



Fall | 24



INTERNATIONAL LAWYERS NETWORK



SIT, FUNG, KWONG & SHUM
ESTABLISHING A BUSINESS ENTITY IN HONG KONG



This guide offers an overview of legal aspects of establishing an entity and conducting business in the requisite jurisdictions. It is meant as an introduction to these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

Neither the International Lawyers Network or its employees, nor any of the contributing law firms or their partners or employees accepts any liability for anything contained in this guide or to any reader who relies on its content. Before concrete actions or decisions are taken, the reader should seek specific legal advice. The contributing member firms of the International Lawyers Network can advise in relation to questions regarding this guide in their respective jurisdictions and look forward to assisting. Please do not, however, share any confidential information with a member firm without first contacting that firm.

This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may have been some time ago and the reader should bear in mind that statutes, regulations, and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

Each contributing law firm is the owner of the copyright in its contribution. All rights reserved.



ESTABLISHING A BUSINESS ENTITY IN HONG KONG

1. Introduction

Hong Kong as an international centre for finance, commerce and trade is often considered as one of the most attractive places to do business owing to its unique advantages such as its prime location, business-friendly policies, simple tax regime, world-class infrastructure, sound legal system and robust regulatory regimes. This Asia's world city has consistently topped various global rankings in business and economic competitiveness – more recently it ranked the 5th most competitive economy by the International Institute for Management Development in its World Competitiveness Yearbook 2024, topping the ranking in business legislation and international trade, and being in the top five positions in tax policy, international investment, basic infrastructure, finance and education.

This Guide provides a high-level overview of the common types of business entities available in Hong Kong. The information in this Guide is for general guidance only. It is not intended to be comprehensive and should not be relied on or treated as legal or professional advice. Specific legal, tax and other professional advice should be obtained before establishing a business entity in Hong Kong.

Unless otherwise indicated, the law and practice are stated as of September 2024.

2. Business Registration

The Business Registration Ordinance (Chapter 310 of the Laws of Hong Kong) requires every person who carries on a business (meaning any form of trade, commerce, craftsmanship, profession,

calling or other activity carried on for the purpose of gain) in Hong Kong to apply for business registration within 1 month from the date of commencement of the business, and to display a valid Business Registration Certificate at the place of business. Certain businesses (e.g., the activities of charities) may qualify for exemption from business registration subject to fulfillment of the relevant conditions.

Business Registration Certificates are valid for either one year or three years and require renewal before their expiry. Application for Business Registration Certificates or their renewal should be made to the Business Registration Office of the Inland Revenue Department.

Business registration is, however, not for regulating businesses. Neither is it a licence to trade. Depending on the types of business, other registration, or specific government licences, permits, certificates or approvals may be needed to start business operations in Hong Kong.

3. Types of Business Entities

The common types of business entities in Hong Kong include:

1. Company incorporated in Hong Kong
2. Non-Hong Kong company, which may operate through:
 - (a) a branch; or
 - (b) a representative office
3. Sole proprietorship
4. Partnerships, including:
 - (a) General partnership (GP)
 - (b) Limited partnership (LP)



(c) Limited liability partnership (LLP)

In recent years, Hong Kong has introduced new types of fund structures such as open-ended fund company (OFC) and limited partnership fund (LPF) and has seen their use on the rise. These are investment vehicles which serve specific purposes and are not designed to engage in commercial trade and business as undertaken by conventional entities.

The adoption of the type of business vehicle has implications on the legal rights and liabilities between the business owners themselves and between the owners and third parties as will be highlighted below.

3.1 Company Incorporated in Hong Kong

Types of Companies

Under the Companies Ordinance (Chapter 622 of the Laws of Hong Kong), a company can be:

- (a) a public or private company limited by shares;
- (b) a public or private unlimited company with a share capital; or
- (c) a company limited by guarantee without a share capital.

A great majority of Hong Kong companies incorporated are private companies limited by shares.

A company is limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.

