

HONG KONG Jurisdictional Guide



GENERAL INFORMATION

Hong Kong (HK) (香港 Heūng Góng in Cantonese, meaning Fragrant Harbour) is a Special Administrative Region (SAR) of the People’s Republic of China, geographically enclosed by the Pearl River Delta and South China Sea. HK is known for its expansive skyline and deep natural harbour, and with a land mass of 1,104 sq.km. and a population of over seven million people, is one of the most densely populated areas in the world.

It is a place with multiple personalities, as a result of being both Cantonese Chinese and under a more recent contemporary ex-British influence. Today, the former British colony is a major tourism destination for China's increasingly affluent mainland population. It is also an important hub in East Asia with global connections to many of the world's cities. It is a unique destination that has absorbed people and cultural influences from places as diverse as Vietnam and Vancouver and proudly proclaims itself to be Asia's World City.

Under the “one country – two system” philosophy the SAR has executive, legislative and independent judicial power. The capitalist system, the legal structure and lifestyle are maintained. HK remains a free port with a free flow of capital and a freely convertible HK Dollar.

HK is famous for being a leading financial and banking centre in East Asia, with a presence of over 70 of the 100 largest banks in the world. HK is also famous for its transition port, transporting a significant volume of exports from China to the rest of the world.

As a major financial and trading centre, HK’s success is attributable to its simple low-rate tax regime and free trade policy, the absence of restrictions on inbound/outbound investment and the absence of nationality restrictions on ownership. HK is also a major service economy, with particularly strong links to mainland China and the rest of the Asia-Pacific region.

COUNTRY INFORMATION

Population	Approximately 7.15 million
Location	East Asia
Political System	Limited Democracy
Language(s)	Cantonese & English
Timezone	8 hours ahead GMT
Currency	HK\$ (HK Dollar)

CORPORATE INFORMATION

Basic Characteristics

Legal Form	Basic Law – Based on English Common Law
Legislation	Companies Ordinance (Cap. 622) (“the new CO” since 03/03/2014)
Regulatory Authority	Hong Kong Monetary Authority (HKMA)
Types of Companies	<ul style="list-style-type: none">• Private Company Limited by Shares• Sole Proprietorship• Partnership• Public Company• Branch Offices of Foreign Companies
Required Incorporation Documents & Formalities for setting up a company	<ul style="list-style-type: none">• Submission of Articles of Association and a prescribed form with the HK Companies Registry by Founder Member of the Company with details of the corporate structure information (NNC1)• Registration Fee for companies with share capital payable to the Companies Registry is HK\$1,720• Registration Fee for companies without share capital HK\$170- HK\$1,025 depending on the number of members stated in the Articles• All businesses in HK must obtain a Business Registration Certificate from the Inland Revenue Department within one month of commencing business (Form IRBR1) – the registration fee is HK\$2,250 for a one year certificate and HK\$5,950 for a three years certificate• Certified copy of passport and copy of proof of address for beneficial owners and senior officers
Shelf Companies	Yes
Double Taxation Treaty Access	Yes (over 20 Double Tax Treaties in force)

COMPANY INFORMATION

Company Name

Language	English Name or Chinese Name or an English and a Chinese Name (a combination of English words/letters and Chinese Characters is not allowed)
Name Suffixes and Abbreviations Required	Limited/Ltd., and its equivalent in Chinese Characters in case of a Chinese Company name

Name Restrictions	<p>The proposed name will likely be rejected if the name:</p> <ul style="list-style-type: none"> • Is the same or similar to a name appearing in the Companies Registry' "Index of Company Names" • Is offensive or otherwise contrary to the public interest • Gives the impression of being connected in any way with the Central People's Government or the Government of the HKSAR or any department of either government such as Department, Government, Commission, Bureau, Federation, Council, Authority
Names Requiring Consent or License	Building Society, Chamber of Commerce, co-operative, Kaifong, mass transit, municipal, savings, tourist association, trust, trustee, underground railway, bank, insurance, assurance, reinsurance etc.
Time to Incorporate	Approximately 15 working days

Authorised & issued Share Capital

Authorized Share Capital	The concept of Authorized Share Capital was abolished effective March 2014
Standard Currency	HK\$
Permitted Currencies	Any
Minimum Share Capital	1
Classes of Shares permitted	Ordinary shares, preference shares, redeemable shares and shares with or without voting rights, subject to the Articles of Association
Bearer Shares Allowed	No

