

Establishing a Business
in Hong Kong



2014

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Foreword

Hogan Lovells is one of the largest full service international law firms based in Hong Kong, providing our global clients with integrated legal advice on all aspects of doing business in the Asia-Pacific region.

Hogan Lovells' Hong Kong office has more than 100 fee earners, including 18 partners, offering strength and depth across the board. We have a large number of lawyers fluent in Chinese, Japanese, Vietnamese, French, German and a number of other Asian and European languages. We have a team of in-house Chinese and Japanese translators together with foreign language documentation capability. We work proactively to manage transactions and cases efficiently, acting both as legal advisers and coordinators.

Since establishment in 1982, we have been the platform for Hogan Lovells' regional expansion and network. We are also the sole Hong Kong member of the Pacific Rim Advisory Council (PRAC), a unique strategic alliance within the global legal community, consisting of 32 major independent law firms, each with substantial presence and expertise in the Pacific Rim region.

This guidebook provides an introduction to the basic legal framework for establishing a business in Hong Kong which we hope you will find helpful and informative. However, please note that the information contained in this guidebook is not intended to be, and should not be used as, a substitute for specific legal advice.

Jamie Barr
Partner, Hogan Lovells

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Chapter I – Overview



Hong Kong maintains its traditional capitalist market economy. There is a straightforward framework for business, with an emphasis on free enterprise with a modest level of regulation. There are no nationality restrictions on corporate or sectorial ownership (except the television broadcasting industry). Apart from specific licensing and regulatory requirements for insurance, telecommunications, banking and securities-related services industries and professionals, companies and individuals can import and export capital, and conduct business in Hong Kong at their discretion. Work visas are required for non Hong Kong persons to take up employment, and the Immigration Department has in place established procedures for the application and processing of employment visas.

Hong Kong has consistently been ranked the freest economy in the world¹ and continues to provide a favourable environment, for both domestic business and business throughout the Asia region. It has a flexible and experienced business culture and sophisticated financial, legal, accounting, trade and transportation infrastructure. The Hong Kong dollar is freely convertible. There are no exchange controls or foreign currency regulations (except those related to suspected terrorist financing and money

laundering). Hong Kong is a free port for the vast majority of goods and the Hong Kong Government operates simple import and export rules, with a limited number of goods which require an import licence. Hong Kong does not impose export tax. There are no barriers to trade – no tariffs, no quotas, no exceptions. The tax system is relatively simple. There is a low level of tax on locally sourced profits and salaries, and there are no taxes on capital gains.

Hong Kong also has world class technological infrastructure and facilities, and the Hong Kong Government attaches great importance in promoting and nurturing research and development, with a number of research and development grants set up in recent years.

The Closer Economic Partnership Agreement (CEPA) signed between the Central People's Government and the Government of the Hong Kong Special Administrative Region effective from 1 January 2004 allows for the grant to qualified enterprises in Hong Kong, whether locally or foreign-owned, preferential access to certain Mainland markets and reduced tariffs. This agreement is intended to support Hong Kong's role as a service centre for China and a bridge between China and the rest of the world.

With the support of the Central Government, the Hong Kong Government has also been actively promoting and developing Hong Kong as an offshore Renminbi centre, with progressive enhancements to Hong Kong's financial systems to handle Renminbi denominated transactions. This has resulted in a growing number of overseas companies placing RMB funds received from trading, investing and from other channels into Hong Kong, which has enabled Hong Kong to form the largest Renminbi liquidity pool outside of China.²

¹ 2014 Index of Economic Freedom – The Heritage Foundation and The Wall Street Journal

² Legislative Council Secretariat Research Brief, Issue No.2 - Offshore Renminbi Centre, 12 December 2013

Chapter II – Legal and constitutional framework of Hong Kong



On 1 July 1997, the People's Republic of China ("PRC") resumed sovereignty over Hong Kong from Britain, with Hong Kong officially becoming the "Hong Kong Special Administrative Region" of the PRC. The Basic Law, implemented pursuant to the 1984 Sino-British Joint Declaration, was adopted by the PRC Government as Hong Kong's mini-constitution, and took effect on the resumption of sovereignty. It entrenches a separate government and legal system from the rest of the PRC, and provides for the maintenance of all laws that were in force before the resumption of Chinese sovereignty (except for those that contravened the Basic Law). Hong Kong therefore maintains its English common law system.

The Basic Law provides that for a period of 50 years, Hong Kong will enjoy a high degree of autonomy, and its current political, social, commercial and legal system (including the common law and the capitalist economic and trade systems that have made Hong Kong an international business and financial centre) will remain intact.

The judicial system has remained largely unchanged since the handover, except that a Hong Kong Court of Final Appeal was established, in place of the former right of appeal to the British Privy Council. Hong Kong and Commonwealth Judges form the bench of the Court of Final Appeal.

The ownership of businesses and investments outside of Hong Kong is protected by law, as are the rights of individuals and legal persons such as

companies to the acquisition, use, disposal and inheritance of property.

Taxation is levied and applied independently by the Hong Kong Government. The Basic Law requires that taxation must be levied with reference to the low tax policy previously pursued in Hong Kong. The Hong Kong dollar continues to be legal tender and is freely convertible.

According to the Basic Law, a policy of free trade, including the maintenance of Hong Kong as a free port and free movement of goods, intangible assets and capital, should continue. Residents have the right of international travel. Markets for foreign exchange, gold, securities and futures continue. Property leases that extend beyond June 1997 continue to be recognized, and further grants of leases are made in accordance with Hong Kong law.