A company is a private company if—

- (a) its articles—
 - (i) restrict a member's right to transfer shares (e.g., discretion

of the board to decline registration of a transfer of shares or pre-emption clause conferring pre-emption rights on existing members);

- (ii) limit the number of members to 50; and

- (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company; and

- (b) it is not a company limited by guarantee.

A company is a public company if (a) it is not a private company and (b) it is not a company limited by guarantee. Some public companies are listed on The Stock Exchange of Hong Kong Limited and may be subject to additional rules and regulations, including the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited and the Codes on Takeovers and Mergers and Share Buy-backs issued by the Securities and Futures Commission (SFC).

A company is limited by guarantee if (a) it does not have a share capital and (b) the liability of its members is limited by the company's articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its being wound up. It is typically set up by non-profit organizations such as charitable institutions (which may seek the Inland Revenue Department's recognition as a charity exempt from tax under section 88 of the Inland Revenue Ordinance (Chapter 112 of the Laws of Hong Kong)), foundations, private clubs, or



associations. Such a company usually has restrictions in its articles of association limiting the application of its funds towards the attainment of its stated objects and prohibiting distribution of its incomes and properties amongst its members.

Incorporation

A limited company can be incorporated in Hong Kong by delivering the following documents with the prescribed fees to the Companies Registry:

- (a) Incorporation Form;
- (b) a copy of the company's articles of association; and
- (c) a Notice to Business Registration Office.

Under the One-stop Company and Business Registration Service, any person who applies for incorporation of a local company will be deemed to have made a simultaneous application for business registration. Upon approval of an application for company incorporation, the Companies Registry will issue the Certificate of Incorporation and the Business Registration Certificate in one go.

Companies limited by shares will normally be incorporated within four working days if the application is delivered in hard copy form. To save the incorporation time, it is common for those with immediate business needs to acquire from company service providers ready-to-use "shelf" companies, being companies which have already been incorporated but have never commenced any operations.

Company Name

A local company can have either an English name or a Chinese name or both, but a company name with a combination of English words/letters and Chinese characters cannot be registered. There are some other restrictions on the choice of company names. For example, a company name will not be registered if it is the same as that of an existing company, and certain company names which would likely to give the impression that the company is connected with the government require the approval of the Registrar of Companies.

A company or business name registration is not an indication of intellectual property rights so a company may still need to apply for registration of its trade marks with the Trade Marks Registry.

Articles of Association

A company must have articles prescribing regulations for the company. The articles of association must include certain mandatory clauses, such as those stating the limited liability of members, share capital and initial shareholdings. Other than the mandatory clauses, a company is largely free to adopt any other clauses for the internal regulations of the company unless overridden by statutory provisions.

The Financial Secretary has prescribed Model Articles for different types of companies, dealing with a range of matters such as directors, members, their meetings, shares, and corporate communications. A company may adopt



any or all of the provisions of the Model Articles appropriate to the type of the company being formed. The appropriate Model Articles will apply insofar as the articles registered by the company upon incorporation do not exclude or modify them. If a company's registered articles do not prescribe any regulations for the company at all, the appropriate Model Articles will form part of the company's articles.

Member and Share Capital

A limited company shall be formed by at least one founder member. A non-Hong Kong resident or a body corporate can be a member but, subject to certain exemptions, a body corporate cannot be a member of a company which is its holding company.

The Companies Ordinance has not prescribed any requirements on the number of shares to be issued and the minimum amount of a company's paid-up capital. Companies in certain industries (e.g., insurance companies and financial institutions) may however be subject to minimum share capital requirements under the relevant regulatory regimes.

While many private companies have only one class of shares, it is possible for a company to issue more than one class of shares, each class with different voting and/or dividend rights attached (e.g., ordinary shares, preference shares, deferred shares, voting shares and non-voting shares).

Director

Every private company must have at least one director whereas a public company or a company limited by

guarantee must have at least two directors.

