



Hong Kong Legal Provisions

Compiled by:

Consulate General of Switzerland, Hong Kong

Hong Kong, July 2006

General remarks

British administration on Hong Kong ended at midnight on 30th June, 1997 and Hong Kong became a Special Administrative Region of the People's Republic of China (PRC) on 1st July, 1997. The **Basic Law, constitutional document** of the Hong Kong Special Administrative Region (HKSAR), came into effect on the same day. The Basic Law sets out the basic policies of the PRC regarding Hong Kong and the way in which the HKSAR is to be administered for 50 years beyond 1997. Under the Basic Law, the HKSAR enjoys a high degree of autonomy except in defence and foreign affairs. The HKSAR exercises executive, legislative and independent judicial power, including that of final adjudication. The HKSAR remains a free port, a separate customs territory and may, on its own, using " Hong Kong, China ", maintain and develop relations and conclude and implement agreements with foreign states and regions and international organisations in appropriate fields. Under the principle of " **One Country, Two Systems** ", the capitalist system and way of life shall remain unchanged. Hong Kong maintains a free and open market economy with a free flow of capital, goods, information and services and a freely convertible currency. The socialist system and policies are not practised in Hong Kong.

Customs

HKSAR is a **free port**. There is **no tariff on general imports**. **Excise duties are levied only on tobacco, liquor, methyl alcohol and hydrocarbon oil**, whether imported or locally manufactured. For tobacco, hydrocarbon oil and methyl alcohol, duties are charged at specific rates per unit quantity. For liquors, duty is assessed at different percentages of their values on the basis of three different categories defined broadly according to alcoholic strength. For details, please consult the website of the Customs and Excise Department (<http://www.customs.gov.hk>).

When applying for first registration of a vehicle, an owner of the vehicle is required to pay **first registration tax** and registration fee. The first registration tax will be derived from the taxable value of the vehicle times the appropriate tax rate. For more information, please consult the Transport Department:

(http://www.td.gov.hk/public_services/licences_and_permits/vehicle_first_registration/guidelines_for_importation_and_registration_of_mot/index.htm).

Import and export regulations

Under the Import and Export (Registration) Regulations, Chapter 60, every person who imports or exports any article, other than an exempted article, is required to lodge with the Commissioner of Customs and Excise an accurate and complete import/export declaration within 14 days after the importation/exportation of the article. Otherwise, a penalty charge is required to be paid.

As a free port, Hong Kong maintains minimal import and export documentation requirements. **Most products do not need licences to enter or leave Hong Kong.** Presently, products that require import or export licences include strategic commodities, rice, chilled or frozen meat and poultry, pharmaceutical products and medicines, pesticides, radioactive substances and irradiating apparatus, left-hand-drive vehicles, outboard engines exceeding 111.9 kilowatts (150 horsepower), ozone-depleting substances and optical disc mastering and replication equipment. Please refer to the website of the Customs and Excise Department (<http://www.customs.gov.hk>) and the Trade and Industry Department (<http://www.tid.gov.hk>) for more details. An overview of HK's import and export licensing and control is available at the website of the Trade and Industry Department (http://www.tid.gov.hk/service/ie/jsp/IE_Gen_IECLR_Home_e.jsp).

Currency regulations

The Hong Kong dollar (HK\$) has been pegged to the US dollar at HK\$7.80 to US\$1 since October 1983. There are **no foreign exchange controls** and **no restrictions on the trading of gold, securities, futures** and the like. Hong Kong retains its own currency and monetary system after the return to China.

Registration procedure for products

The Intellectual Property Department (IPD) is responsible for operating Trade Marks, Patents and Registered Designs Registries in Hong Kong. For registration procedure of trade marks, patents and designs, please visit the web page of the IPD at <http://www.ipd.gov.hk/eng/home.htm>.

Standards, technical rules, labelling regulations

In line with the World Trade Organisation (WTO) Agreement on Technical Barriers to Trade, Hong Kong's policy is to use international standards as far as possible and align domestic standards with international standards where appropriate.

Hong Kong does not have a central standards body developing and issuing domestic standards. Their regulatory agencies use standards as and when necessary, and avoid the position where the setting of standards dictates market development or becomes a means of protecting certain sectors of the industry. More information on standards used in Hong Kong is available on Standards, Regulations and Conformity Assessment Database (<http://www.itc.gov.hk/en/quality/psis/srca/db.htm>).

As far as labelling regulations about food and drugs are concerned, please read labelling guidelines on food allergens, food additives and date format at the website of the Food and Environmental Hygiene Department (http://www.fehd.gov.hk/events/labelling_guide/labelling_guide.htm).

Taxes

The tax regime is simple and predictable. The profits tax rate is 17.5 %, the same for foreign and local companies. There is no capital gains tax, inheritance tax, withholding tax on dividends and interest or collection of social security benefits. The salaries tax rate is at a maximum rate of 16 %, imposed only on all salary income of individuals derived in or from Hong Kong. The salaries tax is demanded on a yearly basis. Property tax is charged at a standard rate of 16% on rentals received less rates and an allowance of 20% for repairs and maintenance.

