

Labuan IBFC's **25th** Anniversary

ASEANROADSHOW 2015

KUALA LUMPUR • MANILA • BANGKOK • JAKARTA • SINGAPORE • HONG KONG

TUESDAY, 20 OCT 2015

HONG KONG

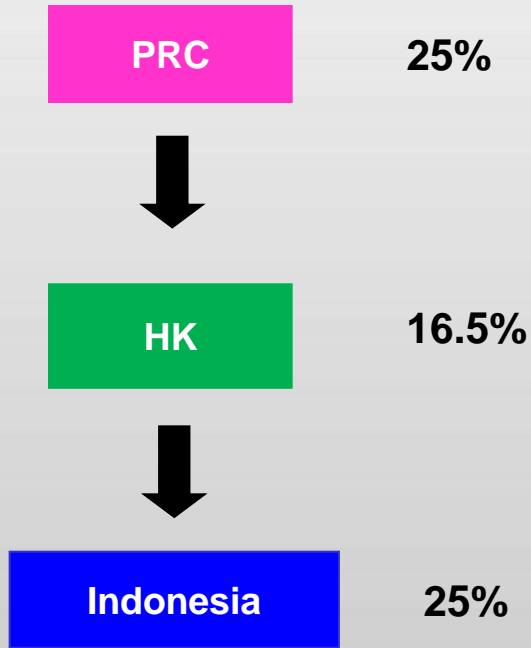
Labuan IBFC's **25th** Anniversary
ASEANROADSHOW 2015
KUALA LUMPUR • MANILA • BANGKOK • JAKARTA • SINGAPORE • HONG KONG

THE NEED FOR SUBSTANCE: FUTURE PROOFING YOUR STRUCTURES

David K.K. Chong

**M.Sc., LL.M.,
Advocate & Solicitor of Singapore
Advocate & Solicitor of Malaya
Advocate & Solicitor of Brunei
Barrister of England & Wales
Solicitor of NSW, Australia
Solicitor of Queensland, Australia
Barrister & Solicitor of British Virgin Islands
Barrister & Solicitor of Australian Capital Territory
Barrister & Solicitor of Victoria, Australia**

Offshore Profits



- **16 Sept 2014**
OECD released first batch of deliverables of **Base Erosion & Profit Shifting (BEPS)** project.
- **9 Oct 2015**
OECD published its final reports and an explanatory statement outlining consensus actions under the BEPS project.

- **Departmental Interpretation and Practice Notes No. 21 (Revised)**
Locality of Profits
July 2012
- territorial concept
- locating the source of profits
- **CIR v. Hang Seng Bank [1991]**
HK-TVB v. CIR [1992]
CIR v. Orion Caribbean [1997]
Kwong Mile Services v. CIR [2004]
Kim Eng Securities v. CIR [2007]
ING Baring Securities v. CIR [2008]
- one looks to see what the taxpayer has done to earn the profits in question and where he has done it
- **Section 14 Inland Revenue Ordinance (Cap 112)**
only profits **arising in** or **derived from** HK
are chargeable to profits tax
- **DIPN No. 31 Advance Rulings**
on the locality of profits to businesses
subject to payment of a **fee**
Advance Ruling Case No. 54 11 Oct 2013

18. Trading Profits

In **CIR v. Magna Industrial Co Ltd [1997] HKLRD 171 at 178**,

Litton VP recognised that in case of a trading profit the purchase and the sale were the important factors.

He further included in his deliberation all of the relevant operations and not just the purchase and sale of the products.

When applying the operations test, Litton VP said at 176G:

“In other words, one looks to see what the taxpayer has done to earn the profits and where he has done it.

Obviously the question where the goods were bought and sold is important.

But there are other questions: For example:

How were the goods procured and stored?

How were the sales solicited?

How were the orders processed?

How were the goods shipped?

How was the financing arranged?