Corporate director is not allowed in a public company, a private company that is a member of a group of companies of which a listed company is a member, and a company limited by guarantee. A private company other than one that is a member of a group of companies of which a listed company is a member, on the other hand, may have a corporate director but it must have at least one director who is a natural person.

A director who is a natural person must have attained the age of 18 years at the time of appointment and must not be an undischarged bankrupt except with the leave of the court. A director need not be a Hong Kong resident.

Company Secretary

A company must have a company secretary. A company secretary must, if a natural person, ordinarily reside in Hong Kong and, if a body corporate, have its registered office or a place of business in Hong Kong.

The director of a private company having only one director must not also be a company secretary of the company. A private company having only one director cannot have as a company secretary a body corporate the sole director of which is the sole director of the private company.

Significant Controller

A company is required to take reasonable steps to identify its significant controllers within the meaning of the Companies Ordinance, maintain a significant controllers



register and designate at least one person as its representative to provide assistance relating to the company's significant controllers register to a law enforcement officer.

Registered Office

A company must have a registered office in Hong Kong to which all communications and notices may be addressed. The registers and company records are kept at the registered office, or a place notified to the Companies Registry.

Post-incorporation Compliance Requirements

A company incorporated in Hong Kong is subject to various annual or ongoing compliance requirements. In general, subject to certain exemptions, a company must:

- (i) deliver an annual return (for a company limited by guarantee, together with a certified copy of the relevant financial statements, directors' report, and auditor's report) and pay an annual registration fee to the Companies Registry within 42 days after the anniversary of the date of the company's incorporation;
- (ii) deliver statutory returns to the Companies Registry upon certain changes in the company's registered particulars, such as any change of director, company secretaries or their particulars, address of registered office, company name or articles, within the prescribed time;

- (iii) have an auditor appointed for each financial year;
- (iv) keep accounting records in accordance with the statutory requirements;
- (v) have its directors prepare financial statements (or consolidated financial statements if the company is a holding company), which must be audited, as well as directors' reports for each financial year and lay such reporting documents before the company in annual general meetings;
- (vi) hold an annual general meeting in respect of each financial year within the prescribed period to approve various matters such as the adoption of audited financial statements, directors' report and auditors' reports, declaration of dividends if any, re-election of directors and appointment of auditors;
- (vii) file annual tax returns and (if an employer) employer's returns to the Inland Revenue Department for each year of assessment;
- (viii) renew business registration before expiry; and
- (ix) maintain the statutory registers (comprising the register of members, register of directors, register of company secretaries, register of charges and significant controllers register) and the records of resolutions and meetings of directors or members.



Separate Legal Entity

Under the doctrine of separate legal entity, a company is a different person from its members. As such, a company has its own rights and liabilities which are generally not regarded as those of its members nor of its directors. The officers and employees of a company are generally not liable for the company's contracts. In limited circumstances though where the separate legal entity doctrine is abused to perpetrate fraud or evade legal obligation and liabilities, the rights and liabilities of a company may be treated as those of the persons behind the company (usually its shareholders or directors). This is known as the lifting or piercing of the corporate veil.

Minority Shareholders' Rights and Protection

The Companies Ordinance has built in some safeguards for minority shareholders. An example of them relates to the resolutions through which the members make decisions. The Companies Ordinance provides for two types of members' resolutions, namely ordinary resolutions, and special resolutions. An ordinary resolution is one that is passed by a simple majority whereas a special resolution is one that is passed by a majority of at least 75%. While most decisions of the general meetings can be made by way of ordinary resolutions, certain types of matters (such as the alteration of articles, change of company name, reduction of share capital and voluntary winding up of the company) require the passing of special resolutions. Members holding more than 25% of the voting

rights effectively have a veto right over such matters.

