

DOING BUSINESS IN HONG KONG

2017



INTRODUCTION

As a leading global finance center and a historically open economy, it's worth remembering that Hong Kong has been a Special Administrative Region (SAR) of the People's Republic of China (PRC) since 1997. But Hong Kong enjoys great autonomy from the mainland, and the city has retained its reputation for ease of doing business and free trade. It frequently attracts the attention of foreign investors looking for a foothold in the Asian market.

As an important banking and financial center in the Asia Pacific region, Hong Kong Stock Exchange ranks the fourth in Asia and the eighth in the world in terms of market capitalization. In 2016, Hong Kong again raised more IPO funds than any other stock market worldwide.

Hong Kong was the fourth-ranked location in the world (behind New Zealand, Singapore and Denmark) by the 2016 World Bank Doing Business Survey in terms of ease of doing business. Its simple, low cost tax structure has made Hong Kong a natural regional hub for multinational companies doing business in Asia. In addition, Hong Kong is a free port and generally does not levy customs duties except for a very limited number of goods. Because of its attractive business environment, Hong Kong receives the third largest amount of foreign investment in Asia and the fourth largest in the world.

Hong Kong is also the perfect gateway to access to the dynamic and emerging market of mainland China, attracting many leading international businesses to choose setting up their regional operations in Hong Kong.

The Doing Business in Hong Kong guide has been prepared to assist those who are interested in doing business in Hong Kong. It features topics such as setting up business entities in Hong Kong, import issues, tax and financial systems, financial reporting and audit standards, and labor and employment.

MAZARS IN HONG KONG

Mazars Hong Kong is part of the Mazars group, unique as an international, integrated and independent partnership. Mazars is also a member of the Praxity Alliance, which ranks among the top 10 of the international accounting firms in size and global billings.

Mazars Hong Kong specializes in audit, accounting, tax and business advisory services, corporate finance, business risk assessment, corporate restructuring and forensic investigation services. We focus on providing value in meeting clients' needs - whether they are individuals, OMB's / SME's, or multi-national corporations. We work closely with our 25 Mainland China offices in delivering professional services through multi-lingual teams experienced in both international and local requirements and regulations.

Mazars Hong Kong recognizes that a comprehensive range of skills, expertise and experience can make all the difference to the success of your business. We therefore offer a complete range of services that can provide for all your business needs. Even when highly specialized services are required, Mazars Hong Kong is well equipped to serve as your coordinator to oversee the successful completion of your assignment.

Our scope of services includes:

- Assurance & Business Advisory
- Tax Advisory – international, PRC, Hong Kong
- Business Risk Services
- Corporate Finance
- Corporate Recovery & Forensic Services
- Forensic Investigations, Litigation Support and Expert Witness
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1. GENERAL INFORMATION ON HONG KONG SPECIAL ADMINISTRATIVE REGION (HKSAR)

GDP GROWTH	1.9%*
INFLATION	2.4%
POPULATION	7.4 M*
GDP PER HEAD	US\$44,000*
WORLD BANK EASE OF DOING BUSINESS RANK	4^

* Data collected from HKSAR ; ^ Data collected from data.worldbank.org

2. ESTABLISHING AN ENTITY

There are three basic ways of establishing a business in the Hong Kong Special Administrative Region (HKSAR):

- Sole proprietorship or partnership.
- Limited liability companies.
- Branch office or representative office of a foreign company incorporated outside of HKSAR.

Sole Proprietorship

Other than ensuring that business registration requirements are complied with, there are no statutory restrictions on the way in which an owner runs the business (provided it is legal). However, a sole proprietorship gives rise to unlimited liability for the owner and therefore it is not normally recommended.

Partnership

General and unlimited partnerships are formed under the Partnership Ordinance.

In a general partnership, all partners are jointly and severally liable without limit for the debts and obligations of the partnership. Partners are also each personally liable, without limitation, for all the debts and obligations of the partnership not satisfied by the partnership assets.

It is possible to register, with the Registrar of Companies, a limited partnership, which is governed by the Limited Partnership Ordinance, under which the liability of at least one of the partners must remain unlimited.

Limited Companies

Limited companies may be either private or public companies limited by shares or a guarantee company without share capital, the operation of which is mainly subject to the provisions of the Companies Ordinance. The liability of members of a company for the company's debts is limited to the issued share capital or, in the case of a company limited by guarantee, to the amount of the guarantee.

Most business operations in the HKSAR are private companies limited by shares, whose articles of association:

- Restrict the right to transfer the company's shares.
- Limit the number of members to 50.
- Prohibit any invitation to the public to subscribe for shares or debentures.