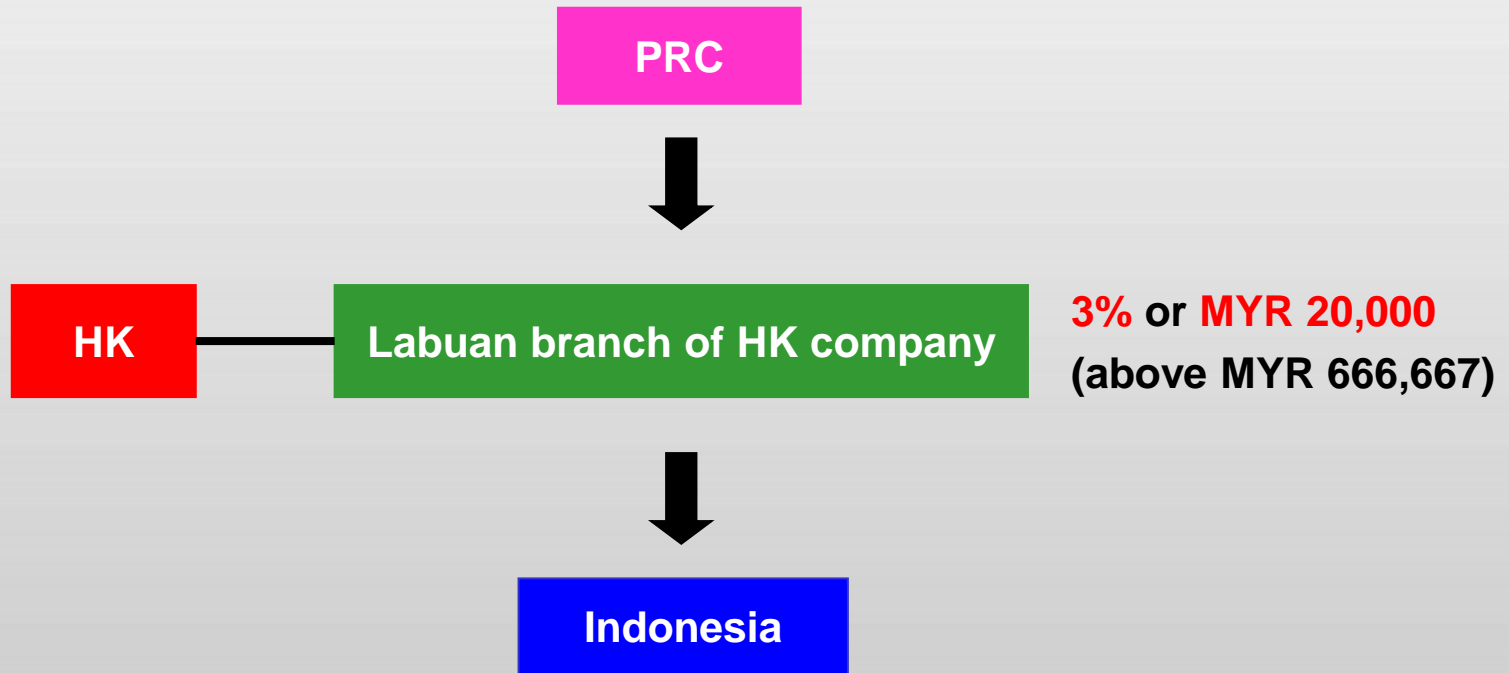
How was payment effected?”

26. Normally the activities of an **agent** and an **employee** are accorded the **same weight** if it can be shown that the **employee** has **full authority to conclude contracts** without reference to the business in Hong Kong.

