

# Country Guide

## Hong Kong

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# Doing Business in Hong Kong



This brochure contains a brief summary of the law and general requirements in connection with the establishment and maintenance of Hong Kong private companies and Hong Kong branches of foreign companies, which we hope will be of general use to our clients and professional associates. While every effort has been made to ensure the accuracy of the information, this brochure should not be relied upon as a substitute for detailed advice in individual cases.

This brochure is based on law and practice as at 30 October 2014 and rates of taxation are those for the year of assessment 2013/2014.

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## Introduction

Hong Kong is a Special Administrative Region of the People's Republic of China that is governed by the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Basic Law) which forms a mini constitution for Hong Kong. Under the Basic Law, Hong Kong enjoys a high degree of autonomy except in relation to matters such as defence and foreign affairs. It has its own executive, legislative and independent judicial power, including that of final adjudication. Socialist systems and policies will not be practised in Hong Kong for a period of 50 years commencing from 1997 under the principle of "one country two systems".

Hong Kong is an attractive place to do business and a leading international trading and service hub as well as a high value-added manufacturing base. It is one of the freest economies in the world and a gateway to investment in China.

The Hong Kong government practises an open and liberal investment policy and actively encourages inward investment. Generally, there are no tariffs or regulatory measures adversely affecting international trade. Hong Kong's continuing success is largely due to a simple tax structure, low rates of tax, excellent infrastructure and the government's firm commitment to free trade and free enterprise.

The following provides an overview of the various factors that a foreign investor should consider when establishing a business in Hong Kong.

## Types of Business Entities

### General

A foreign investor has a wide range of business structures to choose from when doing business in Hong Kong. The type of entity the investor chooses will depend on what best suits the particular needs of the investor and his or her financial and tax considerations.

The most common business entities used by non-residents in Hong Kong include:

1. representative offices;
2. branches of parent companies;
3. subsidiaries of parent companies;
4. partnerships;
5. joint ventures; and
6. trusts.

### Representative office

When a foreign company wishes to analyse the suitability of the Hong Kong market for its goods or services or both, a representative office can be opened. A company establishing a representative office should register under the Business Registration Ordinance (Cap.310) (Business Registration Ordinance). This type of business entity is only permitted to carry on promotional and liaison work in Hong Kong. A representative office is prohibited from carrying on any business in Hong Kong or entering into any contracts in Hong Kong. Once such a company commences the carrying on of a business, it is required to register under the Companies Ordinance (Cap.622) (Companies Ordinance).

### Branch office

If a foreign company wishes to carry on business in Hong Kong and operate through a branch office, it must register the business under the Business Registration Ordinance. It must also register as a non-Hong Kong company under the Companies Ordinance within one month after establishing its place of business in Hong Kong. To register under the Companies Ordinance, the

foreign company will need to appoint a local person authorised to accept service of proceedings and notices in Hong Kong and have a registered place of business.

The branch will not be subject to limitations on the scope of its activities. However, certain types of business activities will require approvals and licences from other government authorities before the proposed business activities can begin. The registered foreign company will then be able to carry on business in Hong Kong.

## Hong Kong subsidiary

A foreign company may wish to incorporate a wholly-owned Hong Kong subsidiary as a Hong Kong company. One advantage of a subsidiary arrangement is that it limits the liability of the parent company in relation to operations carried on by the Hong Kong subsidiary.

The subsidiary may be either a private company or a public company. Either type has unique advantages. Professional assistance should be sought to ensure that the most suitable corporate form is chosen.

The majority of subsidiary companies are private companies. Private companies are limited to a maximum of 50 shareholders, and must have restrictions on the transfer of shares. Private companies are also subject to fund raising restrictions and must not engage in any activity that would require the lodgement of a disclosure document (e.g. a prospectus). A company may be incorporated with one member, and private companies may have a single director. The directors of a Hong Kong company are not required to be Hong Kong residents. At least one director must be a natural person in the case of a private company; and where the company is (i) private but part of a listed group, (ii) public or (iii) limited by guarantee, the director must not be a body corporate. Every Hong Kong incorporated company must have a company secretary, who must be resident in Hong Kong.

## Partnership

Partnerships are comparatively inexpensive to establish and can be formed quickly. The agreement creating the partnership does not need to be registered, but the partnership itself requires registration under the Business Registration Ordinance once it establishes a place of business in Hong Kong. The Partnership Ordinance (Cap.38) and any partnership agreements regulate the relationship among the partners.

Each partner is jointly liable with all the other partners for all debts and obligations of the partnership incurred while he or she is a partner.

## Joint venture company

This is a normal company used to carry on the joint venture activity on behalf of its shareholders. This type of business structure is an entity which is legally distinct from the parties which comprise it. It is used where a number of parties wish to carry on business together. The component parties' liability is limited to their share of capital investment in the joint venture company. The formalities for establishment are similar to those for a subsidiary company.

## Trusts

While not commonly used in Hong Kong in this way, a trust can be utilised as a business vehicle or as an investment vehicle whereby a trustee conducts the trust's business on behalf of the "members" (known as beneficiaries) of the trust. The trustee may be a company (usually a private company) created for this purpose. The income generated will belong to the beneficiaries of the trust. The rights and duties of the trustees are set out in the trust deed.

A trust is not a separate legal entity. The trustee can assume obligations as trustee and is allowed to use trust assets to satisfy its debts and obligations as trustee as provided for in the trust deed.

## Shelf companies

Shelf companies are "ready made" companies, waiting to be purchased. Shelf companies, therefore, offer an immediate solution to an urgent requirement for a company avoiding the need to go through the incorporation process.

A shelf company comes with standard provisions in the Articles of Association which may be changed subsequent to the acquisition. The company name may also be changed after acquisition.

## The Stock Exchange of Hong Kong Limited

Investors may wish to consider raising local equity by listing on The Stock Exchange of Hong Kong Limited (Exchange). This avenue is also available to companies incorporated in some jurisdictions outside Hong Kong. The Exchange serves a wide array of international and domestic investors and end users, including many of the world's largest financial institutions.

Potential investors should ask their legal adviser for a thorough outline of the current listing rules.

## Business Environment

### General

Hong Kong's GDP in 2013 was HK\$2,022.2 billion, with an annual growth rate of 2.9% in real terms. The expansion in domestic demand and exports of services have provided the key growth momentum of the economy.

Hong Kong is characterised by a high degree of internationalisation, business-friendly environment, open and fair competition, free flow of information, well-established and comprehensive financial network, superb network of transport and telecommunications infrastructure, sophisticated support services and a well-educated work force complemented by a pool of efficient entrepreneurs.

It also has a substantial amount of foreign exchange reserves, a fully convertible and stable currency, no exchange controls and a simple tax system with tax being levied at a low rate.