Minority protection can also be achieved by the use of shareholders' agreement, which is a contract entered into by some or all of the shareholders (and sometimes the company as well) to regulate the operations of the company and is most often used for small private companies such as family companies and incorporated joint ventures. It is possible to provide in the shareholders' agreement specific rights in favour of individual or minority shareholders, such as the right to inspect the company's books, the right to nominate directors to the board, veto rights in respect of major decisions requiring unanimous consent of all shareholders, and pre-emptive rights and tag-along rights in relation to transfer of shares. In case of breach of a shareholders' agreement, the full range of ordinary contractual remedies are generally available.

Further, while in general the proper plaintiff to seek legal redress for a wrongdoing to the company is the company itself, a range of legal remedies may be available to minority shareholders in case of abuse of powers or wrongdoings by the company's directors or majority shareholders. They include statutory or common law derivative actions brought by a shareholder in the name and on behalf of the company for any misconduct against the company, personal actions for infringement of personal rights of a shareholder, and the unfair prejudice remedy under the Companies Ordinance where the company's affairs



are conducted in a manner (or an actual or proposed act or omission of the company is or would be) unfairly prejudicial to the interests of the members generally or of one or more members. In appropriate situations, an aggrieved shareholder may seek statutory injunctions or, as a last resort, apply for an order for the winding up of a company on just and equitable grounds.

3.2 Non-Hong Kong Company

3.2.1 Branch

A non-Hong Kong company may carry on business in Hong Kong through a place of business in Hong Kong, commonly referred to as a “branch.” It is only an address at which the business is carried on and hence is not a separate legal entity from the non-Hong Kong company.

Registration

A non-Hong Kong company is required to be registered as a registered non-Hong Kong company within one month after the establishment of the place of business in Hong Kong by delivering the following documents with the prescribed fee to the Companies Registry:

- (a) Application for Registration as Registered Non-Hong Kong Company;
- (b) a certified copy of the instrument defining the company’s constitution (e.g., charter, statutes or

memorandum and articles of association);

- (c) a certified copy of the company’s certificate of incorporation;
- (d) a certified copy of the company’s latest published accounts; and
- (e) a Notice to Business Registration Office.

The One-stop Company and Business Registration Service is also applicable to the registration of a non-Hong Kong company under the Companies Ordinance. The Certificates of Registration of Non-Hong Kong Company and the Business Registration Certificates can normally be issued within ten working days.

Authorized Representative

A registered non-Hong Kong company is required to appoint an authorized representative (which may be a natural person resident in Hong Kong, a solicitors’ firm, a CPA firm, etc.) to accept on the company’s behalf service of any process or notice required to be served on the company.

Post-registration Compliance Requirements

A registered non-Hong Kong company is subject to less extensive continuing obligations than a Hong Kong company. The basic compliance requirements also include, among other things,



the filing of (i) an annual return for which an annual registration fee is payable every year; (ii) statutory returns upon changes in its particulars registered at the Companies Registry; and (iii) tax returns. However, a notable difference when compared with a private company limited by shares is that a registered non-Hong Kong company is required to deliver a certified copy of its latest published accounts annually together with the annual return to the Companies Registry if such accounts are required by other laws such as the laws of its place of incorporation or the rules of any stock exchange. The accounts once filed will become public records.

Branch or Subsidiary?

The establishment of a branch of a non-Hong Kong company offers a few advantages over the incorporation of a Hong Kong company. For example:

- (a) Hong Kong stamp duty is generally not payable on a transfer of shares in a non-Hong Kong company which does not maintain a share register in Hong Kong whereas a transfer of shares in a Hong Kong company will attract stamp duty;
- (b) a registered non-Hong Kong company is subject to more limited compliance requirements under the Companies Ordinance;
- (c) separate audit of the branch is not required;
- (d) the time and costs for the winding up of a Hong Kong company upon cessation of the Hong Kong business can be saved; and
- (e) there may be tax advantages in the place of incorporation of the non-Hong Kong company.

On the other hand, unlike a local subsidiary, a branch is not a separate legal entity and so the non-Hong Kong company will be fully liable for all the debts and obligations of its branch operations in Hong Kong. Also, its accounts will be publicly accessible as mentioned above.