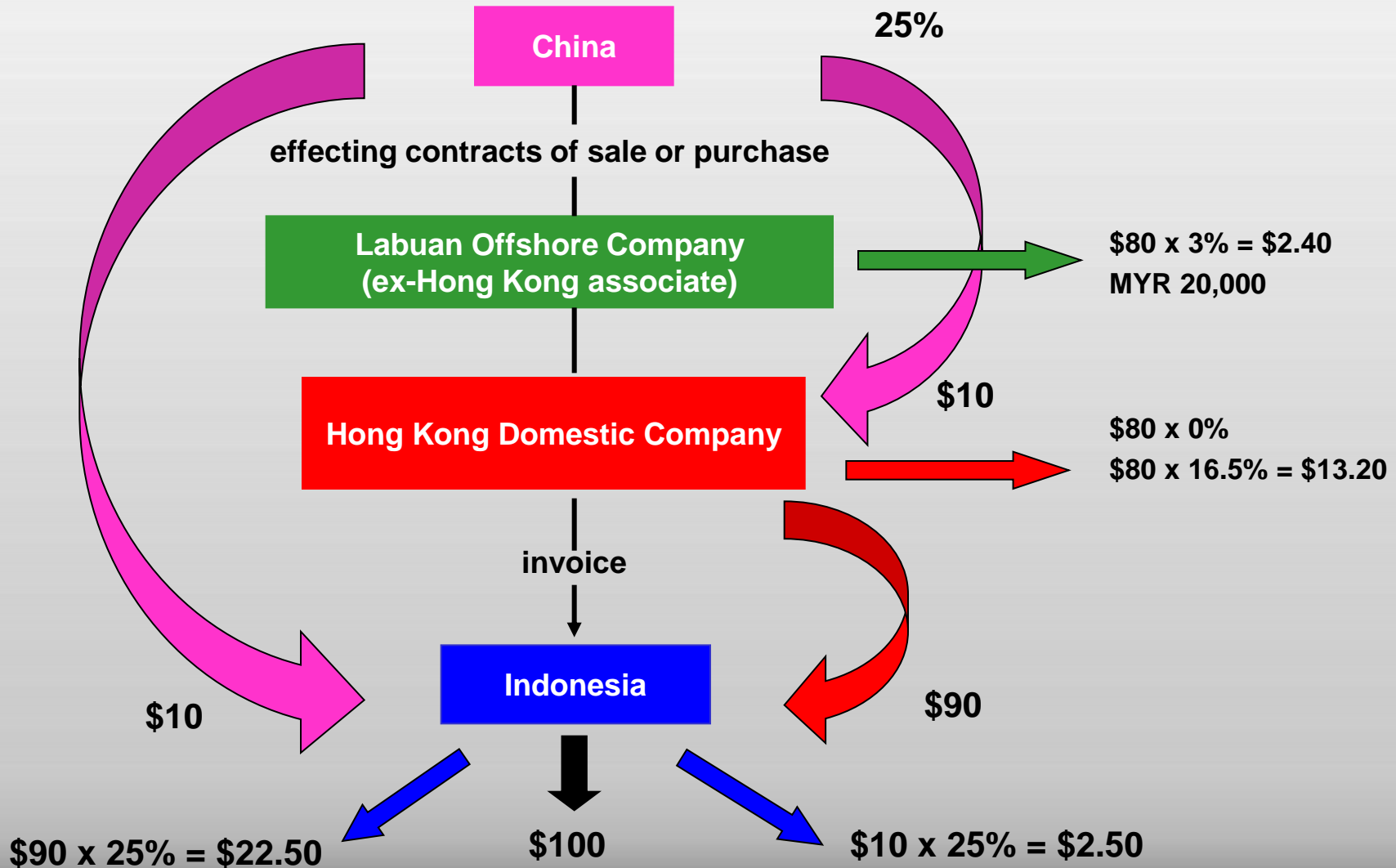
In considering claims that contracts have been wholly effected outside Hong Kong by employees, Assessors will, in addition to facts in **paragraph 18** above, require details of **travelling**, hotel and subsistence expenses in respect of each individual transaction. Where it is claimed that contracts are effected by overseas agents, it will be necessary to provide **agency agreements** or other evidence to support the claim.

- 27. Re-Invoicing Centre**
- 29. Buying Office**
- 30. Manufacturing Profits**
- 33. Contract Processing**
- 39. Import Processing**
- 45. Other Profits**
 - (e) Service fee income**
 - investment adviser**
 - whose organisation & operations**
 - are located only in HK**
 - 2:20**