### Direct investment

Hong Kong is the second most favoured destination for inward direct investment in Asia, second only to mainland China. The stock of inward direct investment into Hong Kong at the end of 2012 amounted to HK\$10,509 billion.

### Services sector

The services sector has flourished and diversified into types of activities in line with the structural transformation of the economy. Trade-related and tourism-related services, community, social and personal services and finance and business services such as banking, insurance, real estate and a host of related professional services have all grown substantially over the past two decades. There has also been strong expansion in information technology, especially telecommunications services and Internet applications, in line with the shift in economic structure towards a knowledge-based economy.

### Manufacturing sector

Manufacturing businesses in Hong Kong are renowned for being versatile and flexible. The existence of many small establishments connected under an extensive local subcontracting network has facilitated producers in coping with changing conditions in overseas markets. By increased outward processing arrangements in mainland China, Hong Kong's capacity has been substantially expanded, helping to maintain the price efficiency of its products, most of which are destined for export.



## Intellectual property rights

### Sources of intellectual property law

As a Special Administrative Region of the People's Republic of China (PRC), Hong Kong has a high degree of autonomy and will retain its own legal system until 2047. Under the Basic Law, for intellectual property purposes, Hong Kong remains a separate jurisdiction from the rest of China. The intellectual property laws and court decisions of the PRC do not apply to Hong Kong. Intellectual property rights registered or protected in Hong Kong will not extend to the PRC and vice versa.

Before the reversion of sovereignty in 1997, apart from the protection of trade marks, Hong Kong's intellectual property laws derived from UK legislation. Prior to the change in sovereignty, Hong Kong implemented its own copyright, registered designs and patents legislation. A new Trade Marks Ordinance was passed in 2000.

As a common law jurisdiction, the Hong Kong courts may rely on previous judgments in similar cases within Hong Kong. They may also refer to other common law jurisdictions such as England, Australia and Canada. Although, these are not legally binding, they can be highly persuasive, particularly where the wording of the legislation is similar.

### Trade marks

Hong Kong has had an independent trade mark registration system for well over 100 years. The current Trade Marks Ordinance (Cap.559) came into force in 2003. It is closely based on the UK Trade Marks Act 1994.

A trade mark is a sign that distinguishes the goods and services of one trader from those of another. A trade mark may consist of words, personal names, designs, letters, characters, numerals or any combination of these. Even sounds, smells or the shape of goods or their packaging may be a trade mark.

Distinctiveness is a key requirement. Invented words or logos are more likely to be registrable than marks consisting of common or descriptive words. Words which praise the quality, function or other characteristic of goods or services are generally not registrable. A trade mark application may also be rejected if the mark applied for resembles a prior application or registration. Hong Kong operates an examination system and applications will be examined by the Trade Marks Registry for registrability and conflict with prior marks.

A trade mark registration will give the registered proprietor the exclusive right to use the trade mark in relation to the goods and services for which the mark is registered. A trade mark registration is initially valid for 10 years from the date of application and can be renewed indefinitely for successive periods of 10 years.

A consultation process is currently underway to discuss the introduction of the Madrid system of international registration to Hong Kong. However, even if a decision is taken to apply the Madrid Protocol to Hong Kong, any implementation is likely to be for 3-4 years away, at least.

### Copyright

Copyright law in Hong Kong is principally governed by the Copyright Ordinance (Cap.528). The Ordinance is largely based on copyright sections of the UK Copyright, Designs and Patents Act 1988. However, Hong Kong's copyright law has developed away from the UK in many significant areas.

Copyright is the right given to the owner of an original work. Copyright can subsist in literary, musical, dramatic and artistic works, computer software, sound recordings, films, broadcasts and cable programmes.

In order to attract copyright, a work must be “original”. Copyright arises automatically when a work is created and fixed in a material form, usually in writing or in the form of a drawing or recording.

The duration and type of protection afforded varies according to the type of copyright work. However, the general rule is that copyright lasts for the life of the author plus 50 years.

Hong Kong uniquely operates an “open qualification” system. This means that any original copyright works created by any person and/or published by any person anywhere in the world will qualify for protection in Hong Kong. Copyright works created in Hong Kong are recognized in other countries by virtue of international copyright conventions. Currently, Hong Kong is party to the Berne Convention, Universal Copyright Convention, the Phonograms Convention and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

The law provides protection against acts such as unauthorised copying of a work or issuing a work to the public. Certain dealings with infringing works are also prohibited, such as knowingly importing, exporting or selling infringing copies. Hong Kong has wide-ranging criminal provisions including offences relating to dealing in and selling counterfeit works, and illegal recording in public entertainment venues such as cinemas and concerts.

In addition, there are specific “business end-user” criminal provisions which prohibit the use of pirated computer software and the unauthorised copying or distribution of certain printed works, in the course of business. Amendments to the law to address protection of copyright in the digital environment, including criminal liability for the electronic communication of works, a safe harbour for online service providers, and new “fair dealing” exemptions from infringement for certain uses, including “parody”, have been proposed in the Copyright (Amendment) Bill 2014.

## Patents

Patent law in Hong Kong is governed by the Patents Ordinance (Cap.514). A Hong Kong patent is based on the re-registration of patents already granted in the UK, the European Patent Office (designating the UK) and the PRC. International applications under the Patent Co-operation Treaty covering those countries will also qualify.

A Standard Patent application is divided into two stages. The first step involves filing a request to record a pending application in the UK, Europe or the PRC. This must be done within 6 months of the publication of the designated overseas application. Once the overseas application has proceeded to grant, an application for registration and grant must be filed in Hong Kong within 6 months of the grant of the designated patent application.

The grant of the Hong Kong patent is dependent on the grant of the designated patent application. However, once granted the Hong Kong patent is largely independent of the corresponding designated patent.

A patent protects “inventions” and covers new products, substances, methods or processes which are novel and may be applied industrially. The invention must be “novel” - new over everything available to the public anywhere in the world as at the patent filing date.

A patent will allow the patentee to stop others from using a patented process, or using, manufacturing, or selling, the patented invention without his consent. A standard patent confers a monopoly of 20 years from the date of filing the application.

A separate regime for the registration of “Short-Term Patents” protects products or processes with a short commercial life. Applications for Short-Term Patents are made directly to the Patents Registry and are not based on any corresponding application elsewhere. The application can cover the same subject matter as a Standard Patent and the requirements for novelty and inventive step are the same. There is no substantive search and examination but the application must be accompanied by a search report from a prescribed searching authority. A Short-Term Patent is valid for 8 years from the application date.

