

www.boasecohencollins.com



**2303-7 Dominion Centre,
43-59 Queen's Road East,
Hong Kong**

Tel: (852) 3416-1711



Doing Business in Hong Kong

1. Why Hong Kong?

Hong Kong is one of Asia's most popular cities for doing business because of its free and open economy— there are no barriers to trade; no restrictions on investments inward or outward; no foreign exchange controls, and no nationality restrictions on corporate or sectorial ownership, etc. In addition, Hong Kong is equipped with excellent banking facilities and a great legal system, as well as easy access to the Mainland market.

According to “World Business Rankings” available on the InvestHK website, in 2009 Hong Kong is ranked the second in the lowest costs of business and business risk, and the third in the lowest tax system.

2. Forms of Business Vehicles:

The following forms of business vehicles are available in Hong Kong:

- Limited company
- Partnership

- Sole proprietorship
- Representative Office
- Branch Office

2.1 Limited Company

The most common company structure is a limited company. Advantages of this structure include: limited liability; greater continuity; separate legal entity; easy to transfer shares, and separate ownership and management.

Disadvantages include: disclosure of information to the public; compliance with the Companies Ordinance (Cap. 32), and close of business by liquidation.

Setting-up

The setting up of a limited company requires at least one director and a company secretary. The processing time for setting up takes approximately 4 days. The minimum capital is HK\$1.

A limited company must be incorporated at the Companies Registry and registered with the

Business Registration Office of the Inland Revenue Department.

After choosing a suitable company name, an application fee is payable and the following documents must be submitted to the Companies Registry: incorporation form and certified copy of the company's Memorandum of Association and Articles of Association (if any).

A limited company is incorporated under the Companies Ordinance, and thus, must comply with all statutory requirements such as filing of Annual Return, changes in directorship and Company Secretary, and performance of annual audit by recognized certified public accountants.

2.2 Partnership

This structure is appropriate where a person wishes to join with others to conduct business with a view for profits. The rights and obligations of partners are governed by a partnership agreement and the Partnership Ordinance (Cap.3).

Advantages of this structure include: it is easy to set up, and it enables better business decisions through

the collective efforts, skills and knowledge of partners.

Disadvantages include: unlimited personal liability; less autonomy; limited sources of finance; every partner is responsible for the acts of other partners, and the entity has no separate legal entity.

Setting-up

To set up a partnership, one needs to apply for a Business Registration Certificate at the Business Registration Office of the Inland Revenue Department within one month of the commencement of business. Form 1(c) needs to be completed and submitted together with photocopies of the HKID cards or passports of all partners.

2.3 Sole Proprietorship

This form of business vehicle is appropriate where an individual wishes to carry on a business on his/her own behalf.

Advantages: simple to set up; easy to make decisions; close relationship with customers; all

profits generated belong to the sole trader, and the sole trader may sell or transfer his/her business as s/he wishes.

Disadvantages: unlimited personal liability; limited sources of finance; sole contribution to capital, and the sole proprietor has to bear all losses.

Setting-up

All a sole trader needs to do is to apply for a Business License at the Business Registration Office within 1 month of commencement of business. Form 1(a) needs to be completed and submitted together with a photocopy of the HKID card or passport of the sole proprietor.

2.4 Representative office (RO)

This structure is appropriate where an overseas company establishes a place of business in Hong Kong but wishes to explore the market before making a bigger investment.

A RO must not be engaged in profit-making activities. Its activities are limited to promotion and liaison; collecting info or maintaining contacts with

customers; undertaking market research, and co-ordinating activities on behalf of the parent company.

Setting-up

This is governed by Part XI of the Companies Ordinance (Cap 32).

Essentially, there are no registration requirements with the Companies Registry; no minimum capital requirements, and no compliances such as filing tax returns nor maintaining accounts. The only requirement is to register with the Inland Revenue Department and obtain a Business Registration Certificate within 1 month of the establishment of the place of business.

2.5 Branch Office of a parent company

This is appropriate where a company incorporated outside Hong Kong establishes a branch office in Hong Kong. A branch office is only considered an extension of the foreign parent company and is not a separate legal entity. Hence, the foreign parent

company is responsible for all the debts and liabilities of its branch.

Setting-up

Requirements include: approval of company name; a local resident authorized representative, and an established place of business in Hong Kong.

Generally, branch offices are subject to the same legal and tax consequences as companies incorporated in Hong Kong. They have to comply with the same requirements such as filing annual returns, filing profits tax returns, and public disclosure.

Therefore, a branch office must file an annual return together with the audited accounts of its foreign parent company, if applicable.

3. Tax implications

One of the most common questions about the world's 'freest economy' is whether it truly has no tax. Although this is untrue, Hong Kong's tax is extremely low.

With no sales tax, no capital gains tax, no value-added tax (VAT) and plans in the pipeline to phase out stamp duties, people are less than enthusiastic about direct taxation.

Income tax, (or salary tax as it is known, which is mainly for individuals), is set at 2% for those earning HK\$40,000 a year; 7% for HK\$40,000-HK\$80,000; 12% for HK\$80,000-HK\$120,000; and 17% for anything exceeding that (Year 2009/10).

This low level of taxation brings Brits, Aussies and Americans by land, sea, air and camel to escape their native countries' tax regimes, contributing to Hong Kong's internationalism.

Similarly, corporate tax, (or profits tax as it is known, which is the main tax on business), is set at the bargain rate of 16% of assessable profits that have a source from Hong Kong and more specifically, according to the Inland Revenue Department, the current (Year 2009/10) normal profits tax rate applicable to sole proprietor and partnership (i.e. unincorporated businesses) is 15%. The tax rate applicable to limited company (i.e. corporations) is 16.5%.

3.1 Taxation of Companies

Companies carrying on business in Hong Kong will be subject to profits tax. Profits arising in or derived from Hong Kong are taxable; whereas, profits derived outside of Hong Kong are not. If the source of income comes from both outside and inside of Hong Kong, there may be apportionment. Dividends and capital gains are not taxable.

3.2 Taxation of Individuals

Income derived in Hong Kong from office, employment and pension is subject to salary tax. Income in this respect includes: wages; salaries; leave pay; commissions; bonuses and allowances.

All in all, the government gets its hands on very little money through direct taxation. This allows small and medium enterprises (SMEs) to flourish and encourages would-be entrepreneurs to throw their hat into the business ring.

4. Conclusion

Hong Kong is an attractive place for foreign investments. Foreign investors intending to set up business in Hong Kong have various forms of business vehicles to choose from. Their decision will largely depend on tax issues, strategic plans, financial considerations, as well as obligation and liability considerations.

by Boase Cohen & Collins

**For further enquiries, please contact
Mr. Colin Cohen at
colin@boasecohencollins.com**