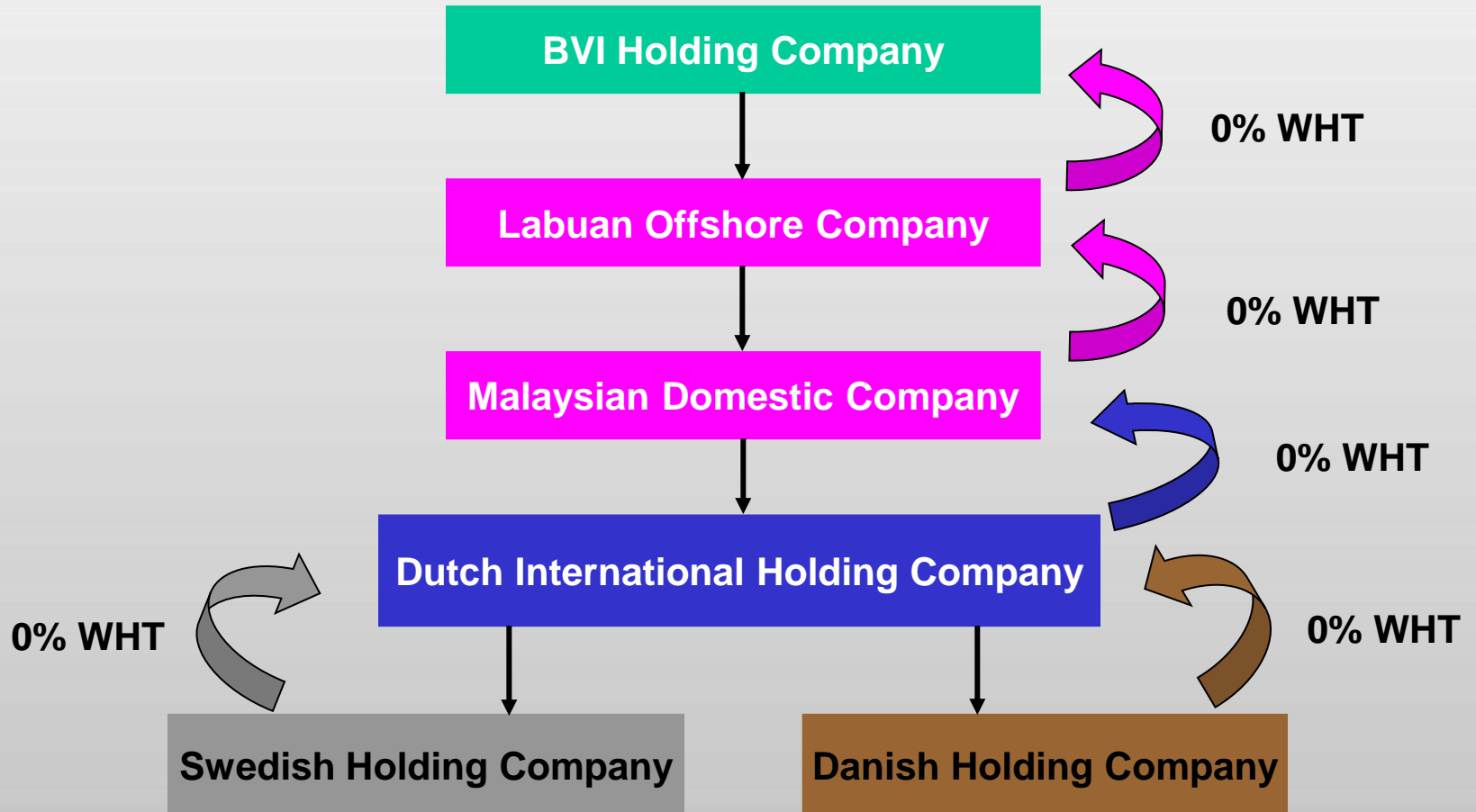
'Hong Kong Chien Chang Go or Thousand-Layer Cake'