In recent years, there have been calls to reform Hong Kong’s patent system and proposals were announced by the Government in 2013 to introduce an “Original Grant Patent” (OGP) in Hong

Kong, to refine the current Short-Term Patent System, and to introduce a regulatory framework for the Hong Kong patent profession, which is currently not regulated. A draft Bill to amend the Patents Ordinance is tentatively planned to be introduced in 2014–2015, with an aim to commence the OGP system in 2016–2017.

### **Registered designs**

The Registered Designs Ordinance (Cap.522) replaced the regime formerly based on the UK Designs (Protection) Ordinance and introduced an independent design regime to Hong Kong. The Ordinance generally follows the UK Registered Design Act 1949.

A registrable design consists of features of shape, configuration, pattern or ornament applied to an article by an industrial process. The features must have what is known as “eye-appeal”, in that the appearance of the article must be relevant to a customer’s decision to buy the product.

A registered design protects the outward appearance of a product and can be registered for a wide range of articles including appliances such as kettles and light fittings, wallpaper and textiles, jewellery, watches and toys.

A design registration is valid for an initial period of 5 years from the date of filing the application. The registration may be renewed for 4 further periods of 5 years, for a total of 25 years.

A design registration will prevent the unauthorised manufacture, import, use, sale or hiring items which look the same as the registered design in Hong Kong. In deciding whether there has been infringement, one must look at whether the substance of the registered design has been taken.

### **Semiconductor topography protection**

The Layout-Design (Topography) of Integrated Circuits Ordinance (Cap.445) protects original layout designs of integrated circuits created after 31 March 1994. The Ordinance confers a right similar to copyright and prevents the reproduction or commercial exploitation of a protected layout design, an integrated circuit in which the protected layout design is incorporated, or an article containing the integrated circuit in which the protected layout is incorporated.

Protection is for 10 years after the product is first commercially exploited or, if not commercially exploited, then 15 years from creation.

### **Passing-Off**

This is a common law action that can be used to protect an unregistered trade mark, trade name or an individual’s name or reputation and the look of a particular product including packaging. In order to establish passing off, it is necessary to show that the plaintiff has a reputation or goodwill in Hong Kong, that a misrepresentation is being made in the course of trade which will confuse the public into believing that his business or goods and services are those of the plaintiff’s, or that they are somehow associated; and that the misrepresentation is likely to cause damage to the business or goodwill of the plaintiff.

Passing off can be used to prevent all sorts of misrepresentations that cause confusion and damage to a plaintiff. The categories of potentially actionable misrepresentations are not exhaustive.

### **Conclusion**

Hong Kong has a comprehensive system for the protection of intellectual property rights in line with international standards. With the PRC’s economic development showing no signs of slowing down, Hong Kong’s role as the go-between for the PRC and the rest of the world, becomes more important than ever. Hong Kong’s intellectual property regime supports Hong Kong’s position as a stepping stone to the PRC, as well as being an international trading centre and a jurisdiction of strategic importance itself.

## Franchising

Hong Kong has no regulatory regime applicable to franchising, thereby enabling overseas franchisors to enter the Hong Kong market with minimum formalities and regulatory compliance. Franchise agreements are, however, subject to various consumer protection rules, including restrictions that apply to contracts generally such as exemption clauses, unconscionable provisions and restrictions on unreasonable restraints of trade. In addition, the Competition Ordinance was passed in June 2012 by the Legislative Council of Hong Kong and is anticipated to come into full operation in 2015. This piece of legislation may impact on franchising arrangements in the future.

## Foreign Investment Policy

### Investment possibilities generally

Foreign investment plays a key role in the Hong Kong economy. Various sources of foreign investment like China, Japan, the United States and the United Kingdom have substantial amounts of inward direct investment in Hong Kong. No industries (with certain narrow exceptions) in Hong Kong are closed to foreign investment. Indeed, it is not only permitted but quite common to have 100% foreign investment in most industries.

### Government attitude

The Hong Kong government upholds a free and open market policy which generally applies to all trade and investment, with very few restrictions on foreign investment. Whilst there are no specially enacted incentives for foreign investment, all foreign companies benefit from the government's policy of providing an appealing climate for investment through its physical infrastructure including good communications, efficient port and airport facilities, a simple tax structure with low rates of tax and its legal and administrative system. The Hong Kong government promotes fair competition and with limited exceptions does not discriminate between foreign and domestic investors.

In terms of international recognition, Hong Kong is consistently described as the world's freest economy by highly reputable international institutions.

### Gateway to mainland China

The fast expanding China market, especially after China's accession to the World Trade Organisation (WTO) and its continued reduction in administrative barriers to trade, has been highly attractive to foreign investors. Given the geographic proximity and business synergies between Hong Kong and mainland China, many foreign companies find it advantageous to choose Hong Kong as their base and a service platform for investment in China. What makes Hong Kong an even easier route in and out of China is the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) entered into between mainland China and Hong Kong. CEPA came into effect on 1 January 2004 and its measures are above and beyond China's WTO commitments in the sense that they grant easier access to mainland markets for Hong Kong-made products and Hong Kong-based companies in various service sectors.

CEPA is not a closed agreement and both sides hold regular meetings on further concessions and the details for implementation. Following the signing of the main text of CEPA on 29 June 2003 and its six annexes on 29 September 2003, both sides have been signing supplements to CEPA introducing further liberalisation measures on a yearly basis.

CEPA mainly covers the following areas:

1. the removal of tariffs and other barriers on trade in goods;
2. the opening up of the mainland market to Hong Kong service suppliers;
3. measures for the promotion of trade and investment;

4. mutual recognition of professional qualifications;
5. strengthening of cooperation in various areas of trade and investment facilitation between mainland China and Hong Kong to improve the overall business environment.

A substantial number of service sectors and businesses are opened up to Hong Kong service suppliers under CEPA and the preferential treatments mainly cover four areas, namely:

1. earlier market access: Hong Kong service suppliers can enter the PRC between one to five years earlier than under the WTO timetable;
2. higher equity share: Hong Kong service suppliers are permitted to hold a higher equity share (in certain service sectors even up to 100%) in PRC service companies;
3. lower capital thresholds: capital requirements to set up in the PRC have been reduced substantially thus opening up the field to smaller players; and
4. recognition of Hong Kong qualifications: eligible Hong Kong residents are allowed to take qualification examinations for professionals and technicians in mainland China in a wide range of specialisations and to obtain the relevant professional qualification certificates.

Foreign companies can take advantage of the liberalization measures for trade in services under CEPA through establishing a legal presence in Hong Kong or a merger with, or acquisition of, an existing Hong Kong service supplier. Where more than 50% of the shareholding of an existing Hong Kong service supplier is acquired by a foreign company, the foreign company can enjoy the CEPA benefits for trade in services through such Hong Kong service supplier after one year of the acquisition. CEPA will therefore strengthen the appeal to foreign companies of Hong Kong's position as a service hub and global platform for China business, and in turn provide an incentive for foreign investment in Hong Kong.