English and Chinese are the official languages. English is widely used by the executive authorities, the legislature, the judiciary as well as the legal, professional and business sectors in Hong Kong.

Chapter III – A limited company or a branch office of a non Hong Kong company



A. INTRODUCTION

The form adopted to carry on business in or with Hong Kong is by and large a matter of choice. If the business activity is limited to trading with Hong Kong, it may not be necessary to establish any local presence: a locally appointed agent could adequately carry out the business on behalf of a foreign principal. However, where the appointment of a third party agent is not appropriate to carry out the intended business activity, it will be necessary to have a local presence.

The most common form of business entity is a private limited liability company, which may either be a Hong Kong incorporated company which is a subsidiary of a foreign business or a branch office of a company incorporated in a foreign jurisdiction (called a "non-Hong Kong company") registered under Part 16 of the Companies Ordinance ("Part 16"). There are other forms of business association such as sole proprietorship, partnership, limited partnership and joint venture. This summary deals only with the legal framework for formation of a Hong Kong incorporated company or registration of a branch office as a non-Hong Kong company.

The decision whether to incorporate a Hong Kong subsidiary or to register under Part 16 as a branch office may depend as much on factors outside Hong Kong, as those that distinguish the two types of entity in Hong Kong. The formalities of establishing these

two types of vehicles are explained in further detail below. As discussed in Chapter V headed "Taxation", local taxation will be applied on the same basis to the operations of a subsidiary company as to a branch office. Problems relating to the allocation of profits of a foreign company to the operations of the local branch, and the practice of Hong Kong Inland Revenue Department ("IRD") requiring profits returns to be supported by audited accounts, can be met in most cases by having the operations of a local branch separately audited. However, it may be more convenient to incorporate a subsidiary company unless there are factors outside Hong Kong leaning towards operating through a branch office registered under Part 16. A locally incorporated company will provide a clear structure for the management and other operations of the company and so may simplify dealings with third parties in Hong Kong.

A parent company will not generally be liable for the debts or obligations of its subsidiaries, unless it has given a guarantee. The Hong Kong courts uphold the separate legal personality of a parent company. However, in exceptional circumstances (i.e. when the corporate structure is a sham) the courts will lift the "corporate veil" or find persons effectively exercising control over a company, a "shadow director", responsible for the company's affairs.

B. LEGAL FRAMEWORK

The formation, operation and dissolution of Hong Kong incorporated companies, and registration and administration of non-Hong Kong companies registered under Part 16, is largely governed by the Companies Ordinance, which is based on a former UK Companies Act. In 2006, the Hong Kong Government launched a comprehensive exercise to re-write the Companies Ordinance. After numerous rounds of public consultations and discussions over the years, the new Companies Ordinance came into operation on 3 March 2014. The changes introduced are extensive and some of the key changes include:

- removal of the requirement for a memorandum of association. The current provisions in a company's memorandum of association will be

regarded as part of the company's articles of association;

- abolition of par value for existing companies and the introduction of a mandatory no-par regime for companies. This means that associated concepts such as share premium or authorised capital will also be abolished;
- codification of certain directors' duties, but not directors' fiduciary duties;
- restricting the appointment of corporate directors by requiring companies to have at least one director who is a natural person; and
- relaxation of the use of the common seal by making it optional.

All companies incorporated in Hong Kong and non-Hong Kong companies intending to carry on business in Hong Kong must be registered with the Companies Registry. They are also required to file returns with the Companies Registry on changes to its registered particulars, and to file an Annual Return setting out their share structure, directors and certain other matters. Details of charges given by a Hong Kong company or a non-Hong Kong company over its property must also be filed.

A non-Hong Kong company is required to comply with equivalent registration formalities to those described below. Hong Kong law may apply to matters, such as directors' liabilities for defaults carried out in Hong Kong, but matters, such as the issue of shares and restrictions on the rights attaching to shares, will in general be subject to the laws of the jurisdiction in which the non-Hong Kong company is incorporated.

C. INCORPORATION OF LIMITED COMPANIES

1. Types of limited company

There are two main types of limited company in Hong Kong, a "private" company and a "public" company.

A private company is subject to less formality than a public company: there is no requirement to file audited accounts with the Companies Registry (although it must make an Annual Return) and, subject to a number of exceptions, certain requirements as to the contents of accounts may be waived by members.

A private company is one whose Articles of Association:

- restrict the right to transfer shares;
- limit the number of its members to 50 (subject to special provisions regarding employees' shares); and
- prohibit any invitation to the public to subscribe for securities in the company.

Unless the intention is to offer shares or debentures to the public upon incorporation and to apply for a listing of such shares on the Hong Kong Stock Exchange, it would be appropriate to incorporate a private company.

A lot of foreign companies incorporate local subsidiaries as a private company. The incorporation formalities and post-incorporation matters of a private company are dealt with in this Chapter. Issues on employment and taxation are highlighted in Chapters IV and V respectively.

2. Incorporation formalities

(a) Articles of Association

The main constitutional document of a private company is the Articles of Association.

The Articles of Association set out the company's name, share capital details and a statement that the liability of members is limited. The Articles also set out the internal regulation of the private company as regards the dealings between the private company and its shareholders, covering such matters as the rights attaching to and transferability of shares, the convening and conduct of shareholders' meetings, the powers, duties and operation of the board of directors and the proceedings at board meetings, the procedure for declaring dividends and other matters.