To date, there is no sales tax or VAT in Hong Kong. However, the HKSAR Government issued a consultation document outlining proposed tax reforms including possible introduction of a goods and services tax (GST) on 18th July 2006. For the moment the proposal is attacked by all political parties. Therefore the outcome of the consultation is not clear yet.

For more information on taxes in Hong Kong, please see the website of the Inland Revenue Department (<http://www.ird.gov.hk>).

Commercial law

The laws previously in force in Hong Kong (that is, the common law, rules of equity, ordinances, subordinate legislation and customary law) are maintained, except for any that contravene the Basic Law, and subject to subsequent amendment by the HKSAR Legislature.

The legal system of Hong Kong is separate from that of mainland China, and English common law prevails. Cases are heard in English and/or Chinese.

There are various ordinances related to business and commercial law such as Companies Ordinance, Sale of Goods Ordinance, Trade Description Ordinance and etc.. In addition, some ordinances are made for specific industries such as banking, insurance, broadcasting and etc..

For information on specific topics of the Hong Kong Laws, please consult the website of the Department of Justice (<http://www.doj.gov.hk>).

Setting up companies

All businesses in Hong Kong must obtain a business registration certificate within one month of start-up. The Business Registration Office is located at the following address: 4/F., Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong (Tel: 852/2594 3146 Website: <http://www.ird.gov.hk/eng/tax/bre.htm>).

Every investor has a wide range of business vehicles to choose from when doing business in Hong Kong. All enterprises are subject to the same rules.

The type of structure that is most appropriate will depend on tax issues, strategic plans, financial aspects and willingness to take on ongoing obligations. Because of the complex and long term impact of this decision, it is advisable to seek professional advice.

The most common forms of business vehicles foreign investors choose are:

- Private limited companies
- Branch offices of overseas companies
- Representative offices

- Partnerships/sole proprietorships
- Joint ventures

For more information, please see the website of the InvestHK (<http://www.investhk.gov.hk>).

Promotion of investment

The Commerce, Industry and Technology Bureau (<http://www.citb.gov.hk>) of the HKSAR Government is responsible for policy formulation and co-ordination of work to promote foreign direct investments. It is assisted by Invest Hong Kong and a network of economic and trade offices outside Hong Kong. The Hong Kong Economic and Trade Office in London (<http://www.hketolondon.gov.hk>) is responsible to promote HK's economic and trade interests in Switzerland.

Entry conditions, work permits, residence permits, labour law

Valid passports or other travel documents are required by all visitors to Hong Kong. **Swiss nationals do not need visas for visits to Hong Kong if the stay is not exceeding 90 days.**

As a general rule, foreign nationals including **Swiss nationals must obtain a visa before coming to Hong Kong for the purpose of education, taking up employment, training, investment or residence.**

For a visa application for employment in Hong Kong, the applicant must provide the following information:

- an application form ID(E) 936 (can be downloaded at the website of the Immigration Department <http://www.immd.gov.hk>), with relevant parts duly completed and signed;
- a copy of the sponsor's Business Registration Certificate, Certificate of Incorporation and/or Memorandum of Incorporation and Articles of Association;
- financial standing of the sponsor/sponsor's company (income tax return, trading profit and loss account, profit tax return);
- company staff list with salary offered and position held and list of expatriate staff previously or currently recruited from overseas;
- a copy of the applicant's service contract or letter of appointment with details of post, salaries and benefits;
- full description of the applicant's post;
- details, with proofs, of applicant's academic qualifications and experience relevant to the post, e.g. copies of diplomas, certificates and testimonials;
- a letter, with supporting proof from the employer (if possible), stating the reason why the post cannot be filled locally;
- if the applicant is to replace someone already working in Hong Kong, the personal particulars and his whereabouts (if known) should be given;
- if the applicant is to fill a new post, explain why his/her services are essential; and
- evidence of the applicant's past residence in Hong Kong (if any).

For a visa application for investment in Hong Kong, the applicant must provide the following information:

- an application form ID(E) 936 (can be downloaded at the website of the Immigration Department <http://www.immd.gov.hk>), with relevant parts duly completed and signed;

- a copy of the sponsor's Hong Kong identity card and/or travel document (if he is sponsoring the applicant as an individual);
- a copy of the sponsor's Business Registration Certificate (if he is sponsoring the applicant as a company);
- a copy of Business Registration Certificate of the company which the applicant is going to invest or has invested. Copy of Form 1A (for sole proprietorship) or Form 1B plus Form X(i) and X(ii) (for limited company) or Form 1C (for partnership) from the Company Registry;
- details, with proof, of the applicant's proposed business activities in Hong Kong;
- details, with proof, of the applicant's proposed investment in Hong Kong, his paid-up capital and source of funds;
- details of the personal particulars of all other Directors of the company and their whereabouts; reasons why the applicant's presence is essential;
- the number of local and expatriate employees;
- details, with proof, of the applicant's academic qualifications and experience relevant to the post, e.g. copies of diplomas, certificates and testimonials;
- details, with proof, of the applicant's plan to co-operate actively with Hong Kong commerce and industry; and
- evidence of the applicant's past residence in Hong Kong (if any).