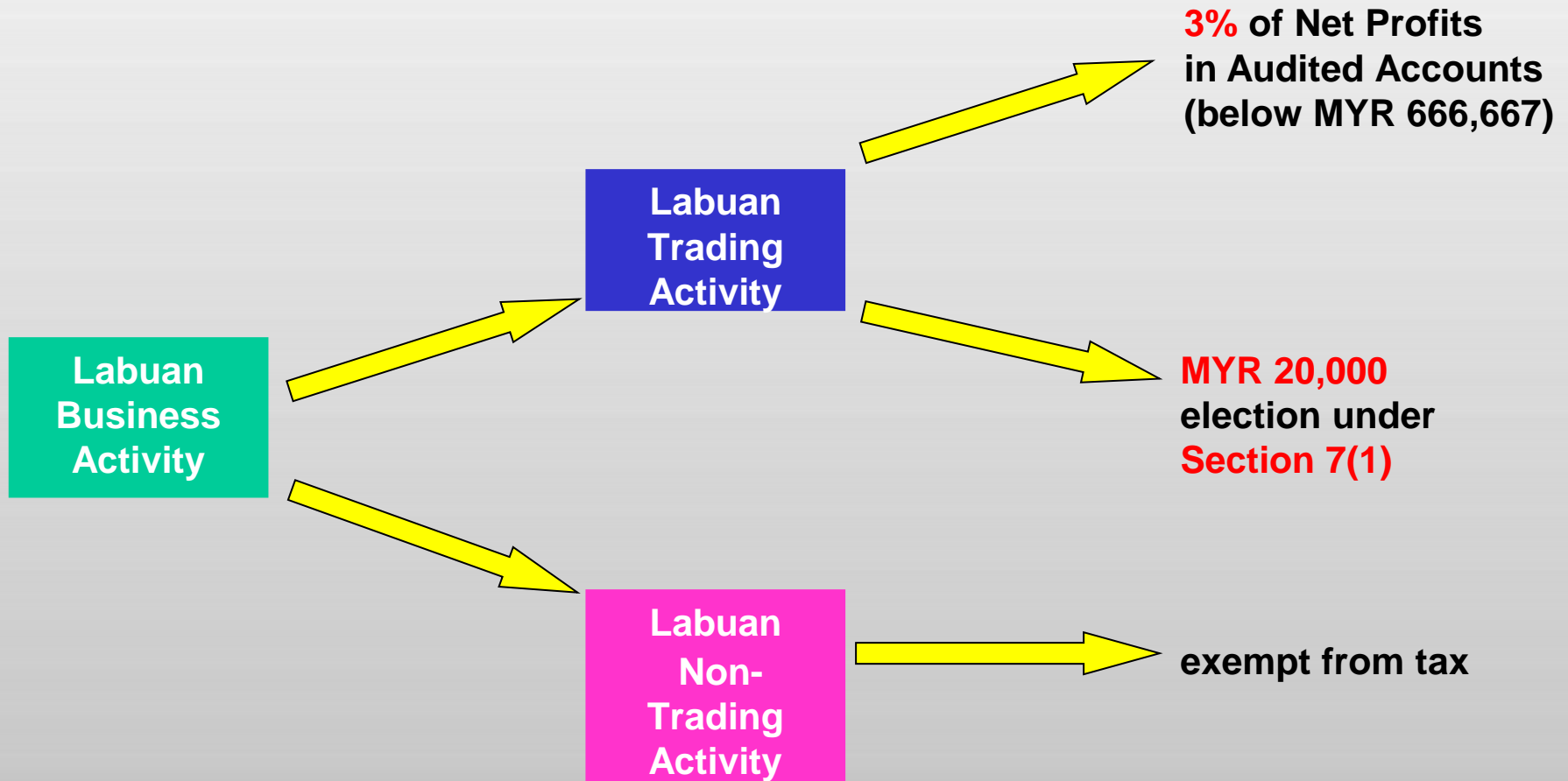
'Hong Kong Chien Chang Go or Thousand-Layer Cake'



'Malaysian Kuih Lapis'



Labuan Business Activity Tax Act 1990



Market capitalisation and trading value of listed companies by incorporation place