## Foreign investment restrictions

The Hong Kong government in general makes no distinction between local and foreign companies, and welcomes investment from both. Foreign companies setting up operations in Hong Kong do not face any special approval procedures and the procedural requirements are not materially different from those for the local counterparts. Funds from profit or capital accounts may be freely repatriated and remitted overseas and there is no foreign exchange control.

100% foreign ownership of companies is generally permitted and common in Hong Kong, with very few foreign investment restrictions. The table below sets out the business sectors where foreign investment restrictions or limitations are in place:

<b>Sector</b>	<b>Foreign investment restriction related regulations/situation</b>
Banking	Foreign banks in Hong Kong are common and free to operate with limited restrictions. They have been allowed to establish as many branches as they wish since November 2001. A number of market entry criteria were relaxed in May 2002 such as the lowering of the minimum asset size and the lifting of the requirement to have maintained a local representative office for a period of one to two years before its authorisation request.
Civil Aviation	Generally no foreign ownership restrictions. Control over international airlines serving Hong Kong is shared with the Chinese government. Arrangements for air services between Hong Kong and other parts of mainland China are made by the Chinese government in consultation with the Hong Kong government.

Television Broadcasting	Control over the licensees of domestic free TV programme services by foreign investors may not exceed 49%. Prior approval is required for the holding, acquisition or exercise of voting control by foreign investors of 2% or more of a television licensee. Sound Broadcasting.
Sound Broadcasting	Control over sound broadcasting licensees by foreign investors may not exceed 49%.

## Government Initiatives and Incentives

### General

Hong Kong provides an appealing tax environment for foreign investors. In particular:

1. Hong Kong has lower headline tax rates than most other Asian jurisdictions;
2. there is no tax on gains arising from the sale of capital assets;
3. there is no tax on profits arising or derived from outside Hong Kong;
4. there is no tax on dividends under statute or revenue authority practice; and
5. estate duty has been abolished - there is currently no inheritance tax or death duties.

Accordingly, Hong Kong does not have an extensive regime of specific tax incentives designed to attract foreign investment. There are, however, a number of exemptions from tax or tax allowances designed to stimulate particular industries or new investments in existing businesses. Further, Hong Kong has entered into comprehensive double taxation agreements with a number of jurisdictions, which minimise or eliminate double taxation on undertakings that carry on business activities in the jurisdiction of the contracting parties.

### Tax Exemptions

Important exemptions include:

1. deposit interest from bank deposits paid to corporations (other than financial institutions) and individuals carrying on business in Hong Kong is tax exempt;
2. interest income and trading profits derived from qualifying debt instruments are either subject to a concessionary tax rate of half of the normal rate or are exempt (qualifying debt instruments must be approved by the Hong Kong Monetary Authority, have a suitable credit rating and be of a minimum denomination of HK\$50,000 or its equivalent in a foreign currency);
3. profits on all debt instruments with a maturity period of seven years or more are tax exempt;
4. offshore funds are exempt from profits tax; and
5. the profits of a fund that is a collective investment scheme authorised by the Securities and Futures Commission or is otherwise a bona fide widely held investment scheme complying with the requirements of an acceptable supervisory regime are exempt from profits tax.

### Allowances

Important allowances include:

1. (i) an initial allowance of 20% of the cost (excluding land cost) of an industrial building for the purpose of a qualifying trade (which includes mills, factories or similar premises, certain utility undertakings, manufacturing, storage, farming and scientific research); and (ii) an annual depreciation allowance of 4% of the initial capital expenditure - balancing allowances or balancing charges may arise in the tax year in which the building is sold;

2. an annual depreciation allowance of 4% is available for commercial buildings or structures used other than for industrial purposes;
3. capital expenditure on the renovation or refurbishment of a building other than a domestic building is deductible on a straight line basis of 20% a year over a five year period; and
4. (i) an initial allowance of 60% of the capital expenditure on machinery or plant is available in the year in which the expenditure is incurred; and (ii) annual depreciation allowances at varying prescribed rates are available in subsequent years on the reducing value.

There is a more generous 100% initial allowance for capital expenditure on prescribed fixed assets. This covers certain machinery or plant used specifically and directly for any manufacturing process, computer hardware, computer software, and computer systems. It does not apply to leased assets.

Capital expenditure on environmental protection machinery and environment-friendly vehicles is fully deductible in the year of assessment in which the expenditure was incurred. Capital expenditure on environmental protection installations benefits from an initial allowance of 20% in the year of assessment in which the capital expenditure was incurred, with the remaining expenditure deductible at the rate of 20% a year in the subsequent 4 years, provided the environmental protection installation has not been sold at the end of the basis period for the year of assessment concerned.

## Double Taxation Agreements

Hong Kong has:

1. Comprehensive double taxation agreements with Austria, Belgium, Brunei, Canada, the Czech Republic, France, Guernsey, Hungary, Indonesia, Ireland, Italy, Japan, Jersey, the Republic of Korea, Kuwait, Liechtenstein, Luxembourg, Mainland China, Malaysia, Malta, Mexico, the Netherlands, New Zealand, Portugal, Qatar, Spain, Switzerland, Thailand, the United Kingdom, and Vietnam, some of which are not yet in force.
2. Double taxation agreements concerning airline and shipping income with Singapore and Sri Lanka.
3. Double taxation agreements concerning airline income with Bangladesh, Canada, Croatia, Denmark, Estonia, Ethiopia, Fiji, Finland, Germany, Iceland, Israel, Jordan, Kenya, Korea, Kuwait, Laos, Macao SAR, Maldives, Mauritius, Mexico, Norway, the Russian Federation, and Sweden.
4. Double taxation agreements concerning shipping income with Denmark, Germany, Norway, and the USA.

Comprehensive double taxation agreements generally cover income taxes such as profits tax and salaries tax, and withholding taxes on dividends, interest, and royalties, although the specific taxes covered in particular agreements may differ. Generally, double taxation agreements are intended to minimise or eliminate double taxation of the types of income covered by such agreements, and enable undertakings to assess with greater certainty the tax implications of their cross border activities.

Hong Kong's comprehensive double taxation agreements contain exchange of information provisions compliant with the latest model from the Organisation for Economic Co-operation and Development, which are nevertheless in practice subject to safeguards built into Hong Kong's domestic law and procedure to prevent 'fishing expeditions' by the tax authorities of other jurisdictions.

Hong Kong is currently in negotiations with a number of jurisdictions with a view to expanding its comprehensive double taxation agreement network.