In addition to the above-mentioned visa for investors in general, the Capital Investment Entrant Scheme allows individuals to enter for residence by making capital investment.

Individuals with net assets under their control and disposal in permissible investment assets of no less than HK\$6.5 million will be eligible for admission into Hong Kong as capital investment entrants. There are many investments that qualify as permissible investment assets. Successful applicants can bring in their spouses and unmarried dependent children under the age of 18 as dependents. An entrant under this scheme is allowed to take up employment, set up or join in a business in Hong Kong. A dependent of an entrant under this scheme may take up employment with no restrictions or requirements for visas.

The Quality Migrant Admission Scheme QMAS allows an annual quota of highly skilled or talented persons to settle in Hong Kong.

To be eligible for a visa through QMAS, there is a five-step process:

- All applicants under the Scheme must fulfil a set of 5 criteria, concerning age, finance, character, language and education.
- Applicants must select whether they will be evaluated under the general points test or achievement-based points test. Most applicants, except for those with Nobel prizes and lifetime achievement awards from their industry, are likely to apply under the former. This test involves winning points in five areas: age, qualifications, work experience, language proficiency and family background.
- Suitable candidates will be assessed further by the Director of Immigration.
- Successful applicants will receive an approval in principle. On receipt of this letter, applicants are required to go to Hong Kong to personally attend an interview and present originals of relevant documents.
- If everything is satisfactory, applicants are issued an entry visa/entry permit for stay in Hong Kong.

For detailed information on entry conditions, employment visa, residence permits, Capital Investment Entrant Scheme and Quality Migrant Admission Scheme, please contact the Immigration Department, HKSAR Government (address: Immigration

Department, Immigration Tower, 7 Gloucester Road, Wan Chai, Hong Kong. Website <http://www.immd.gov.hk> tel.: 852/ 2824 6111 e-mail: enquiry@immd.gov.hk).

There is **no legal minimum wage** in Hong Kong. The Employment Ordinance (Chapter 57 of the Laws of Hong Kong) sets the minimum entitlements for employees, such as statutory holidays, sick and maternity leave, severance and long-service payments. It is up to employers whether to provide additional benefits.

Hong Kong introduced Mandatory Provident Fund (MPF), a privately managed fund designed to provide retirements benefits, in December 2000. In general, MPF applies to all members of the workforce between the ages of 18 and 65. Both employers and employees are required to contribute 5% of the employees monthly income into a registered MPF scheme, up to a maximum of HK\$1,000 each per month.

Information on labour legislation is available at the website of the Labour Department (<http://www.labour.gov.hk/eng/legislat/contentA.htm>).

Procedures for collecting payment

There are some debt collection companies in Hong Kong such as Dun & Bradstreet (HK) Ltd. (address: 18/F., Caroline Centre, Lee Gardens Two, 28 Yun Ping Road, Causeway Bay, Hong Kong Tel.: 852/2516 1111 Fax.: 852/2563 7427 Website: <http://www.dnbasia.com/hk/>) and Coface Greater China Services Limited (address: 8th Floor, Sunning Plaza, 10 Hysan Avenue, Causeway Bay, Hong Kong, Tel.: 852/2368 6965, Fax.: 852/2367 7275 Website: <http://www.coface.com.hk/>).

It is advisable to ask for an estimate of fees in advance. This information may not be regarded as any recommendation or endorsement by this Consulate General for any purpose with respect to any company or service. This Consulate General cannot be held responsible for any loss and inconvenience incurred.

Sources of information and links

- Basic Law (http://www.info.gov.hk/basic_law/flash.html)
- Customs and Excise Department (<http://www.customs.gov.hk>)
- Trade and Industry Department (<http://www.tid.gov.hk>)
- Inland Revenue Department (<http://www.ird.gov.hk>)
- Intellectual Property Department (<http://www.ipd.gov.hk>)
- Department of Justice (<http://www.doj.gov.hk>)
- Invest HK (<http://www.investhk.gov.hk>)
- Immigration Department (<http://www.immd.gov.hk>)
- Labour Department (<http://www.labour.gov.hk>)
- Hong Kong Economic and Trade Office in London (<http://www.hketolondon.gov.hk>)
- Hong Kong Trade Development Council (<http://www.tdctrade.com>)
- SECO (<http://www.seco.admin.ch/>)

Date: 28 July 2006
Author: W.K. Chan
Author's address: Consulate General of Switzerland
Suite 6206-07, Central Plaza
18 Harbour Road, Wan Chai
Hong Kong
Tel.: +852 / 2522 7147
Fax: +852 / 2845 2619
E-Mail: vertretung@hon.rep.admin.ch

The above information intends to give readers a general overview regarding legal provisions. Only the mentioned authorities of the HKSAR Government are competent for binding information. Interested parties are therefore kindly advised to consult the mentioned authorities (website) before taking any decision.