End of 2014

Country	No. of listed companies ⁽¹⁾	Market capitalisation (HK\$mil) ⁽²⁾	% of total	Turnover (HK\$mil)	% of equity total
Bermuda	466	2,453,571.07	9.86	1,184,360.12	9.50
Brazil	1	–	–	22.20	0.00
British Virgin Islands	6	36,382.71	0.15	16,048.91	0.13
Canada	4	7,736.32	0.03	6,247.63	0.05
Cayman Islands	668	5,489,735.11	22.05	3,209,704.47	25.74
England	4	1,709,043.36	6.87	321,206.76	2.58
Hong Kong	204	9,183,684.26	36.89	3,246,676.29	26.03
Italy	1	112,460.31	0.45	34,874.27	0.28
Japan	2	11,335.90	0.05	10,326.24	0.08
Jersey	3	83,011.76	0.33	6,774.29	0.05
Luxembourg	2	61,273.63	0.25	26,696.69	0.21
PRC	179	5,723,993.53	22.99	4,398,915.75	35.27
Singapore	7	20,191.08	0.08	9,433.57	0.08
USA	1	–	–	3.99	0.00
USA – NASDAQ ⁽³⁾	7	–	–	3.57	0.00
Total	1,548	24,892,419.04	100.00	12,471,294.75	100.00

Notes:

- (1) Total no. of listed companies are excluded the NASDAQ Stocks.
- (2) Foreign companies not solely listed in Hong Kong and stock suspended over 1 year are excluded.
- (3) NASDAQ stocks are quoted on the Exchange for trading only.

- An archipelago of 29 islands & 661 cays
Christopher Columbus, in search of a westward route to China, discovered the New World when he landed on **San Salvador** or Watling's Islands on **12 October 1492**;
when the natives of the Bahamas referred to 'Colba' (Cuba) he thought they were referring to Kubla Khan
- On 5 September 1983, NBC television accused the government of Prime Minister, **Sir Lynden Pindling**, of complicity in **drug trafficking**.
The Royal Commission of Inquiry concluded 'it is apparent that the Prime Minister's expenditure over the years from 1977 has far exceeded his income'.
Since 1977 the PM had received USD 3.5 million over and above his official salary,
spent mostly on a palatial home 'Lakeview' on Prospect Ridge.

- in 1991 Bermuda Fire & Marine Insurance Co. Ltd was split into 2 companies:
 - BF & M Ltd which carried on the profitable **domestic** insurance
 - Bermuda Fire & Marine Insurance Co. Ltd which carried on the non-profitable **international** business

- in 1993 insolvency (**USD 450 million** debts) of Bermuda Fire & Marine Insurance Co. Ltd

- liquidators **Ernst & Young** sued:
 - 1,000 shareholders of BF & M Ltd,
 - 5 former directors,
 - Coopers & Lines (now **PricewaterhouseCoopers**)
 - **Conyers Dill & Pearman** (lawyers)

- **fraudulent conveyance of USD 40 million of assets to defraud creditors**
- **breach of fiduciary duties**
- **USD 35 million legal fees**
- **30 November 1999 settled out of court for at least USD 35 million**

Bermuda Fire & Marine Case 1995 (3)

- director **Charles Collis** was senior partner of Conyers Dill & Pearman
- son John was lawyer of Bermuda Fire & Marine Insurance Co. Ltd
- director **Donald Lines** was CEO of **Bank of Bermuda** brother David was partner of Cooper & Lines
- director **Michael Collier** was chief general manager of **Bank of Butterfield**
- both banks financed BF & M Ltd

- **Premier of Cayman Islands**

McKeeva Bush

was removed from his post as Premier
in a vote of no confidence

following his arrest on 11 Dec 2012

for theft, breach of trust, abuse of office & conflict of interest

he was later **acquitted**

said he was victim of **'political witch hunt'**

by former British-appointed Governor **Duncan Taylor**

- **Sir Donald Tsang Yam-Kuen**
former Chief Executive of HK
arrested on 5 Oct 2015
for **misconduct in public office**
- **Rafael Hui Si-Yan**
former No. 2 in Tsang's government
jailed for seven and a half years
for accepting bribes from **Thomas Kwok (Sun Hung Kai Properties Ltd)**
ordered to repay HKD 11.2 million
he was found guilty of accepting

Labuan IBFC's **25th** Anniversary

ASEANROADSHOW 2015

KUALA LUMPUR • MANILA • BANGKOK • JAKARTA • SINGAPORE • HONG KONG

Thank You



This presentation should not be regarded as offering a complete explanation of the matters referred to and is subject to changes in law. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Labuan IBFC cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this presentation.