DOBING BUSINESS IN
Hong Kong

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### Business Structures:
What types of business structures are permitted?

The most common form of business structure used in Hong Kong is a company incorporated under the Companies Ordinance. There are three different types of limited company, namely private company limited by shares, public company limited by shares and company limited by guarantee. Private company limited by shares is the most common form.

A foreign company can also register itself in Hong Kong as a Non-Hong Kong company under the Companies Ordinance instead of incorporating a local subsidiary.

Other forms of permitted business structure include sole proprietorship and partnership, and limited liability partnership is available. However, these are not very common. It is also possible to form a joint venture or co-operation with a local partner based on contract without creating an entity. Trust can be used to carry on a business in Hong Kong but that is very unusual.

### Taxation: Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

**Profit Tax**
- Profits Tax is only charged on profits which arise in or are derived from Hong Kong. This means that a person who carries on a business in Hong Kong but derives profits from another place is not required to pay tax in Hong Kong on those profits. Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding capital gain) arising in or derived from Hong Kong from such trade, profession or business. There is no distinction between residents and non-residents. In 2018, the profits tax rate for corporations is 16.5% and for unincorporated businesses is 15%.

**Salary Tax**
- This tax is imposed on all income arising in or derived from Hong Kong from an office, employment or pension. Whether income arises in or is derived from Hong Kong depends on where the employment, i.e. the source of income, is located. Income arising in or derived from Hong Kong from any employment includes all income derived from services rendered in Hong Kong. Salary Tax is charged at various rates based on net chargeable income provided that salary tax charged shall not exceed a standard rate of tax (15% in 2018) applied to the net income without allowances.

**Property Tax**
- Property Tax is charged on the owners of land and/or buildings in Hong Kong and is computed at the standard rate on the net assessable value of the property. The standard rate is 15% in 2018.

**Stamp Duty**
- Transfer of property and Hong Kong stock are subject to Hong Kong stamp duty. Ad valorem stamp duty payable on property is very complicated and the rate depends on the type of property and also the circumstances.
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<th>Foreign Investment Review and Issues</th>
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| Foreign investment is generally not subject to approval from the government other than in a few industries, mainly broadcasting or telecommunication related. | Person without a right of abode in Hong Kong will require a visa to stay and work in Hong Kong. The most common forms of visa for this purpose are an employment visa or a visa for investment as entrepreneur. Generally, an application for a visa to begin employment may be favorably considered if:  
- There is no security objection and no known record of serious crime in respect of the applicant;  
- The applicant has a good education background, normally a first degree in the relevant field, but in special circumstances, good technical qualifications, proven professional abilities and/or relevant experience and achievements supported by documentary evidence may also be accepted;  
- There is a genuine job vacancy;  
- The applicant has a confirmed offer of employment and is employed in a job relevant to his academic qualifications or work experience that cannot be readily taken up by the local work force; and  
- The remuneration package including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in Hong Kong.  
An application for a visa for investment as entrepreneur may be favourably considered if:  
- There is no security objection and no known record of serious crime in respect of the applicant;  
- The applicant has a good education background, normally a first degree in the relevant field, but in special circumstances, good technical qualifications, proven professional abilities and/or relevant experience and achievements supported by documentary evidence may also be accepted; and  
- The applicant is in a position to make substantial contribution to the economy of Hong Kong with consideration factors including, but not limited to, business plan, business turnover, financial resources, investment sum, number of jobs created locally and introduction of new technology or skills. Generally, an employment visa is easier to obtain than an investment visa and the processing time 4 to 6 weeks.  

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- Stamp Duty payable on transfer of Hong Kong stock is based on the value of the Hong Kong stock being transferred or the consideration whichever is higher, and the rate is approximate 0.2% in 2018.
Dispute Resolution and Court Systems: Summarize the court system, including the use of juries and arbitration.

The Court of Final Appeal is the final appellate court for Hong Kong. The High Court comprises the Court of Appeal and the Court of First Instance. The Court of Appeal hears appeals on all civil and criminal matters from the Court of First Instance and the District Court. It also hears appeals from the Lands Tribunal and some statutory bodies. The jurisdiction of the Court of First Instance is unlimited in both criminal and civil matters. The Court of First Instance also hears appeals from Magistrates’ Courts, the Labour Tribunal, the Small Claims Tribunal and the Obscene Articles Tribunal.

Below the High Court are the Magistrates Courts and the District Courts. Magistrates courts exercise criminal jurisdiction which covers a wide range of indictable and summary offences. The District Court has limited jurisdiction in both criminal and civil matters. In its criminal jurisdiction, the court may hear cases with the exception of a few very serious offences. The District Court has civil jurisdiction to hear monetary claims over $50,000 but not more than $1,000,000. Apart from its general civil jurisdiction, the District Court has exclusive jurisdiction over claims brought under certain ordinances.