Hong Kong companies may adopt "Model" Articles of Association from the Hong Kong Companies Ordinance in whole or in part, which provides a model form of these regulations. In some cases, it may be more appropriate to adopt Articles tailored to the specific circumstances of the company (for example a joint venture company).

To incorporate a private company, the Articles of Association must be filed with the Registrar of Companies ("**Registrar**"), along with a duly completed prescribed incorporation form signed by at least one founder member named in the form. It is also possible to have single shareholder companies. The Articles of Association is given statutory effect as a contract under seal between the private company

and each member and between a member and each other member and is deemed to contain covenants on the part of the private company and of each member to observe all the provisions of the Articles of Association.

(b) Company name

The name of a private company must end with the word "limited", unless exempted by the Registrar, and must not be the same as or too similar to the name of any other company registered in Hong Kong. Certain words, such as "Trust" or "Chamber of Commerce", may not be used in a company name without permission. The Registrar has the power, within 12 months of the date on which such a name was adopted, to direct the company to change its name within such period as specified. This direction may also be given where the Registrar believes that the name under which the company is registered gives so misleading an indication of the nature of its activities as to be likely to cause harm to the public.

A company should also exhibit its name outside its registered office and outside every place of business, and on its letterheads and other stationery.

(c) Registered office

A company must maintain a registered office in Hong Kong for service of process and other documents. The registered office may be changed from time to time with notice to the Companies Registry.

(d) Share capital

A private company has to have a share capital of some monetary amount. There is no prescribed minimum or maximum share capital nor is there a limit restricting the maximum number of shares that can be issued (although a company can choose to place a restriction on the number of shares it can issue). Each founder member must subscribe for at least one share.

(e) Shareholders, directors and secretary

While the shareholders of a Hong Kong company may be individuals or companies, there are restrictions on corporate directorship. Private companies are required to have at least one natural person director and corporate directors are not permitted in the case of a company which is a member of a group of companies, one of which is listed on the Hong Kong Stock Exchange. Directors are not required to be resident in Hong Kong. Individual directors must be over 18 years of age.

There are no restrictions on foreign shareholders, apart from restrictions that would apply generally to foreign control over companies in broadcasting.

The Companies Ordinance allows private companies to have a single shareholder and single director. The sole shareholder of a private company may also be the sole director.

A company must have a secretary who is either an individual resident in Hong Kong or a body incorporate with a registered office or place of business in Hong Kong. One of the directors may be the secretary, although the sole director of a private company cannot be the secretary of the company.

(f) Directors' duties

Normally, the day to day management of the company's business will be carried on by the directors. Directors have general duties under common law to the company, most notably to act in its best interests and under the Companies Ordinance, the directors have a statutory duty to exercise due care, skill and diligence.

In addition to the statutory duty, the Companies Ordinance imposes various duties on directors of private companies, for example: to ensure requirements for the allotment of shares are complied with, to ensure that returns of allotment of shares are filed, to ensure that an annual general meeting is held within the required period, to ensure that books of account are properly kept.

A director may be personally liable if it is shown that he was associated in some way with the company's default in complying with requirements of the Companies Ordinance. Directors also face personal liability for breach of duties owed to the company under statute, common law or equity.

(g) Certificate of incorporation

The time required to incorporate a company varies according to the workload on the Companies Registry. For paper applications, it usually takes four working days from the filing of the incorporation documents until the issue of the Certificate of Incorporation. An online incorporation service is also available, which takes one working day to process applications.

The Certificate of Incorporation is conclusive evidence of the due incorporation and the date of establishment of a company and entitles a company to commence business immediately.

It is also common in Hong Kong to purchase a "shelf company" from an incorporation agent.

3. Post-incorporation matters

(a) Business registration

Every business carried on in Hong Kong, whether by an individual, partnership or company, is required to register with the IRD in accordance with the Business Registration Ordinance. Companies incorporated in Hong Kong are required to apply for registration within one month of incorporation whether or not they are then trading. Since February 2011, a one-stop company incorporation and business registration service was implemented so that any application to incorporate a company under the Companies Ordinance will be deemed to have made a simultaneous application for a business registration. This applies to both on-line and paper applications.

The application for registration is straightforward and covers the name or names under which and the places where the business is carried on together with a description of the nature of the business. A business registration fee and levy is normally payable on application and renewal. Registration is for IRD administration purposes but the registered particulars are open for public inspection.

The Business Registration Certificate shall be displayed at every address at which business is carried on in Hong Kong. Where there are branch offices, branch certificates would be issued for a further fee. Certificates are required to be renewed each year for a one year certificate, or every three years, for a three year certificate. It is usual for banks to require production of a valid Business Registration Certificate before they will open bank accounts on behalf of a company or branch office. Other persons, such as landlords, may also request to see the Business Registration Certificate in order to deal with a business operating in Hong Kong.

Certain types of business may require additional forms of licence. For more information, please visit the website of Business Licence Information Services of the Trade and Industry Department (<http://www.success.tid.gov.hk/tid/blics.index.jsp>).

(b) Functioning before incorporation

Although a company does not exist under Hong Kong law before the Certificate of Incorporation is issued by the Registrar, the Companies Ordinance provides that, subject to any express contrary agreement, a contract which purports to be made by or on behalf of

a company before incorporation shall be effective as a contract of the person who purported to act on the company's behalf and such person will be personally liable on the contract. The pre-incorporation contract can be adopted by a company after its incorporation by ratification, and it can also be transferred to a company by novation - a new agreement replacing the original whereby the other contracting party agrees to deal with the company in substitution for the person who made the original contract.