Directors

Minimum Number	One (at least one physical person under 18 years of age)
Register of Members	Yes
Local Director Required	No
Publicly Accessible Director Records	Yes
Location of Meetings	Anywhere

Shareholders

Minimum Number	One (physical or legal)
Register of Members	Yes
Local Required	No

Publicly Accessible Shareholder Records	Yes
Location of Meetings	Anywhere

Secretary

Required	<p>Yes (physical or legal) – responsible for maintaining all statutory books and records of the company and ensure the company’s compliance with all statutory requirements.</p> <ul style="list-style-type: none"> • If physical he/she must be a HK resident • If legal it must have its registered office or a place of business in HK
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Local Requirements

Registered Office/Agent	Yes (must be situated in HK and must be a registered physical address)
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Accounts

Required to Prepare and File	<p>Yes</p> <ul style="list-style-type: none"> • Audited Accounts and Tax Returns must be filed annually with the Inland Revenue Department (IRD)
Audit Required	Yes
Publicly Accessible Accounts	No

Recurring Government Costs

Minimum Annual License Fee or Franchise Tax	<p>Annual Return statutory filing fee and business registration fee currently HK\$105 and HK\$450 respectively</p> <ul style="list-style-type: none"> • The Annual Return must be filed within 42 days of the most recent anniversary of the date of incorporation of the Company • Higher fees apply with late filing
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TAXATION

General

HK has one of the least cumbersome tax regimes among developed economies and prides itself on its simple tax system and low rates. Profits from a HK trade or business are subject to profits tax; income from employment or pensions is subject to salaries tax; and income from property is subject to property tax. Foreign-source income is not taxable, even if remitted to HK. Capital gains on transfers of capital assets are not taxed, and no withholding tax is imposed on dividends paid out of after-tax profits.

HK does not impose any direct payroll, turnover, value added, gift or capital gains taxes. Duties are charged on a few products such as alcohol and tobacco.

The main tax legislation is found in the Inland Revenue Ordinance (IRO) and the main tax authority in HK is the IRD.

HK Quick Tax Facts for Companies

Corporate profit tax rate	16.5%
Branch profit tax rate	16.5%
Capital gains tax rate	0% (though net gains on certain transactions deemed speculative may be liable to profits tax as trading income)
Basis	Territorial (only profits arising in or derived from HK are subject to tax)
Participation exemption	No
Additional income subject to profit tax	<ul style="list-style-type: none"> • Fees from the exhibition or use in HK of cinema, television, film or tape, or any sound recording; • Grants, subsidies or similar financial assistance connected with a business conducted in HK; • Fees received for rental of movable property in HK • Royalties from the use of, or the right of use, certain types of intellectual property in HK; and • Royalties from the use of, or the right to use, certain types of intellectual property outside HK; however, such royalties may be deductible as expenses of the payer in determining the payer's taxable profits
Loss Relief	
Carry Forward	Indefinite (losses attributable to carrying on a business that earns profits subject to profits tax may be carried forward indefinitely and set off against future taxable profits of the company)
Carry Back	No
Double Taxation Relief	
Double taxation relief	Yes
Tax consolidation	No (HK does not allow groups of companies to file consolidated returns, nor are there provisions allowing group loss relief for members of a group of companies)
Transfer pricing rules	No mandatory documentation requirements, but the tax authorities may ask a taxpayer to submit documentation to justify its transfer pricing.
Thin capitalization rules	No, however the deduction of interest expenses may be affected by anti-avoidance provisions
Controlled foreign company rules	No CFC legislation
Tax Year	1 April – 31 March
Advance payment of tax	Provisional Payment
Return due date	1 month from the date of notice