The Legislative Council of Hong Kong has recently passed legislation enabling Hong Kong to enter into standalone tax information exchange agreements (TIEAs) with jurisdictions with which it does not have a comprehensive double taxation agreement. Hong Kong has since entered into TIEAs with the USA and six Nordic jurisdictions.

## Taxation

### General

The principal sources of revenue for the Hong Kong Government (apart from revenue from the sale of government land) are:

1. salaries tax;
2. profits tax;
3. property tax; and
4. stamp duty.

Hong Kong does not impose any payroll, turnover, sales, value added or goods and services, gift or capital gains taxes or any estate duty or inheritance tax. Hong Kong does not levy capital duty.

There are various indirect taxes. The most significant of these are excise duties on hydrocarbons, tobacco and liquor, and fees for vehicle registration and licensing.

The taxation regime in Hong Kong contains broad anti-avoidance provisions designed to disregard the effect of certain transactions giving rise to a tax advantage which are held to be fictitious or artificial or which have a primary tax avoidance motive. Such provisions are typically not invoked as aggressively as in many other common law jurisdictions.

### Salaries Tax

A person is subject to salaries tax on his Hong Kong sourced employment income, income from an office in Hong Kong (e.g. a directorship), or a Hong Kong pension. If the employment is a Hong Kong employment, all income derived from it will normally be subject to salaries tax even if some services are performed outside Hong Kong.

Income from a non-Hong Kong employment is only taxed to the extent of income derived from services rendered in Hong Kong. What constitutes a Hong Kong employment will ultimately be a matter of fact. In making this determination, the practice of the Inland Revenue Department (IRD) is to take all relevant factors into account, with particular emphasis on where the employment contract was negotiated and entered into, its governing law, where it is enforceable, where the employer is resident, and where contractual payments are made.

No account is taken for salaries tax purposes of visits to Hong Kong by persons with a non-Hong Kong employment not exceeding 60 days in any fiscal year. In other words, a person holding a Hong Kong employment will be exempt from salaries tax if he renders services in Hong Kong during visits not exceeding 60 days in a year of assessment.

Perquisites, including non-monetary remuneration, are generally taxable but where the employer has the primary liability for payment of benefits they may not be. Perquisites by way of educational allowance or vacation allowance are taxable.

Housing provided by an employer is taxable, but on a concessionary basis.

An employer is not required to withhold salaries tax (with limited exceptions in the case of an employee about to leave Hong Kong) but it must make an annual return of remuneration paid to employees and must make various other returns; e.g. on commencement or termination of employment or departure of the employee from Hong Kong.

Collection of tax is by way of provisional assessment based on the previous year's salary and final assessment on filing of the tax return for the year in question. Provisional tax paid is credited against final tax payable, with any over payment being refunded or under payment being charged, as appropriate.



Salaries tax is chargeable at a progressive rate, up to a maximum of 17%, and is calculated with reference to various personal allowances and bands of taxable employment income. However, the aggregate rate of taxation is capped at 15% of taxable income.

Hong Kong has a 'light touch' pensions regime. Employers are required to deduct at source 5% of an employee's remuneration capped at a maximum of HK\$18,000 per year, which must be paid, together with a matching employer contribution, by way of mandatory provident fund contribution (for which see further the Workplace Relations section below).

## Profits Tax

Hong Kong's taxing regime is source based.

In the absence of an applicable tax treaty, liability to profits tax is not dependent on a person being treated as tax resident in Hong Kong, or by virtue of having a permanent establishment in Hong Kong. The place of residence or domicile of a taxpayer play little or no part in determining whether a profits tax liability exists and the quantum of any such liability.

Profits tax is currently chargeable on taxable profits at a rate of 16.5% on corporations and 15% on other taxpayers.

A person will be subject to profits tax under section 14 of the Hong Kong Inland Revenue Ordinance (Cap.112) (Inland Revenue Ordinance) if both of the following conditions are met:

1. The person carries on a trade, profession or business in Hong Kong (either in its own right or through a dependent / independent agent); and
2. Profits are derived from that trade, profession or business (other than profits arising from the sale of capital assets not held as trading stock), which arise in or are derived from Hong Kong (i.e. the profits have a Hong Kong source) and are not otherwise regarded as taxable or exempt from tax.

Whether a trade, profession or business is carried on in Hong Kong is ultimately a question of fact. Generally, a person will be regarded as carrying on a trade, profession or business in Hong Kong if it has an office, a place of business or where a significant portion of its business activities are undertaken in Hong Kong. The general consensus is that the threshold test is low and easily satisfied.

The broad guiding principle in determining the source of a profit is first to identify the nature of the profit in question and then look at what the taxpayer has done to earn it, and where he has done it.

The term "person" is cast broadly in the Inland Revenue Ordinance, and includes individuals, bodies corporate, partnerships, and persons in their capacity as trustees. In this regard, the question of whether, as a technical matter, trustees are taxable in respect of Hong Kong source trust profits remains unresolved; however, the IRD is of the view that they are so taxable.

Dividends are generally exempt from profits tax by operation of statute, and are, in any event, not taxed as a matter of IRD practice. Bank deposit interest income is also exempt from profits tax, except in the hands of a financial institution. There is no domestic withholding tax on dividend and interest payments to residents and non-residents.

There is no capital gains tax in Hong Kong. Broadly, the disposal of capital assets is only taxable where such assets constitute trading stock.

Certain categories of profits are, where they would ordinarily fall outside of the section 14 of the IRO charging provision, nonetheless deemed taxable in Hong Kong, including:

1. fees for exhibition or use in Hong Kong of films or tapes or sound recordings;
2. royalties for use of intellectual property rights in Hong Kong and, in some circumstances, outside Hong Kong;
3. grants, subsidies or financial assistance to a business carried on in Hong Kong;

4. rentals for use of property in Hong Kong;
5. interest accruing to a financial institution through, or from, its business in Hong Kong;
6. interest received in respect of the funds of a business carried on in Hong Kong not otherwise exempt;
7. Hong Kong sourced profits arising to corporations carrying on a trade or business in Hong Kong on sale or redemption of certain commercial paper; and
8. consideration for the transfer of certain rights to receive income from property.

Outgoings and expenses incurred (but not necessarily wholly or exclusively incurred) in the production of taxable profits are broadly speaking deductible irrespective of source. Certain specific types of deductible and non-deductible expenses are set out in the Inland Revenue Ordinance.

Losses are deductible from profits arising in the same year of assessment and may be carried forward indefinitely to the extent they are not utilised. Group tax relief or intra-group transfer of losses is not available.

Financial institutions, insurance companies, shipowners, and aircraft operators are subject to special tax regimes.