Any company, whose articles of association do not contain the three restrictions specified above, is a public company.

Branch or Representative Office

Any overseas company which establishes a place of business in the HKSAR is required to register pursuant to the Companies Ordinance. A place of business includes a share transfer or share registration office, any place used for the manufacture or warehousing of goods, and/ or a place used by the company to transact any business which creates legal obligations.

If the office in the HKSAR has a liaison function and no business is conducted in the HKSAR that creates legal obligations, then the only action that must be taken is for the company to register a representative office under the Business Registration Ordinance.

3. FOREIGN BUSINESS RESTRICTIONS

Essentially, there is no restriction on foreign business setting up in Hong Kong. There is also no Hong Kong residential requirement for shareholders and directors of an entity in the HKSAR.

4. INVESTMENT INCENTIVES

While Hong Kong does not offer special business incentives, its low tax rates, excellent financial infrastructure and freedom of information are enough to establish itself as a leading global business center.

Expenditure on plant and machinery directly related to manufacturing and computers may be written off in the year of purchase. For other plant and machinery, depreciation allowance is in the form of initial allowance and annual allowance. Deduction of initial allowance of 60% of the capital expenditure incurred is allowed in the year of purchase. Annual allowance is calculated on the remaining balance at a certain rate (usually 20%).

5. WORK PERMITS AND VISAS

Other than those who have the Right of Abode or Right to Land in the HKSAR, all foreigners require a visa to live and work in Hong Kong.

As a general rule, any person who wishes to study, enter into employment, invest in the HKSAR, settle in Hong Kong for permanent residence, or stay as a visitor longer than the allowed visa free period, must obtain a visa before coming to the HKSAR, via a Chinese Consulate or Visa Office in his/her country of residence or citizenship.

People who take up residence in the HKSAR are required to register for an identity card by law. After living in the HKSAR for seven years, one can apply for a permanent identity card and, if successful, there is no subsequent requirement for a visa or a work permit.

6. FOREIGN CURRENCY TRANSACTIONS CONTROL

There are no exchange controls or restrictions on capital flows in and out of Hong Kong. The local currency is the Hong Kong Dollar (HKD).

Since 1983, the HKD has been officially pegged at HKD 7.80 = USD 1.00. Accordingly, the exchange rate of HKD to other currencies and Hong Kong interest rates follow US fluctuations.

7. TAXATION

Profits tax is imposed for each tax year on Hong Kong-sourced profits derived from a trade, profession or business carried on in Hong Kong. There is no distinction between residents and non-residents. The source of profits is determined by an "operations test", i.e. identifying the activities which directly produce the relevant profits and the place where these activities are carried out. Expenses are generally deductible to the extent that they are incurred in the production of assessable profits. However, capital expenditure is not tax-deductible.

A tax year covers a period of 12 months commencing on 1st April and concluding on 31st March. Profits earned by a person during an accounting year ending within a tax year will be deemed to be his profits for that tax year.

Tax losses incurred cannot be carried back but can be carried forward indefinitely to offset against any future assessable profits. Anti-avoidance provisions restrict the use of tax losses where a change in shareholding was undertaken solely or dominantly for the purpose of utilizing the losses to obtain a tax benefit.

The prevailing profits tax rate is 16.5% for corporations and 15% for unincorporated businesses.

Salaries tax is imposed for each tax year on an individual's income arising in or derived from Hong Kong from any office, employment or any pension. For Hong Kong employment, all income derived will normally be subject to salaries tax, even if some services are performed outside of Hong Kong. Income from non-Hong Kong employment is only taxed to the extent that is derived from services rendered in Hong Kong. In determining whether an employment is a Hong Kong employment or a non-Hong Kong employment, the practice of the Inland Revenue Department is to take into account all of the relevant facts with particular emphasis on where the employment contract was negotiated, entered into and where it is enforceable, where the employer is resident and where the employee's remuneration is paid to him. Income from services rendered during visits to Hong Kong by a person not exceeding 60 days in a tax year will be exempt.

Salaries tax is charged at progressive rates from 2% to 17% on a taxpayer's net chargeable income (i.e. income after deduction of expenses and personal allowances) with the maximum amount of tax limited to the standard rate of 15% on the taxpayer's net assessable income (i.e. income after deduction of expenses but with no personal allowances granted). Subject to certain exceptions, both employer and employee are required to contribute 5% of the monthly income of the employee to a Mandatory Provident Fund (capped at HKD 18,000 p.a.).

There is no value added tax, sales tax or capital gains tax in Hong Kong.

8. EMPLOYMENT (TAX & LEGAL)

The Employment Ordinance serves as the law governing employment practice and labor relations in Hong Kong.