Withholding Tax	
Dividends	0%
Interest	0%
Royalties	4.95% / 16.5%
Branch Remittance tax	0%
Social Security Contribution	5% (for employees with monthly income of HK\$7,100 or more)
Indirect Taxes	
Capital tax	No
Real Estate tax	15%
Special Stamp Duty	5% (property resold within 2 years of purchase) 10% (property resold within 1 year of purchase) 15% (property resold within six months of purchase) 20% (residential property purchased on or after 27/10/2012 and resold within six months of purchase)
Buyer's Stamp Duty	15% (on residential property acquired as from 27/10/2012)
VAT	No
Ad valorem stamp duty	0.2% (value of shares), 0.25% to 1% (lease of immovable property) HK\$ 100 to 4.25%* (sale and conveyance of property)
*A bill that proposes to double the ad valorem stamp duty for the sale and conveyance of property is under discussion by the Legislative Council. If the legislation is enacted, the new ad valorem stamp duty rate (1.5% to 8.5%) would apply retroactively to sales or conveyance of properties acquired on or after 23 February 2013.	
Other Taxes	<ul style="list-style-type: none"> • No Custom Duties • No Environmental taxes • Duty of bets (25% - 75%) • Air passenger departure tax (HK\$120 per person over 12 years)

HONG KONG FOREIGN TRUST

General

Trust law in HK is virtually identical to English trust law and is contained in the provisions of the Trustee Ordinance (an Ordinance which was modeled on the English Trustee Act 1925).

LEGAL FRAMEWORK:

The HK Foreign Trust is governed by the Trustee Ordinance.

On 19 July 2013 HK passed the Trust Law (Amendment) Bill 2013 which amends the Trustee Ordinance (Cap.29) and the Perpetuities and Accumulations Ordinance (Cap.257). The new Law came into effect on the 1st December 2013.

Trust Law Amendments

1. RESERVED POWERS	Settlors will be able to reserve to themselves powers relating to investment or asset management functions
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2. FORCED HEIRSHIP	Foreign heirship rules will not affect the validity of a lifetime transfer of movable assets to a Trust expressly governed by HK Law
3. PERPETUITY	A HK Trust can be established for an unlimited period of time
4. ENHANCEMENT OF TRUSTEE'S DEFAULT POWERS	<p>In the absence of a trust instrument specifically granting trustees the powers normally required to carry out their role, trustees will have certain default powers, unless there are provisions to the contrary in the trust instrument:</p> <ul style="list-style-type: none"> - Appointment of agents, nominees and custodians: trustees are authorised to delegate specific functions to agents, nominees and custodians, although the trustee must monitor the performance of these agents. - Power to insure: Trustees have the power to insure trust property against loss or damage caused by any event. - Trustees' remuneration: Professional trustees are entitled to receive remuneration. <p>Authorised investments: the scope of permitted investment has been widened. In future, trustees will be permitted to invest in companies quoted on a stock exchange provided that the companies selected each have a market capitalization of not less than HK \$5 billion and have paid cash dividends for the 3 years prior to the date on which the investment is made.</p>
5. DUTY OF CARE	The new legislation imposes a statutory duty of care on trustees so that they must exercise such care and skill as is reasonable in the circumstances, having regard in particular to any special knowledge or experience that the trustee has or that is held out by the trustee as having; if the trustee is acting in the course of a business or profession, having regard in any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.
6. EXEMPTION CLAUSES	The new legislation provides for greater protection for beneficiaries. Professional trustees cannot now be exempted from liability for wilful misconduct, gross negligence or fraud.
7. REMOVAL OF TRUSTEES	The new legislation includes a court free process for beneficiaries of full age and capacity who are absolutely entitled under the trust to appoint new trustees in place of the existing trustees, without terminating the trust.
Trust Characteristics	
Registration	There is no requirement for the registration of the HK Foreign Trust
Settlor	The Settlor does not need to be a permanent resident of HK
Beneficiary	The beneficiary does not need to be a permanent resident of HK
Trustee	There is no requirement for the trustee to be licensed or resident of HK
Protector	The appointment of Protector is optional
Property	There are no restrictions on the property of a HK Foreign Trust

Confidentiality	As there are no registration requirements for the Hong Kong Foreign Trust the details of the Settlor and Beneficiaries are not disclosed to any person other than the Trustee
Taxation	Income derived by the HK Foreign Trust from assets outside Hong Kong will not be taxable to the trustee, or the beneficiaries. Distributions to beneficiaries from a HK Foreign Trust are not taxable in HK in the hands of the beneficiaries.
Asset Protection	There is no specific legislation providing asset protection for Hong Kong Foreign Trusts.
Reporting Requirements	There are no reporting requirements for a Hong Kong Foreign Trust

NOTE:

The information contained in this publication is accurate as at the date of its publication and is not intended to be exhaustive nor a substitute for proper professional advice. Please contact our company for consultation. We look forward to assessing your individual business plans and requirements and recommending the right solution for your unique needs.