Tax is collected by way of provisional assessment based on the previous year's profits and final assessment on filing of the tax return for the year in question. Provisional tax paid is credited against final tax payable, with any over payment being refunded or underpayment being charged, as appropriate.

The rate of profits tax is 16.5% for corporations and 15% for taxpayers other than corporations.

## Property Tax

Property tax is charged at the rate of 15% of the net assessable value of any land or buildings in Hong Kong. The net assessable value is the rent receivable less: (i) any rent which has become irrecoverable; (ii) rates paid; and (iii) a fixed allowance of 20% of assessable value (after any rates have been paid) for repairs. Corporations carrying on a trade or business in Hong Kong can elect to be exempted from property tax and subject instead to profits tax.

Collection is by way of provisional assessment based on the previous year's net assessable value and final assessment on the filing of the tax return for the year in question. Provisional tax paid is credited against final tax, with any over payment being refunded or underpayment being charged, as appropriate.

## Stamp Duty

### Ad Valorem Stamp Duty (AVSD)

AVSD is charged on the following documents:

1. agreements for sale and purchase of immovable property (whether residential or non-residential) at a progressive rate of up to 8.5% of the consideration - there are two scales for AVSD: Scale 1 is the default rate; Scale 2 is a lower rate, which applies, broadly, to Hong Kong permanent resident buyers of residential property;
2. leases of property not exceeding one year at 0.25% of the total rent payable over the term of the lease;
3. leases of property exceeding one year but not exceeding three years at 0.5% of the yearly or average yearly rent;
4. leases of property exceeding three years at 1% of the yearly or average yearly rent;

5. transfers of Hong Kong stock (including shares of companies incorporated in Hong Kong or listed on the Exchange) at 0.2% of the consideration or the value of the stock, whichever is higher; and
6. Hong Kong bearer instruments at 3% of the market value.

There are special rules for:

1. stock lending;
2. transactions by market makers for hedging options transactions in the ordinary course of acting as a market maker; and
3. transactions in regional derivative options and convertible bonds or notes.

### **Special Stamp Duty (SSD)**

SSD is chargeable on the transfer of residential properties acquired on or after 20 November 2010 and resold within 36 months. For property acquired on or after 27 October 2012, the rate of SSD ranges from 10% for properties held for a period of more than 24 months but less than 36 months, to 20% for properties held for six months or less. SSD is calculated by reference to the stated consideration or market value of the property, whichever is higher. It is chargeable in addition to AVSD. Certain agreements for sale of residential property are not chargeable with special stamp duty such as sale to the vendor's parent, spouse, child, brother or sister, sale pursuant to a court order and sale by a mortgagee.

### **Buyer's Stamp Duty (BSD)**

BSD is chargeable on the acquisition of Hong Kong residential property by any person other than a Hong Kong permanent resident individual. BSD is charged at a flat rate of 15% of the stated consideration or the market value of the property acquired, whichever is higher. The buyer or transferee alone is liable for BSD. BSD is chargeable in addition to both AVSD and SSD.

### **Relief**

The Stamp Duty Ordinance (Cap.117) provides that a transfer of shares from one associated corporate body to another is exempt from stamp duty, subject to the approval of the Collector of Stamp Revenue. Two companies are associated where one is the beneficial owner of not less than 90% of the issued share capital of the other, or a third company owns not less than 90% of the issued share capital of each company. In addition to the 90% association test, a number of other conditions need to be satisfied to qualify for this exemption. A clawback provision applies where the 90% association test ceases to be satisfied within two years from the date of the transfer.

## **Visas and Work Permits**

### **Who requires an entry visa?**

Every person who wishes to enter Hong Kong for employment, investment, education, training or residence is required to obtain the appropriate entry visa before coming to Hong Kong unless he or she:

1. is a Hong Kong permanent resident with a Hong Kong Permanent Identity Card;
2. has the right of abode in Hong Kong;
3. has the right to land in Hong Kong; or
4. has the right of unconditional stay in Hong Kong.

## Sponsorship

Every applicant for an entry visa, irrespective of the category of visa, needs to have a sponsor.

In the case of an application for a visa for employment purposes, the applicant should be sponsored by the employing company in Hong Kong.

The sponsor must undertake to assume responsibility for the applicant's repatriation to his or her original country of residency if, at the expiration of the stay period granted by the Immigration Department, the applicant fails to leave Hong Kong. In addition, the sponsor must undertake to inform the Immigration Department of any change in the conditions of the applicant's stay in Hong Kong (e.g. cessation of the applicant's employment with the sponsor in Hong Kong).

Normally, applications should be made through the sponsor before the applicant's arrival in Hong Kong. However, if the applicant has already entered Hong Kong (i.e. as a visitor), it is important to note that the applicant may not commence work in Hong Kong until he obtains his employment visa, save for certain limited business-related activities which may be carried out by persons entering Hong Kong on a visitor status (e.g. attending meetings).

## Policies regarding employment visa

Under the existing immigration policy, a person seeking to enter Hong Kong for employment should possess a special skill, knowledge or experience of value which is not readily available in Hong Kong and show that he or she is not filling a post which can be filled locally.

A person holding an employment visa may only work for the sponsoring company. If he or she wishes to change employment, an application for change of employment will need to be made to the Immigration Department through his or her new employer. He or she may then only commence work for the new employer if such application has been approved.

Subject to certain exceptions, dependants of a person holding an employment visa are able to work in Hong Kong under the dependant's residency visa. However, dependants that are subject to a condition of stay prohibiting employment which was imposed on them before 15 May 2006, may need to apply for cancellation of such condition so that they can take up employment in Hong Kong.

## Workplace Relations

### General

The workplace relations climate in Hong Kong is generally very stable and hence favourable for foreign investors.

Hong Kong employees have always been and continue to be committed to making their industries internationally competitive. As Hong Kong progresses to a knowledge-based economy, the nature of work, workplaces and workplace practices are being aligned to the new demands of the economy.

Hong Kong's combination of a highly educated, skilled and dedicated workforce is very appealing to foreign investors.

The government recognises the need to promote good employer-employee relations and enhance the rights and benefits of employees in a way commensurate with Hong Kong's socio-economic development. Considerable importance is also attached to health and safety at work.

The Labour Department implements labour policy and labour legislation for the promotion of harmonious labour relations and safeguarding employees' rights and benefits. It also provides free employment services to employers and job seekers.

## Employment conditions

Employment conditions are usually provided for in the contracts of service entered into between employers and employees. For employees who fall within the ambit of the Employment Ordinance (Cap.57) (Employment Ordinance), employers must observe its provisions to the extent that it sets out certain basic employment conditions that would apply on a mandatory basis.