(c) Continuing obligations for Hong Kong companies

Important continuing obligations of companies incorporated in Hong Kong are listed below:

- Annual General Meeting: a private company or a company limited by guarantee is required to hold an Annual General Meeting within nine months after the end of its accounting reference period (i.e. its financial year); in the case of any other company (such as a public company), within six months after the end of its accounting reference period. If the accounting reference period is the first accounting reference period of the company and is longer than 12 months, the company must hold its first annual general meeting within the following period:

In the case a private company or a company limited by guarantee:

- (i) nine months after the anniversary of the company's incorporation; or
- (ii) three months after the end of that accounting reference period, whichever is later.

In the case of any other company (such as a public company):

- (i) six months after the anniversary of the company's incorporation; or
- (ii) three months after the end of that accounting reference period, whichever is later.

The Companies Ordinance allows a company to dispense with the requirements for holding of Annual General Meetings by passing a written resolution or a resolution at a general meeting by all members. A single member company is

not required to hold an Annual General Meeting at all.

- Annual Return (containing prescribed information in relation to the directors, secretary and shareholders of the Company): to file an Annual Return with the Companies Registry within 42 days of the date specified in the return – for a private company, the information in the Annual Return should be made up to the anniversary of the date of its incorporation. (or in the case of a public company the Annual Return should be made up to the date that is six months after the end of its accounting reference period.).
- Audited accounts: to prepare audited accounts and lay them before the company in general meeting. Unless the company is a private company, a copy of the accounts must be filed with the Companies Registry. The new Companies Ordinance has relaxed the criteria for companies to prepare simplified financial reports and directors' reports so private or guarantee companies that meet certain size criteria are exempted from certain specific requirements relating to the preparation of financial statements, directors' and auditor's reports. Certain types of companies may be able to benefit from simplified financial reporting.
- Reporting requirements: to make timely filings when there are changes to its registered details including a change in company name, registered office, secretary and directors, changes to its articles of association, any increases, redemption or reductions of share capital, any subsequent allotments of shares, the granting of encumbrances over assets and any special and certain ordinary resolutions passed by the company.
- Employer's Return: to make a return containing details of employees and their remuneration.
- Profits Tax Return: to make a Profits Tax Return, normally on the basis of audited accounts showing the profits tax payable for the financial period ended in the year of assessment.
- Special resolutions: copies of all special resolutions passed, except for special resolutions for the change of name of a company, are to be filed with the Companies Registry.

- Statutory Books: in addition to its books of account, to keep its statutory books, the most important of which are the register of members, the register of directors and secretary, the register of charges and the minute books for minutes of directors' and shareholders' meetings. The registers of members, charges and directors and secretaries must be kept at the registered office of the company except in certain circumstances where the work carried out to make them up is carried on elsewhere or where someone else is instructed to make them up. However, they must not be kept outside Hong Kong.

(d) Change of name

A private company can pass a special resolution of shareholders to approve a change of name and then file a notice of change of name with the Companies Registry. The new name has to comply with similar restrictions as with incorporation. The Registrar will issue a Certificate of Change of Name, usually within four working days of the filing of the notice of change.

(e) Amendments to the Articles of Association

A private company is allowed to amend any provisions in its Articles of Association. Procedures for such amendment are the same as those for a change of name. Subject to the provisions of its Articles of Association, a private company may alter its share capital in the following manner:

- increase its share capital by adding new shares;
- increase its share capital without allotting and issuing new shares, if the funds or other assets for the increase are provided by the members of the company;
- capitalize its profits, with or without allotting and issuing new shares;
- allot and issue bonus shares with or without increasing its share capital;
- convert all or any of its shares into a larger or smaller number of shares; or
- cancel shares which have not been taken or agreed to be taken by any person; or that have been forfeited.

A notice in the prescribed form has to be filed with the Companies Registry within one month after the alteration.

D. REGISTRATION OF A BRANCH OFFICE OF A NON-HONG KONG COMPANY

A company incorporated outside Hong Kong that wishes to carry out activity in Hong Kong to create binding legal obligations must apply for registration under Part 16 within one month of establishing a place of business in Hong Kong.

1. Registration formalities

(a) Documents for registration

- (i) a specified registration form;
- (ii) a certified copy of the charter, statutes or memorandum (including articles, if any) of the company or other instrument defining the constitution of the company. If the original document is not in English or Chinese, only a certified translation of the document into either of these languages needs to be filed;
- (iii) a certified copy of the Certificate of Incorporation of the company (together with any certificates of incorporation on change of name) including a certified translation in English or Chinese, if not produced initially in either of these languages;
- (iv) a certified copy of the latest published accounts of the company (if any). If the accounts are not written in English or Chinese, a certified translation in English or Chinese should be filed in lieu of the certified copy of the accounts in the original language; and
- (v) a specified business registration form.

(b) Appointment of authorised representative

A non-Hong Kong company must appoint an "authorised representative" who is either an individual resident in Hong Kong or a firm of solicitors or accountants with an established place of business in Hong Kong to accept service of documents on the company's behalf.

2. Post-registration matters

(a) Business registration

Similar to companies incorporated in Hong Kong, non-Hong Kong companies are required to apply for business registration within one month of registration whether or not they are then trading.

A branch of a company incorporated outside Hong Kong, which only operates as a "representative office", may simply register itself under the Business Registration Ordinance (within one month following its opening) without the need to apply for registration under Part 16.