3.2.2 Representative Office

An office in Hong Kong set up by a non-Hong Kong company falling short of an establishment of a place of business in Hong Kong is loosely referred to as a “representative office” or “liaison office.” Such a representative office is not meant to transact any business or create any legal obligations, and its activities are normally restricted to the promotion or marketing of overseas businesses and liaison with potential local customers or overseas offices. It is usually set up by foreign enterprises to establish a physical presence in Hong Kong and familiarize itself with the local business



environment as the first step of its entry into the Hong Kong market.

A non-Hong Kong company that has a representative or liaison office is required to obtain a Business Registration Certificate but is normally not required to be registered as a registered non-Hong Kong company with the Companies Registry unless and until a place of business is established in Hong Kong.

Provided that the representative office continues to confine itself to promotional or liaison activities such that no profits are generated in Hong Kong, the Inland Revenue Department may exempt the non-Hong Kong company from filing tax returns.

3.3 Sole Proprietorship

Sole proprietorship refers to the operation of a business by a person on his own account.

All the rights and liabilities of the business accrue to the sole proprietor. The sole proprietor is personally liable for all the losses of, and all the contracts entered into for the business. The sole proprietor being the sole owner of the business will have complete control over its management.

A sole proprietor must apply for business registration within one month from the business commencement date.

3.4 Partnership

A partnership, also referred to as a “firm,” is the relation which subsists

between persons carrying on a business in common with a view of profit.

Nature

A partnership is not a legal entity separate from the partners. Partnership property is owned jointly by the partners.

Types of Partnership

There are mainly four types of partnerships in Hong Kong:

- (a) General partnership (GP);
- (b) Limited partnership (LP);
- (c) Limited liability partnership (LLP); and
- (d) Limited partnership fund (LPF).

The rights and liabilities of the partners between themselves depend on the type of partnership and are governed by the partnership agreement (if any), the Partnership Ordinance (Chapter 38 of the Laws of Hong Kong) and general common law.

3.4.1 General Partnership (GP)

Constitution

GPs can either be formed by express agreements or implied by conduct. There is no limitation on the number, nationality, or residence of partners. A body corporate is capable of being a partner.

There is no registration requirement for setting up a GP except for business registration. In the absence of a partnership agreement, the Partnership Ordinance applies to govern the dealings and management of the partnership.



Rights and Duties of Partners

The rights and duties of the partners in relation to the partnership shall be determined by the Partnership Ordinance subject to any agreement between them to the contrary. The Partnership Ordinance provides that, among other things:

- (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses sustained by the firm;
- (b) every partner may take part in the management of the partnership business;
- (c) no person may be introduced as a partner without the consent of all existing partners;
- (d) any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners; and
- (e) no majority of the partners can expel any partner unless a power to do so is conferred by the partnership agreement.

Liability of Partners

Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm

incurred while he is a partner. He is also liable jointly with his co-partners and severally for any wrongful act or omission of any partner acting in the ordinary course of the business of the firm or with the authority of his co-partners for which the firm is liable while he is a partner.

Authority of Partners

Every partner is an agent of the firm and his co-partners and may bind each other to contracts entered into with actual, apparent or ostensible authority. The acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm bind the firm and his partners, unless the partner has in fact no authority and the third party dealing with him either knows that he is unauthorized or does not know or believe him to be a partner.

Dissolution

A partnership does not have continual existence. Subject to any agreement to the contrary, a partnership is dissolved by the expiration of fixed term (if any), notice to co-partners of any intention to dissolve the partnership, the death or bankruptcy of any partner, the illegality of the partnership or a decree made by the court.

3.4.2 Limited Partnership (LP)

LPs are governed by the Limited Partnerships Ordinance (Chapter 37 of the Laws of Hong Kong).



Constitution

An LP must consist of one or more general partners and one or more limited partners. A body corporate may be a limited partner.