Generally speaking, there is no collective bargaining in Hong Kong. However, depending on the particular industry or employer, trade unions may be involved in negotiating terms and conditions of employment between employers and employees.

## Employment Ordinance

### General

The Employment Ordinance is the main legislation prescribing the minimum rights, benefits and protection for employers and employees in Hong Kong. The employer and the employee cannot contract out of the minimum rights, benefits and protection given to the respective parties by the Employment Ordinance.

### Who does the Ordinance apply to?

The Employment Ordinance applies to every employee engaged under a contract of employment in Hong Kong with only limited exceptions. These exceptions include:

1. employees who are family members living with the employers;
2. certain employees working outside of Hong Kong; and
3. apprentices.

Whether an employment relationship exists is a matter of fact.

### Minimum protection

All employees covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Employment Ordinance including (but not limited to) payment of wages, restrictions on wage deductions and the granting of statutory holidays. Employees who are employed under a continuous employment contract are further entitled to benefits such as rest days, paid annual leave, sickness allowance, severance payment and long service payment.

### Continuous employment

Under the First Schedule of the Employment Ordinance, an employee is deemed to have been continuously employed if he or she has been employed under a contract of employment for a period of four or more weeks, each week working for no less than 18 hours. Certain breaks such as maternity leave and sickness days are deemed not to interrupt the continuity of employment.

## Employee protection/benefits

Employees employed under a continuous contract are entitled to the following:

### Rest days

Employees are entitled to not less than one rest day every seven days. These rest days shall be appointed by the employer, which may be granted on a regular or irregular basis.

## **Annual leave**

Employees are entitled to paid annual leave ranging from a minimum of seven days to a maximum of 14 days, depending on their length of service. The daily rate of annual leave pay is a sum equivalent to the daily average of the wages earned by the employee.

## **Maternity leave and pay**

All female employees under a continuous contract are entitled to maternity leave of 10 weeks and those who have been employed under a continuous contract for a minimum qualifying period (i.e. 40 weeks) are entitled to be paid during maternity leave. An employee who is pregnant may decide to commence her maternity leave from two to four weeks before the expected date of confinement, with the agreement of her employer. Maternity leave pay is currently paid at the rate of four-fifths of the daily average wage earned by the female employee.

## **Sickness allowance**

Employees are currently entitled to paid sickness leave at the rate of four-fifths of their daily average wage. Sickness days accrue at the rate of two paid sickness days for each completed month of employment during the first 12 months of employment and four paid sickness days for each month of employment thereafter, up to a maximum of 120 paid sickness days. The entitlement to sickness pay applies only if the sickness leave taken is not less than four consecutive days.

## **Severance payment**

An employee who has been employed under a continuous contract for 24 months or more and is dismissed by reason of redundancy or lay-off is entitled to a severance payment. The amount of the severance payment is two-thirds of the employee's last full month's wages or two-thirds of HK\$22,500, whichever is less, for each year of service. The current maximum severance payment payable is HK\$390,000. The amount of any gratuity or retirement scheme payment to the employee, based on length of service, is deductible from the amount of severance payment entitlement. In the case of a retirement scheme payment, only the employer's contributions (and interest thereon) may be deducted.

## **Long service payment**

An employee who has been employed under a continuous contract for five years or more and is dismissed for any reason other than redundancy or misconduct is entitled to a long service payment on termination of employment by the employer. An employee who has been paid a severance payment will not be entitled to a long service payment. The calculation of long service payment is the same as severance payment and is also subject to the same maxima as stated above. The amount of any gratuity and retirement scheme payment paid to the employee, based on length of service, is deductible from the amount of long service entitlement, as in the case of severance payment.

## **End of year payment**

For every employment contract made after 27 June 1997, it is presumed that an annual payment or annual bonus (if provided) is not of a gratuitous nature and is not payable only at the discretion of the employer unless a written term or condition in the contract expresses intention to the contrary.

## Prohibition from making deductions from wages

In general, employers are not allowed to make deductions from the wages of an employee. There are, however, a number of limited exceptions. These exceptions include deductions for:

1. absence from work;
2. damages or loss of goods or equipment belonging to, or in the possession or control of, the employer or expressly entrusted to an employee for custody where such damage or loss is directly attributable to the employee's neglect or default;
3. meals supplied by the employer at the request of the employee;
4. accommodation provided by the employer and occupied by the employee or the family of the employee;
5. recovery of any advance or over-payment of wages made by the employer to the employee;
6. any loan owed by an employee with the written consent of the employee;
7. any medical benefit scheme, superannuation scheme, retirement scheme or thrift scheme of which the employee is a member.

Employers are also allowed to make deductions from the wages of an employee which have been authorised by an enactment of law, approved by the Commissioner for Labour, pursuant to an attachment order or in respect of any payment that an employee would be liable to pay for wrongfully terminating an employment contract.

Any amount deducted must not exceed the maximum thresholds imposed by the Employment Ordinance. All other deductions not listed above are unlawful. An employer who makes unlawful deductions commits a strict liability offence and will be liable to a fine of HK\$100,000 and imprisonment for one year.

## Definition of wages

Wages under Hong Kong law means all remuneration, earnings, allowances, tips and service charges, however designated or calculated, payable to an employee in respect of work done or work to be done. Allowances including travelling allowances, attendance allowances, commissions and overtime payments are within the definition, but the following are excluded:

1. the value of any accommodation, education, food, fuel, light, medical care or water provided by the employer;
2. any contribution paid by the employer on his or her own account to any retirement scheme;
3. any commission which is of a gratuitous nature or which is payable only at the discretion of the employer;
4. any attendance allowance or attendance bonus which is of a gratuitous nature or which is payable only at the discretion of the employer;
5. any travelling allowance which is of a non-recurrent nature;
6. any travelling allowance payable to the employee to defray actual expenses incurred by him or her by the nature of his or her employment;
7. the value of any travelling concession;
8. any sum payable to the employee to defray special expenses incurred by him or her by the nature of his or her employment;
9. any end-of-year payment or any proportion thereof;
10. any annual bonus which is payable by the employer at the discretion of the employer; and
11. any gratuity payable on completion or termination of employment.

Overtime pay which is of a consistent character or the monthly average of which over the past 12 months is 20% or more of the average monthly wage of the employee during the same period should also be included in calculating wages.

### **Calculating the daily or monthly average wages earned**

In calculating the average wages, certain periods of time in which an employee is not paid full wages must be disregarded and deducted from the relevant time period. Such periods include, but are not limited to, maternity leave, holidays and annual leave taken by the employee (Disregarded Periods).

Accordingly, any amount of wages paid to the employee for Disregarded Periods should be deducted from the total amount of wages accrued to the employee. This deduction would result in the relevant amount (Relevant Amount) used in the calculation of the respective average wages.