(b) Annual return

Every non-Hong Kong company must, within 42 days of the date specified in the return – for a non-Hong Kong company, the information in the Annual Return should be made up to the most recent anniversary of its date of registration., deliver to the Registrar of Companies for registration, an annual return together with a certified copy of its latest published accounts, if any. If the accounts are not written in English or Chinese language, a certified English or Chinese translation has to be filed.



(c) Continuing obligations

Important continuing obligations of non-Hong Kong companies registered under Part 16 in Hong Kong are listed below:

- Reporting requirements: to make timely filings when there are changes to the registered details of the non-Hong Kong company including a change in company name, details of its directors and secretary, the Memorandum and Articles of Association or equivalent constitutional documents, names or addresses of the authorised representative, address of the company's principal place of business in Hong Kong or of its registered office or of its principal place of business in the place of its incorporation, the creation or execution of incumbrances over its assets in Hong Kong;

- Employer's Return: to file a return containing details of employees and their remuneration; and
- Profits Tax Return: to file a Profits Tax Return with the IRD, normally on the basis of audited accounts showing the profits tax payable for the financial period ended in the year of assessment.



Chapter IV – Employment



Basic rights and protection for employees are prescribed by the Employment Ordinance (the "Ordinance") without distinction between locals and foreign nationals working in Hong Kong. The statutory provisions are (mostly) mandatory and govern all employment contracts (with a few exceptions) that are to be performed wholly or substantially in Hong Kong. Other rights may apply by virtue of the terms of the employment contract.

There is no legal requirement for a Hong Kong employment contract to be made in writing, except where the duration of the employment is for a fixed term which exceeds one month. The absence of written terms will result in the employment contract being treated as a one-month contract, renewable on a monthly basis (terminable on notice). An employer who does not wish to enter into a written employment contract with its employees, is under a statutory duty to give an employee a written statement containing the major terms of employment on request.

Terms of the employment relationship may also be implied by custom, the common law or equity. For example, employees owe an implied duty of fidelity and good faith to their employers, under which they may not compete with or breach the confidentiality of their employers.

A. SCOPE OF THE EMPLOYMENT ORDINANCE

The Ordinance applies generally to all contracts of employment in Hong Kong. It provides a range of statutory controls including measures for the duration and termination of contracts, the payment of wages and severance pay and days off. Whether any or all of these provisions apply to an employee will generally depend upon whether the employee has a "continuous contract", and the period for which he has been employed under that contract. The statutory meaning of "continuous contract" is complicated, but is based upon the concept of an employee working for 18 hours or more in each of the four weeks preceding the relevant time. The employment of young persons in industrial settings is specifically regulated.

Employers and employees generally cannot contract out of the provisions of the Ordinance.

Contracts for service with independent contractors do not fall within the ambit of the Ordinance.

B. WAGES

The Minimum Wage Ordinance ("MWO") was passed by the Legislative Council in July 2010, and came into force on 1 May 2011. The current statutory minimum wage is HK\$30 per hour and applies to all full-time, part-time or casual employees, whether or not they are employed under a "continuous contract", except for foreign domestic helpers, student interns and work experience students.

Wages must be paid in legal tender, unless the employee consents to a bank transfer or similar form of payment. The employer is entitled to make deductions from wages only in certain circumstances (e.g. deductions for absence from work, recovery from an advance or overpayment of wages or other than in cases where the employer knows that the employment is to terminate and the employee is to leave Hong Kong, in which case the IRD will require the employer to withhold payment until the IRD is satisfied that the employee has paid all outstanding

taxes). This is an exception to the general case that wages are paid without deduction on account of tax to employees.

It is common in Hong Kong for employees to be given a "Chinese New Year" or an "end of year payment" which in effect is an annual bonus, frequently equivalent to one month's wages, generally paid at the lunar new year. Employers may "contract out" of this obligation but in the case of lower paid employees, to do so would be the exception rather than the norm.

C. MANDATORY PROVIDENT FUND, INSURANCE

With limited exceptions, employees are required to make statutory contributions to a retirement fund scheme that is registered as a mandatory provident fund scheme for employees. Both the employer and the employee must make 5% contributions on the employee's relevant income, unless an employee earns less than HK\$7,100 a month (in which case only the employer has to contribute 5%). The employer and employee need not contribute more than HK\$1,500 each per month.

Employers are also required to maintain statutory workers' compensation insurance coverage for work-related injuries. The amount of cover is at least HK\$100 million (US\$12.8 million) per event for employers with not more than 200 employees and at least HK\$200 million (US\$25.6 million) per event for employers with more than 200 employees. There is no statutory requirement to provide medical benefits (beyond limited sick pay) or pay public or private medical insurance for illness or other disability affecting employees.

D. WORKING WEEK

The generally applicable statutory limit imposed on working hours or days is that every employee who works at least 18 hours per week must be given at least one rest day in every period of seven days. There is no statutory limit on the maximum number of working hours for an employee. Although many employers in Hong Kong still adopt a five and a half-day working week, with the half-day worked on Saturday, there is a rising trend that is shifting this practice to a five day working week. It is common for Hong Kong employment contracts to stipulate that employees are required to work overtime as and when required.

E. REST DAYS / PAID LEAVE

An employee is entitled to one rest day in every seven days, the specific day of the week to be set by

the employer. After three months of service, all Hong Kong employees who work at least 18 hours per week are entitled to 12 paid statutory holidays in every year. Employees working at least 18 hours per week are also entitled by statute to between seven and 14 days annual leave (or payment in lieu), according to a progressive scale based on years of service.

