Experimentation Act, Statute for Industrial Innovation and amendments to the Company Act in the recent years have made more funding options available to startups, for instance, early-stage operating funds through the Business Angel Investment Program supported by the National Development Fund, as well as tax incentives for investments in the segments of smart machinery, artificial intelligence, internet-of-things, and system integration.

In response to the predicament that many startups are now facing due to the ongoing pandemic, National Development Council started to accept application for relief in April 2020 and successful participants in the program will receive six to 12 months of direct funding from the council, providing preferred shares in return.

Company structure

The most common business vehicles in Taiwan are: (i) corporations (companies limited by shares); (ii) limited companies; (iii) closed companies; (iv) branches; and (v) representative offices.

Foreign investment

There are restrictions on foreign investment in Taiwan, the Taiwanese government prohibits foreign investments in selected industries relating to national security and environmental protection. This includes: public utilities, power distribution, natural gas, postal services, telecommunications, mass media, and air and sea transportation. There are also certain restrictions on doing business with mainland China.

Government incentives

The Taiwanese government, at both national and local level, provides grants, loans, and awards.

Grant: Small Business Innovation Research; Service Industry Innovation Research; National Development Fund Startup Angel Project; and Taipei City Industry Incentive Subsidy Project.

Loan: SME Innovation Development Project Loan; and the Small Enterprise Loan.

Award: the Taiwan SME Innovation Award; and the Business Start-up Award.

The Start-up Regulatory Adjustment Platform was also launched in 2017 to support technological innovation. The government backed Taiwan Tech Area also offers co-working space for technology startups. There are also a number of angel investment funds to support and encourage startups.

Key points

Legal system	Civil law
Foreign investment restrictions	All foreign investments must be approved by the Investment Commission of the Ministry of Economic Affairs.
Exchange control	Inward and outward remittance involving New Taiwan Dollars and foreign currencies are subject to an annual US$5 million ceiling for individuals and US$50 million for businesses.
Immigration control	Most foreign employees must apply for work visa. Only foreign employees with a valid work permit can apply for residency permit. Newly added revisions to immigration laws now relaxes regulations governing work permits, resident visas, and residence applications, and offer pension protection and preferred tax treatments to international talent meeting the required criteria.
Tax	**Income tax**: 5-40 percent **Corporate tax**: 18-20 percent **VAT**: 5 percent (for corporates) **Dividends tax**: foreign dividends subject to income tax **Inheritance tax**: 10-20 percent

Your business. Our experience in how businesses really work; their strengths, weaknesses, opportunities, and threats, enables us to give you practical, commercially relevant advice.

We help you develop the right business model, foster strategic relationships, navigate complex regulation, manage risks, and address challenges your business faces every day.

Please contact us for more information:

Mark Parsons
Partner, Hong Kong
T +852 2840 5033
mark.parsons@hoganlovells.com

Tommy Liu
Counsel, Hong Kong
T +852 2840 5072
tommy.liu@hoganlovells.com

Jacky Scanlan-Dyas
Partner, Tokyo
T +81 3 5157 8214
jacky.scanlan-dyas@hoganlovells.com

William Wu
Registered Foreign Lawyer, Hong Kong
T +852 2840 5032
william.wu@hoganlovells.com

Wataru Kamoto
Partner, Tokyo
T +81 3 5157 8163
wataru.kamoto@hoganlovells.com

Matthew Bousfield
Counsel, Singapore
T +65 6302 2565
matthew.bousfield@hoganlovells.com

Jeff Olson
Office Managing Partner, Ho Chi Minh City
T +84 28 3829 5100
jeff.olson@hoganlovells.com

Ngan Tran
Associate, Ho Chi Minh City
T +84 28 3827 1734
ngan.tran@hoganlovells.com

Alicante
Amsterdam
Baltimore
Beijing
Brussels
Budapest
Caracas
Colorado Springs
Denver
Dubai
Dusseldorf
Frankfurt
Hamburg
Hanoi
Ho Chi Minh City
Hong Kong
Houston
Jakarta
Johannesburg
London
Los Angeles
Louisville
Luxembourg
Madrid
Mexico City
Miami
Milan
Minneapolis
Monterrey
Moscow
Munich
New York
Northern Virginia
Paris
Perth
Philadelphia
Rio de Janeiro
Rome
San Francisco
São Paulo
Shanghai
Shanghai FTZ
Silicon Valley
Singapore
Sydney
Tokyo
Warsaw
Washington, D.C.
Zagreb

Our offices
Associated offices

www.hoganlovells.com