A limited partner shall not take part in the management of the partnership business and does not have the power to bind the firm. As such, only general partners have full management control of the business and limited partners are considered to be merely financial contributors. An LP will not be dissolved by the death or bankruptcy of a limited partner.

Registration

Apart from business registration, every LP must also be registered with the Companies Registry, failing which the partnership will be deemed to be a GP. Any subsequent change in the constitution or particulars of the LP must also be registered with the Companies Registry.

Liability of Partners

The general partners are liable for all debts and obligations of the firm whereas the limited partners are liable for the debts and obligations of the firm only to the amount contributed to the firm as capital or property at the time of entering into the LP.

3.4.3 Limited Liability Partnership (LLP)

An LLP is a form of partnership available for law firms in Hong Kong and is regulated by the Legal

Practitioners Ordinance (Chapter 159 of the Laws of Hong Kong).

An LLP operates in substantially the same manner as a GP except that a partner in an LLP is not, solely by reason of being a partner, jointly or severally liable for any partnership obligation that arises from the provision of professional services by the partnership as an LLP as a result of a default of another partner or an employee, agent or representative of the partnership. A partner continues to be personally liable for his or her own default, the default of the firm's employee, agent or representative whom he or she directly supervised in respect of the matter at the time of the default, as well as in circumstances where he or she knew of the default at the time of its occurrence and failed to exercise reasonable care to prevent its occurrence.

3.4.4 Limited Partnership Fund (LPF)

The LPF regime under the Limited Partnership Fund Ordinance (Chapter 637 of the Laws of Hong Kong) enables private funds (including private equity and venture capital funds) to be registered in the form of limited partnerships in Hong Kong.

Eligibility

A fund is eligible to be registered as an LPF if, among other requirements:

- (a) the fund is constituted by a limited partnership agreement which does not



contravene the applicable laws;

- (b) the fund has one general partner and at least one limited partner;
- (c) the fund has an office in Hong Kong to which communications and notices may be sent; and
- (d) not all the partners in the fund are corporations in the same group of companies.

The general partner can be a natural person, a private Hong Kong company limited by shares, a registered non-Hong Kong company, a limited partnership, an LPF or a non-Hong Kong limited partnership. A limited partner can be a natural person, a corporation, a partnership, an unincorporated body, or any other entity.

The partners have freedom of contract in respect of the operation of the fund. The matters that may be covered by a limited partnership agreement may include the organization, management structure, governance and decision-making procedures of the fund, the investment scope and strategy of the fund, etc.

Liability of Partners

A limited partnership fund does not have a legal personality.

Similar to a limited partnership, the general partner in an LPF is ultimately responsible for the management and control of the fund and will assume unlimited

liability for the debts and obligations of the fund. The limited partners have no day-to-day management rights or control over the assets held by the fund, but rather they have the right to participate in the income and profits arising from the fund. The liability of the limited partners in an LPF is limited to the extent of their agreed contributions.

Other Officers

The general partner in an LPF must appoint:

- (a) an investment manager to carry out the day-to-day investment management functions of the fund;
- (b) an auditor to carry out audits of the financial statements of the fund annually;
- (c) a responsible person to carry out anti-money laundering and counter-terrorist financing functions; and
- (d) (if the general partner is another LPF or a non-Hong Kong LP without a legal personality) an authorized representative. The general partner and the authorized representative will be jointly and severally liable for all the debts and obligations of the LPF and ultimately responsible for the management and control of the fund.



Registration and Continuing Obligations

The general partner should apply to the Companies Registry for registration of the fund as an LPF. In addition, the general partner must:

- (a) file annual returns with the Companies Registry;
- (b) notify the Companies Registry of changes in the registered particulars;
- (c) maintain proper records of the fund; and
- (d) ensure that there are proper custody arrangements for the assets of the fund as specified in the limited partnership agreement.

The fund must also have a registered office situated in Hong Kong.

The information registered with the Companies Registry is publicly available, but the register will not contain information as to the identity or background of the limited partners.