F. SICKNESS LEAVE AND ALLOWANCE

Persons employed under a continuous contract are, after one month, entitled to a sickness allowance, according to their length of service, of two paid sickness days for each completed month of service during the first 12 months of continuous employment and four paid sickness days for each such month subsequently, up to a maximum of 120 paid sickness days. The minimum allowance for paid sick leave is four-fifths of an employee's average monthly wages over the preceding 12 months.



G. MATERNITY AND PATERNITY

A woman employed under a continuous contract is entitled to maternity leave if she gives the prescribed notice. Leave begins two to four weeks before the

expected date of delivery, and may continue until the end of the sixth or eighth week after the expected date of delivery (the maximum basic leave period being ten weeks) and up to a further four weeks on grounds of illness or disability arising from the pregnancy. Where an employee who has worked continuously for her employer for more than 40 weeks, the employee is entitled to receive four-fifths of her average monthly wages over the preceding 12 months during maternity leave and such leave will not break her continuity of employment.

Hong Kong is beginning to introduce paternity leave with Government employees being entitled to five working days of paid paternity leave since 1 April 2012. A draft bill was introduced to the Legislative Council in March 2014 but as yet no timetable for implementation has been fixed.

H. TERMINATION OF EMPLOYMENT

Most contracts of employment may be terminated unilaterally by either the employer or employee giving the requisite period of notice of termination to the other or by payment of wages in lieu. The notice period for termination of an employment contract is freely negotiable, subject to the following rules:

- a fixed term contract for more than a one month period may be terminable before its expiry on the expressly agreed notice period, which must not be less than seven days;
- a continuous contract which has lasted for one month may be terminated on not less than one month's notice or the agreed period of not less than seven days; and
- in the case of all other continuous contracts, not less than seven days' notice must be given to terminate other continuous contracts.

An employer can summarily dismiss an employee without notice or payment in lieu of notice, for wilful misconduct or serious breach of the employment contract. Equally, an employee may leave without prior notice if his employer is in serious breach of the contract; in effect, the employee may treat himself as being "constructively dismissed" by the employer.

Employees who have been unreasonably or unlawfully dismissed are entitled to seek financial compensation, while either reinstatement or re-engagement (that is re-employment in another position) may be ordered in special cases. The amount of compensation payable will be equivalent to the payment in lieu of notice that would have been payable if the employment contract had been lawfully

terminated by payment in lieu of notice together with any statutory termination payment.

I. REDUNDANCY

Employees who have been employed under a continuous contract (see above) for at least 24 months under continuous contract of employment are entitled to a severance payment in the event of redundancy or being laid off (that is, where the employee's remuneration depends on being provided with a particular kind of work, and the amount of this work cannot be sustained). Such employees may also be entitled to receive other sums payable on termination. Severance payments are calculated with reference to two-thirds of (i) the employee's last full month's wages or the average of the employee's wages in the last 12 months, at the employee's option or (ii) HK\$22,500, whichever is the lesser, multiplied by the years of service, up to a maximum of HK\$390,000.

Redundancies must be fair and objectively justifiable to avoid claims for unfair dismissal.

J. LONG SERVICE PAYMENTS

An employee who has been employed under a continuous contract for no less than five years and is dismissed (other than for his own wrong-doing or by way of redundancy), or who gives notice to terminate his employment on the grounds of ill health or retirement after the age of 65, will be entitled to a long service payment. The amount of long service pay is calculated according to the employees existing monthly pay multiplied by the relevant years of service at the same level as a severance payment on redundancy. Any amounts paid in respect of a gratuity based on length of service and/or the employer's contributions to any retirement scheme or mandatory provident fund scheme may be set off against a long service payment.

K. NON-RESIDENT EMPLOYEES: IMMIGRATION TO HONG KONG

A work permit is required for all non-residents who wish to take up employment in Hong Kong. Applicants are required to complete prescribed forms and produce evidence of their employment offer and qualifications. Applications for work permits can be submitted through the PRC Embassy, diplomatic or consular mission nearest the applicant's place of business. It will, however, generally save time if the Hong Kong employer submits the application directly to the Immigration Department in Hong Kong explaining why the particular skill sets are needed and that they cannot be obtained from the local labour force. Once all of the requisite documents have been submitted, the processing time is normally between four to six weeks. The work permit will initially be granted for one year, but can be extended provided the permit holder continues to be employed with the same employer, or has arranged a substitute employer. The Government fee for processing and issuing the work permit is currently HK\$160.

Work permit holders are able to sponsor their spouse and any children to live with them in Hong Kong with separate dependant visas.

L. TRADE ASSOCIATION BACKGROUND

In the private "white collar" sector, there is little collective bargaining. Trade unions are legally recognised and must be registered. Employees have a statutory right to be a member of a trade union, and must not be discriminated against as a result of that membership. Collective bargaining agreements are relatively uncommon in the private sector in Hong Kong. Outside such collective agreement, employees do not have rights to management representation, or consultations regarding corporate transactions.

There are various employers' organisations, including the General Chamber of Commerce, the Employers' Federation of Hong Kong and the Federation of Hong Kong Industries.



Chapter V – Taxation



A. TAXATION STRUCTURE

All companies carrying on a trade or business in Hong Kong are subject to profits tax on any assessable profits arising in, or derived from, Hong Kong sources. Profits derived from outside Hong Kong are exempt from this tax, even if earned by a Hong Kong resident and remitted to Hong Kong. Hong Kong does not tax dividends, bank interest or capital gains (although capital profits made in the trading of assets in the course of business will be assessable to profits tax), as will profits on dividends and interest income arising in the conduct of business.