The respective daily and monthly average wages of an employee are to be calculated as follows:

Daily average wage = Relevant Amount / (365 days - Disregarded Period)

Monthly average wage = Relevant Amount / (12 months - Disregarded Period)

In the event that the employee has been employed for less than 12 months, the period of 365 days and 12 months should be replaced with the shorter period of employment.

## **Termination**

### **General**

The employment of an employee on probation may be terminated by the employer or the employee without notice during the first month and with at least seven days' notice after the first month. In all other cases, unless summarily dismissed for good cause, the employee is entitled to:

1. at least one month's notice of termination where the contract does not provide for the length of notice required to terminate the contract; or
2. seven days or the agreed period, whichever is the longer, where the length of notice of termination is provided for in the contract.

Alternatively, a contract of employment can be terminated without notice by making a payment in lieu of notice equal to the amount of wages which would have accrued to the employee during the requisite period of notice.

### **Statutory restrictions on termination of employment contract**

It is unlawful for an employer to dismiss an employee under certain circumstances, including the following:

1. a female employee who has been confirmed pregnant and has served a notice of pregnancy (up until and including the day she is due to return to work on the expiry of her maternity leave or the date of cessation of pregnancy);
2. an employee who is on a day in which a sickness allowance is paid;
3. an employee by reason of his or her giving of evidence or information in any proceedings or inquiry;
4. an employee for trade union membership and activities; or
5. an injured employee before having entered into an agreement with the employee for employee's compensation or before the issue of a certificate of assessment.

Employers should also ensure that employees are terminated only for valid reasons as provided under the Employment Ordinance.



## Termination payments

Termination payments may differ depending on the length of service and the reason for termination. These payments will usually include the following:

1. outstanding wages;
2. notice/wages in lieu of notice (if any);
3. payment in lieu of any untaken annual leave and any pro rata annual leave pay for the current leave year;
4. any outstanding sum of end of year payment and pro rata end of year payment for the current payment period (if any);
5. where appropriate, long service payment or severance payment; and
6. other payments under the employment contract, such as gratuity, provident fund, etc.

## Other issues

### Statutory Minimum Wage

With effect from 1 May 2011, Employers in Hong Kong are required to pay a minimum wage to employees. Currently, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked during that time, should be no less than the HK\$30 per hour. This rate will be reviewed (and revised if necessary) every 2 years.

### Standard working hours

Except in relation to the employment of children and young persons, Hong Kong does not currently have legislation regulating the working hours of employees. However, there are talks to introduce a standard working hours regime in Hong Kong and the government has set up a Standard Working Hours Committee to carry out public consultation and explore the options for Hong Kong in this area.

### Insurance coverage

Employers are required to maintain insurance coverage in respect of employees employed in Hong Kong pursuant to the Employees' Compensation Ordinance (Cap.282) in respect of work-related injuries, diseases and death, but other than this, there is currently no statutory requirement to provide medical benefits to employees.

### Mandatory provident fund

The Mandatory Provident Fund Schemes Ordinance (Cap.485), which commenced operation on 1 December 2000, requires both the employer and the employee to contribute 5% of the employee's salary into a mandatory provident fund scheme. The current maximum level of mandatory contribution required is HK\$1,500 paid each month by both the employer and the employee, based on a maximum relevant income level of HK\$30,000 per month. The employer and/or the employee may make additional voluntary contributions to the scheme if they wish.

### Taxation

Employers are required to notify the Inland Revenue Department of the commencement and cessation of employment of its employees within a prescribed time.

## Paternity leave

There is currently no statutory requirement in Hong Kong to grant paternity leave to fathers of new born babies. However, a bill to amend the Employment Ordinance has been proposed which seeks to provide male employees under a continuous contract with paternity leave of three working days. The bill also proposes that male employees who have been employed under a continuous contract for a minimum qualifying period (i.e. 40 weeks) are entitled to be paid during paternity leave at the rate of four-fifths of the daily average wage earned by the male employee.

## Discrimination

The implementation of the Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487), the Family Status Discrimination Ordinance (Cap.527) and the Race Discrimination Ordinance (Cap.602) in Hong Kong makes any discrimination in the workplace by reason of a person's gender, marital status, pregnancy, disability, family status or race unlawful. These ordinances also make other forms of discrimination including victimisation, sexual harassment, disability harassment and vilification unlawful.

Currently, only discrimination as described above is unlawful. It is therefore strictly speaking not unlawful for an employer to discriminate on some other basis such as a person's age, physical appearance, height, educational attainment, political beliefs or social skills. However, the Equal Opportunities Commission is seeking to make discrimination on some or all of these grounds unlawful.

# Dispute Resolution

## Courts

The Court system is in essence the same as that which existed prior to reunification in 1997. It is largely based on the English Court system although, after 1997, the final appellate court was changed from the Privy Council in London to the Court of Final Appeal in Hong Kong. The judiciary operates on the same principle fundamental to the common law system, namely the principle of the independence of the judiciary from the executive and legislative branches of government.

The Court system operates efficiently and is the usual avenue for the settlement of disputes in Hong Kong.

Enforcement of Hong Kong judgments abroad is largely based on reciprocity of enforcement in Hong Kong. On this basis, enforcement of Hong Kong judgments is possible in Commonwealth and various other jurisdictions, and in Mainland China under "An Arrangement on Reciprocal Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region pursuant to Choice of Court Agreements between Parties Concerned" where the strict conditions under that arrangement are met.

## Arbitration

Arbitration has become a very popular dispute resolution method in the Asia-Pacific region with Hong Kong being one of the foremost and most respected arbitration centres. Hong Kong's arbitration regime is set out in the Arbitration Ordinance (Cap.609). Hong Kong has widely adopted the UNCITRAL Model Law, which represents a worldwide consensus on key aspects of international arbitration practice. Hong Kong has a unitary arbitration regime that applies to all arbitrations seated in Hong Kong.

Awards made in Hong Kong are enforceable in 149 states through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and in Mainland China, through a separate arrangement. The main arbitral institution in Hong Kong is the Hong Kong International Arbitration Centre (HKIAC). HKIAC offers a wide range of dispute resolution services, including

the administration of arbitrations, and is committed to develop arbitration in the Asia Pacific Region. HKIAC is authorised to determine the number of arbitrators and act as appointing authority where parties have failed to and are unable to agree the appointment. HKIAC provides a panel of arbitrators and accredited mediators.

Apart from the enforceability of arbitral awards, major advantages of arbitration are seen to be procedural flexibility, confidentiality and the possibility to appoint neutral arbitrators with relevant expertise and conduct the arbitration in private, at a neutral venue.

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