Licensing Requirements

Where the investment manager or its delegate carries on a business in a regulated activity, such as asset management, as defined in the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), the investment manager or its delegate is required to be licensed or registered by the SFC in respect of such regulated activity.

Tax Benefits

LPFs may benefit from advantageous tax arrangements. For example, they may be exempt from profits tax if they can satisfy certain conditions. Further, while an in-kind capital contribution to the fund, or a distribution to a limited partner, by way of transfer of dutiable assets (e.g., Hong Kong stock and immovable properties) will attract stamp duty, the contribution, transfer, or withdrawal of an interest in an LPF in cash is not subject to stamp duty.

Re-domiciliation or Migration

A fund set up in the form of an LP, whether under the laws of a jurisdiction outside Hong Kong or in Hong Kong and meeting the eligibility requirements may apply to be registered as an LPF in Hong Kong.

3.5 Open-ended Fund Company (OFC)

Hong Kong funds have traditionally been established as unit trusts instead of in corporate form due to the restrictions on capital reduction and distribution out of capital under the Companies Ordinance.

An OFC is a relatively new structure introduced in 2018 and refers to an open-ended collective investment scheme structured in corporate form with limited liability and variable share capital. The main purpose of an OFC is to serve as an investment fund vehicle and manage investments for the benefit of its shareholders. The SFC registers and oversees OFCs whereas the Companies Registry is responsible for their incorporation and corporate filings.



Incorporation

Under a “one-stop” approach, the application documents for incorporation and business registration shall be delivered to the SFC. The Companies Registry will issue the Certificate of Incorporation and Business Registration Certificate in one go after approval is given by the SFC.

Registration

OFCs, whether publicly or privately offered, are required to be registered with the SFC. Same as other publicly offered funds, publicly offered OFCs are also required to obtain prior authorization from the SFC, unless an exemption applies.

An OFC is required to, among other things, (i) have a board of directors, an investment manager, and a custodian; (ii) fulfil certain disclosure requirements for documents; (iii) comply with applicable investment restrictions; and (iv) comply with certain ongoing disclosure requirements.

3.6 Choice of Business Entities

When choosing the type of business entity that is suitable for a particular business, regard should be given to all the relevant factors including but not limited to:

- (1) Nature of the business
- (2) Size of the business
- (3) Number of owners
- (4) Legal status of the entity (E.g., Is the vehicle a separate legal entity? Can it own property in its own name? Does it have perpetual succession?)

- (5) Management of the business
- (6) Liability of owners
- (7) Formation requirements and procedures
- (8) Formalities
- (9) Registration procedures (if required)
- (10) Ongoing maintenance and other compliance requirements (e.g. filing of statutory returns and forms, audit, maintenance of registers and keeping of books and records) and the fees and costs involved
- (11) Tax implications in Hong Kong and overseas
- (12) Any implications for employment matters (e.g., visa applications)
- (13) Transfer of ownership
- (14) Business exit

4. Taxation

Tax

Hong Kong adopts a territorial source principle of taxation. There are three principal heads of tax in Hong Kong, namely profits tax, salaries tax and property tax. There is no sales tax or value-added tax, withholding tax, capital gains tax or estate tax in Hong Kong.

As to profits tax, as a general principle, any persons (including corporations, partnerships, trustees, whether incorporate or unincorporated, or bodies of persons) carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade,



profession or business. No distinction is made between residents and non-residents. Whether a business is carried on in Hong Kong and whether profits have a Hong Kong source are largely questions of fact.

While the principle itself seems clear, its application in particular cases can at times be contentious. It is therefore crucial to obtain tax advice before establishing any business in Hong Kong in order to produce a tax-efficient structure.