Types of employment

All employees in Hong Kong except seamen, apprentices, and family members living in the same dwelling are entitled to wage protection and statutory holidays. After four weeks of employment with at least 18 hours worked per week, an employee automatically falls under a continuous contract and can receive other benefits.

An employment contract must stipulate the wage, wage period, notice requirements, and bonus calculations if applicable. If a contract is in writing, the employee must receive a copy; and if the contract is made orally, the employee is entitled to a copy if s/he requests one.

Additionally, the employer must keep records of the employee's name, identity card number, job title, wage, wage period, notice requirement, the number of days' leave entitled and taken, as well as payments made during leave. If applicable, the employer must also keep record of the number of hours in a wage period, bonus calculations, and date of termination.

Working hours and compensation

Wages must be paid out within seven days after the wage period. Hong Kong has no law about regular working hours and overtime hours—they are specified in the employment contract although one is currently under discussion. Employers are only required to provide one rest day every week. The average full-time employee in Hong Kong works 49 hours a week and over half of employees receive no remuneration for overtime.

Wages and benefits

Minimum daily wage

Since 2011, Hong Kong has enforced a statutory minimum wage. The current minimum wage is HKD 32.5 per hour. The minimum wage will be increased to HKD 34.5 with effect from 1 May 2017.

Holiday pay

Each full time employee is entitled to twelve days of statutory holidays.

An employee who has rendered one year of service is entitled to a minimum of 7 days of paid leave annually. After the third year of service, the number of paid leave days increases by one every year, up to a cap of 14 days.

Mandatory Provident Fund

The Mandatory Provident Fund (MPF) is designed to provide a formal, compulsory system of retirement protection by way of a privately managed contribution scheme. Generally, all benefits derived from mandatory contributions must be preserved until the contributor reaches the prescribed retirement age of 65. Early withdrawal of benefits may be allowed when a person retires between ages 60 and 65, has departed or will depart from Hong Kong permanently, has become totally incapacitated, or has died before 65 years old. The benefits accrued from mandatory contributions to MPF schemes are withdrawn in a lump sum upon retirement rather than as an annuity.

Certain categories of people are not required to join an MPF scheme, including people who are already covered by overseas retirement schemes, and foreigners who enter Hong Kong for employment with a working visa for a validity period that does not exceed 13 months.

Under the MPF system, the employee is required to contribute 5% of his/her monthly income, capped at HKD 18,000 p.a, and the employer has to match this amount. Each employee and employer may make voluntary contributions in addition to the mandatory contributions.

Termination of employment

An employee is entitled to severance payment only after 24 months of service if the employee was laid off because of redundancy. An employee is entitled to a long service payment after 5 years of service if the employee is dismissed not because of redundancy or

misconduct, but because of old age, ill health, or death. The amount payable is 2/3 of the previous month's salary (up to a cap of HKD 22,500) multiplied by reckonable years of service. The payment is capped at HKD 390,000.

The relevant party has to be notified of the termination according to the notice period requirement specified in the employment contract. If no notice time was specified, then the party has to be notified at least 1 month before termination. Summary dismissal is allowed only if the employee has committed a grave misconduct or if the employee habitually neglects his/her duties and has been warned repeatedly. The employee may disagree and file a case with the labor tribunal. The employee may terminate the employment without notice if s/he is reasonably threatened by violence or disease, has been subjected to maltreatment by the employer, or is deemed unfit by a medical practitioner after five years of service.

9. AUDIT AND ACCOUNTING

All companies incorporated under the Companies Ordinance, regardless of size, must have their (annual) financial statements audited by a practicing Certified Public Accountant registered with the Hong Kong Institute of Certified Public Accountants (HKICPA). Hong Kong GAAP is commonly adopted for the preparation of financial statements though it is not mandatory by law. Hong Kong GAAP (also generally referred to as Hong Kong Financial Reporting Standards (HKFRS) issued by the HKICPA) is almost fully converged with International Financial Reporting Standards (IFRS). Hong Kong also adopts the Hong Kong variation of IFRS for SMEs, which is known as HKFRS for Private Entities, for companies that do not have public accountability. SMEs that meet certain criteria including a size test and shareholders' approval can also choose to apply the Small and Medium-sized Entity Financial Reporting Framework and Financial Reporting Standards (SME-FRF & SME-FRS).

10. COUNTRY QUIRKS

- Legal system: originated and based on English Common Law, unlike that of Mainland China
- There is no restriction on foreign business nor is there any foreign exchange control.
- The HKD has been pegged to the USD since 1984 at a fixed rate of HKD 7.8 = USD 1
- Official languages: English and Chinese

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