In Hong Kong, there are also various tribunals dealing with specific matters. For example, Labour Tribunal, Small Claims Tribunal, Competition Tribunal, etc. Decision is usually made by the trial judge. Jury trial in civil action is rare and is only needed in quasi criminal cases. The jury is still used in criminal trials other than for summary offences which are minor ones.

The Hong Kong International Arbitration Centre (HKIAC) was established in 1985 to act as an independent and impartial focus for the development of all forms of dispute resolution in the HKSAR and the Asia-Pacific region. The HKIAC provides information on dispute resolution and arbitration both in the HKSAR and overseas. It operates panels of international and local arbitrators, and maintains lists of mediators. Arbitrations are quite common in complicated contracts.

Foreign Corrupt Practices: What are the anti-corruption, anti-bribery and economic sanction laws which impact doing business in the country?

The statutory regime against corruption in Hong Kong is the Prevention of Bribery Ordinance (“POBO”) enforced by the Independent Commission Against Corruption. In the POBO, certain offences are applicable to public servants which are defined to include both prescribed officers (mainly persons holding office under the HK Government) and employees of public bodies (e.g. power companies, MTR and bus companies, universities, hospitals, etc.). Other offences apply to the public. Main offences under the POBO include the followings:
- Any prescribed officer who, without the general or special permission of the Chief Executive of Hong Kong, solicits or accepts any advantage shall be guilty of an offence.
- Any person who without lawful authority or reasonable
excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

-Any public servant who without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

-Any person who, whether in Hong Kong or elsewhere, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive's (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, shall be guilty of an offence.

-If the Chief Executive without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as the Chief Executive; (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by the Chief Executive in his capacity as the Chief Executive or by any public servant in his capacity as a public servant; or (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body, he shall be guilty of an offence.
-If a public servant other than a prescribed officer solicits or accepts an advantage with the permission of the public body of which he is an employee being permission which complies with subsection (4), neither he nor the person who offered the advantage shall be guilty of an offence under this section.

-Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant’s giving assistance or using influence in, or having given assistance or used influence in (a) the promotion, execution, or procuring of any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance, or any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid, shall be guilty of an offence.

-Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in (a) the promotion, execution or procuring of, or (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in such contract as is referred to in subsection (1) shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, offers any advantage to the Chief Executive as an inducement to or reward for or otherwise on account of the Chief Executive’s giving assistance or using influence in, or having given assistance or used influence in (a) the promotion, execution or procuring of any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance; or any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body; or (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in paragraph (a), shall be guilty of an offence.

-If the Chief Executive, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in (a) the promotion, execution or procuring of; or (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in certain contract or subcontract, he shall be guilty of an offence.
-Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or a reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.

-Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.

-Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business, shall be guilty of an offence.
## Types of transaction: How may businesses combine?

Generally, business can be combined by transfer of shares or transfer of assets. There is no amalgamation procedures except between members of the same group of companies.

## Competition Law: How do laws impact competition?

Anti-trust and fair practice are governed by the Competition Ordinance. There are three main competition rules. The first rule prohibits businesses from making or engaging in giving effect to an arrangement if the object or effect of the arrangement is to prevent, restrict or distort competition in Hong Kong. The second rule prohibits business that has a substantial degree of market power in a market from engaging in conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. The third rule prohibits merger that has or is likely to have the effect of substantially lessening competition in Hong Kong. The third rule however only applies to merger involving carrier licenses under the Telecommunication Ordinance.

## Employment Relations: Briefly summarize major laws impacting employment and employee relations.

Employment is normally governed by the principles of contract supplemented by various legislations, e.g. the Employment Ordinance, Employees’ Compensation Ordinance, etc.

Employment can be full time or part time. There is a statutory minimum wage which in 2018 is HK$34.5 per hour. There is no maximum working hours and there is no mandatory overtime payment. Each employee is entitled to one rest day every 7 days and is entitled to paid statutory holidays. After one year of employment, an employee is entitled to paid annual leave. There is no mandatory probation period.

There is no mandatory disciplinary procedure. It is possible to terminate employment without cause and summarily dismissal is available in certain circumstances. There is also a statutory right for a party to buy out the notice period by payment in lieu of notice so the terminate can take effect immediately. An employee can challenge the dismissal by filing a claim at
Statutes and regulations: What are the main laws and regulations governing business combinations?

Business combination is generally done either by a share sale or an asset sale. They are generally governed by general contract law.

Transactions involving listed companies may be subject to the Listing Rules of the Hong Kong Stock Exchange and also the Codes on Takeovers and Mergers and Shares Buy-backs issued by the Securities and Futures Commission.

Share transactions involving Hong Kong stock are subject to Stamp duty.

Governing Law: What law typically governs the transaction agreements?

Generally, transaction in Hong Kong are governed by the laws of Hong Kong although the parties can agree to be subject to foreign laws in most circumstances.