Hong Kong has a relatively simple taxation system, with a low level of profits/income tax, historically ranging between 15 and 20 per cent. The most important tax legislation is contained in the Inland Revenue Ordinance. There are three main taxes: profits tax, salaries tax and property tax (taxing on rent and other deemed income from land and buildings). There are various other taxes, such as stamp duty on documents (principally those transferring an interest in land or securities), betting duty, entertainment tax and hotel accommodation tax. As previously referred to, there is also an annual fee and levy for the registration of businesses carried on in Hong Kong. There is no sales tax or any form of indirect consumption tax, such as value added tax. There is no total income concept, so if an item of

income does not fall within one of these heads of tax charge, it is not taxable.

Hong Kong has no special tax incentive schemes for investors. Offshore income is not taxed. Taxation relief previously available between Hong Kong and some Commonwealth countries is no longer available following the reversion of sovereignty to China. Hong Kong has traditionally had double tax treaties with various countries covering aviation and shipping but is now significantly increasing the number of more comprehensive double taxation treaties. There are certain arrangements in place with the PRC authorities to minimise double taxation of cross border activities between PRC and Hong Kong and tax relief arrangements for international shipping and aircraft income.

The tax system is administered by the Inland Revenue Department, which issues guidance notes from time to time in relation to its application of relevant tax legislation.

B. PROFITS TAX

1. The basic tax charge

Profits tax (at 16.5 per cent for corporations and 15 per cent for others, with effect from 1 April 2008) is chargeable on every person (including individuals and business organisations regardless of where they are incorporated) carrying on a trade, profession or business in Hong Kong in respect of any profits "arising in or derived from" Hong Kong. Additionally, certain receipts of income will be treated as taxable Hong Kong income even if the recipients have no presence in Hong Kong at all. These include royalties for the use of patents, trademarks, copyrights, designs or knowhow in Hong Kong, rental charges for moveable property in Hong Kong and cinema and television fees. There are also special taxation rules for insurance companies, clubs, trade associations and ship and aircraft owners and operators and financial institutions.

Whether a business is being carried on in Hong Kong is primarily a question of fact and must be distinguished from the case where a person is trading with Hong Kong. A common test to determine whether profits arise in or derive from a Hong Kong source is whether the operations from which the profits in substance arise took place in Hong Kong.

The Hong Kong branch office or representative office of a foreign-incorporated business will be presumed to be carrying on trade or business in Hong Kong (and will therefore be liable to profits tax on profits from a local source) if its local operation constitutes "a place of business". There is no difference between the charge to profits tax for a Hong Kong incorporated company and the charge to a non-Hong Kong company.

2. Chargeable profits

Normal accounting principles are generally accepted in determining profits or losses for tax purposes, except where there is a specific statutory provision. Business records enabling profits to be readily ascertained must be kept for at least seven years.

Profits on the sale of capital assets are not taxable and in practice this is extended to other forms of capital gain.

Dividends received from a corporation subject to Hong Kong profits tax, and income already included in the assessable profits of another person chargeable to Hong Kong profits tax, are excluded from the chargeable profits of the recipient.

3. Deductible expenditure and losses

Expenditure may be deducted to the extent that it is incurred in the production of chargeable profits is deductible. Expenditure of a capital nature are not deductible though allowance on depreciation may be available. Deductible expenditure includes interest (subject to certain statutory conditions), bad and doubtful debts (any sums subsequently recovered being treated as income when received), repair costs for premises, plant and machinery and rent of land used to produce the profit, registration of a trade mark, design or patent and the purchase of patent or know-how rights, research and development, an employer's annual contribution to a fund under a recognised occupational retirement scheme or the like and donations of not less than HK\$100 made to approved charities (for so long the donation does not exceed 35% of the assessable profits).

Losses in one year can be carried forward indefinitely against future profits of that person, but losses of one company cannot be set off against profits of another group company. However, losses made by a company carrying on more than one trade may have losses in one trade set off against profits of the other.

4. Year of assessment

A taxpayer is assessed on profits tax for each year of assessment in which he or she earns assessable profits. A "year of assessment" commences on 1 April and concludes on 31 March in the following year.

A taxpayer is under a duty to provide an income statement to the IRD within four months of the end of the tax year. The IRD has wide powers to obtain information.

Profits tax is assessed on a "current year" basis. The normal "basis period" for a profits tax assessment for a continuing business is the period of the assessment year. A taxpayer's assessable profits are normally computed on the full amount of his or her profits which have arisen or derived from Hong Kong during the year ending 31 March.

C. SALARIES TAX

1. Taxable income

All Hong Kong based employees, regardless of their nationality, are liable to pay Hong Kong salaries tax on any income generated from Hong Kong employment. "Income" includes all benefits including salary, bonuses and all perquisites capable of being turned into money. Any income from employment-related services performed in Hong Kong will constitute Hong Kong employment, and will therefore be taxable. In the absence of special circumstances, an employee seconded to work for an employer conducting business in Hong Kong will be presumed to be engaged in Hong Kong employment, even if some services are performed outside Hong Kong.

Salaries tax is chargeable on a person's net chargeable income "arising in or derived from" his Hong Kong employment, any office he holds and any pension he receives during the tax year. The tax is charged at progressive rates, subject to a maximum effective standard rate of 15 per cent (with effect from 1 April 2008).

Employees whose period of secondment or visits to Hong Kong last not more than 60 days (in aggregate) in any tax year will not be liable, by virtue of those

visits alone, to Hong Kong salaries tax. The extraterritorial jurisdiction of certain tax laws in other countries frequently subjects expatriate workers in Hong Kong to double taxation. Accordingly, seconded workers will need to look to the domestic law of his or her home country for double taxation relief.