Hong Kong has implemented a two-tiered tax rates regime for years of assessment commencing on or after 1 April 2018. The profits tax rate for the first \$2 million of assessable profits has been lowered to 8.25% (half of the rate specified in the Inland Revenue Ordinance) for corporations and 7.5% (half of the standard rate) for unincorporated businesses (mostly partnerships and sole proprietorships). Assessable profits above \$2 million will continue to be subject to the rate of 16.5% for corporations and the standard rate of 15% for unincorporated businesses. All entities with profits chargeable to profits tax in Hong Kong would qualify for the two-tiered profits tax rates, except those with a connected entity which is nominated to be chargeable at the two-tiered rates.

Hong Kong has also entered into Comprehensive Double Taxation Agreements / Arrangements (DTAs), also referred to as tax treaties, with over 50 jurisdictions, including Mainland China, United Kingdom, Japan, Canada, New Zealand, and Switzerland, just to name a few. Generally, the DTAs operate to reduce or eliminate double taxation caused by overlapping tax jurisdictions, provide a level of security about the tax rules that will apply to particular international

transactions, and facilitate investment, trade, movement of technology, and movement of personnel by reducing rates of foreign withholding tax.

Stamp Duty on Transfer of Hong Kong Stock

A transfer in Hong Kong stock is chargeable with ad valorem stamp duty, subject to certain exemptions or stamp duty relief. The current stamp duty rate is 0.2% of (i) the consideration or (ii) the market value of the shares transferred (whichever is higher).

5. Visa

A visitor is prohibited from taking any employment (whether paid or unpaid) or establishing or joining in any business during his stay in Hong Kong, but he may generally engage in the following business-related activities:

- (a) concluding contracts or submitting tenders;
- (b) examining or supervising the installation/packaging of goods or equipment;
- (c) participating in exhibitions or trade fairs (except selling goods or supplying services direct to the general public, or constructing exhibition booths);
- (d) settling compensation or other civil proceedings;
- (e) participating in product orientation; and
- (f) attending short-term seminars or other business meetings.

Persons who wish to enter or stay in Hong Kong to establish or join in business in Hong Kong will need to apply to the Immigration Department for a visa / permit entry to enter Hong Kong for investment as



entrepreneur. Generally, they are required to be in a position to make substantial contribution to the economy of Hong Kong with reference to a range of consideration factors, or the start-up business concerned is supported by certain government-backed programmes and the applicant is the proprietor or partner of the start-up company or a key researcher of the relevant project.

If the business will engage or employ anyone without the right of abode in Hong Kong, such persons will need to apply for visa / entry permit to take up employment in Hong Kong. The applicants should normally possess special skills, knowledge, or experience of value to and not readily available in Hong Kong.

6. **Foreign Investment Restrictions**

No General Restrictions

There is no general restriction on foreign investment in Hong Kong save for certain regulated sectors. One notable exception is the restrictions on voting control by non-residents over licensed broadcasters.

A sale or transfer of residential property in Hong Kong is subject to buyer's stamp duty where the purchaser or transferee is not a Hong Kong permanent resident.

Exchange Control or Currency Regulations

There is no foreign exchange control in Hong Kong. There is generally no restriction on the repatriation or remittance of funds outside Hong Kong, subject to the compliance of the anti-money laundering laws and regulations.

areas including corporate and commercial, dispute resolution, conveyancing and probate, trusts, and technologies. We provide professional services to local and overseas clients including leading multinational corporations, public and private companies, and professional firms.

Our Corporate & Commercial Department advises on a wide spectrum of corporate and commercial matters in Hong Kong, the Mainland China, and other jurisdictions. With a team of experienced and dedicated lawyers, we are able to steer through complex issues and provide high quality advices which are practical and solution-oriented. Our clients encompass listed and private companies, investment funds as well as financial institutions from different countries.

The information in this Guide is for general guidance only and does not constitute legal or professional advice. Our firm assumes no responsibility for such information and expressly disclaims all liabilities arising from or in connection with any reliance thereof.

SIT, FUNG, KWONG & SHUM

Sit, Fung, Kwong & Shum is one of the major local law firms in Hong Kong. We have a wide spectrum of practice