2. Administration

Salaries tax is charged on the actual income of the tax year. The employer is not required to deduct tax at source. A provisional tax charge for the following tax year is made during the current tax year, with any excess being applied towards salaries tax chargeable for the following year.

An employer must also provide certain returns about his employees and inform the IRD when an employee is about to leave Hong Kong, so that the IRD may ensure all tax is paid before departure.

D. STAMP DUTY

The Government levies stamp duty on certain instruments executed or brought into Hong Kong, including transfers of Hong Kong stock and transfers or leases of immovable property situated in Hong Kong. The standard rate of ad valorem duty on the sale and purchase of Hong Kong stock is 0.2% (0.1% on the sale, 0.1% on the purchase). Transfers of sale and purchase agreements in relation to interests in immovable property attract ad valorem duty at a variable depending on the value of up to 8.5% from 23 February 2013 (the maximum rate was only 4.25% prior to this date). A lease under which rent is payable, attracts duty of between 0.25% and 1% of the annual rent depending on the lease period.

In recent years, the Hong Kong Government has introduced measures in an attempt to cool property speculation. On 20 November 2010, a Special Stamp Duty regime (of 15%, 10% and 5%) was introduced, which applies to residential properties which are resold within 6, 12 and 24 months of acquisition. On 27 October 2012, a Buyer's Stamp Duty regime was introduced on residential properties acquired by any person or company (except for properties acquired by a Hong Kong Permanent Resident) charged at a flat rate of 15%. This is on top of the existing stamp duty and the Special Stamp Duty. On 23 February 2013, further cooling measures were announced by the Financial Secretary, including doubling the rate of ad valorem stamp duty on most property sales (although this does not apply to Hong Kong permanent residents who are not beneficial owners of any other residential

property in Hong Kong at the time of acquisition). The legislation supporting such measures was passed on 15 July 2014 and will apply retrospectively to 23 February 2013. For non-residential properties, stamp duty became chargeable on execution of the agreement for sale and purchase instead of on execution of the conveyance. This was aimed at curbing sub-sales of properties before completion of the original conveyance.

The authorities have power to charge duty on the market value of the asset if they assess the consideration to be inadequate. Late stamping of documents will be penalized (in some cases up to 10 times the original duty).

Generally, each party to the transaction is responsible for payment of the stamp duty. The persons liable may be sued to recover the original duty and any penalty. Unstamped documents are generally inadmissible as evidence in court proceedings.

There is relief from stamp duty on transfers of interests in land or Hong Kong securities between associated companies (having 90 per cent common ownership) where the consideration for the transfer is funded by the group or financed by banks on an arm's length basis in the normal course of business. The relief is lost if the companies cease to be associated within two years from the transfer.



Appendix – Useful contacts

BUSINESS SERVICES

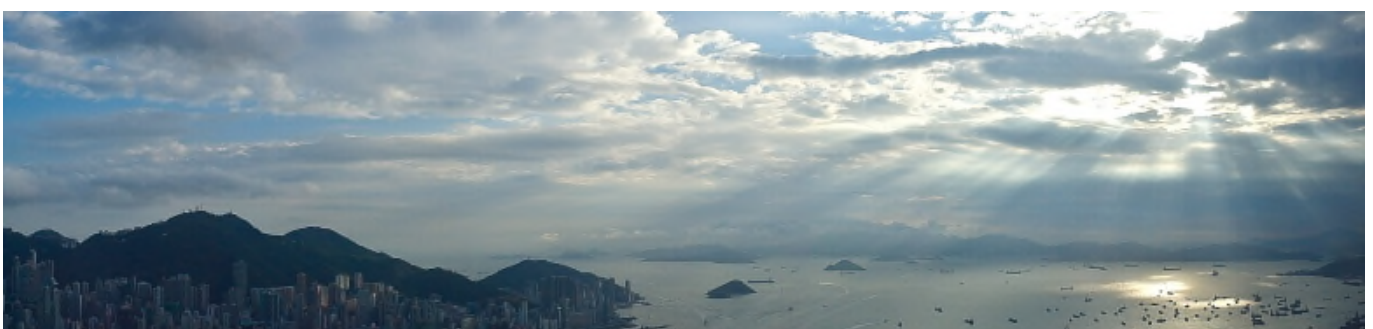
- Hogan Lovells – www.hoganlovells.com
- Hong Kong Tourism Board – www.discoverhongkong.com
- Hong Kong Trade Development Council – www.hktdc.com
- Invest HK – www.investhk.gov.hk

HONG KONG GOVERNMENT

- Create Hong Kong – www.createhk.gov.hk
- Hong Kong Government home page – www.gov.hk
- Immigration Department – www.immd.gov.hk/
- Inland Revenue Department – www.ird.gov.hk
- Labour Department – www.labour.gov.hk
- Trade and Industry Department – www.tid.gov.hk

BANKING, FINANCIAL AND INSURANCE

- Financial Services and the Treasury Bureau – www.fstb.gov.hk
- Hong Kong Exchanges and Clearing Limited – www.hkex.com.hk
- Hong Kong Institute of Certified Public Accountants – www.hkicpa.org.hk
- Hong Kong Monetary Authority – www.hkma.gov.hk
- Mandatory Provident Fund Schemes Authority – www.mpfa.org.hk
- Office of the Commissioner of Insurance – www.oci.gov.hk
- Securities and Futures Commission – www.sfc.hk



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