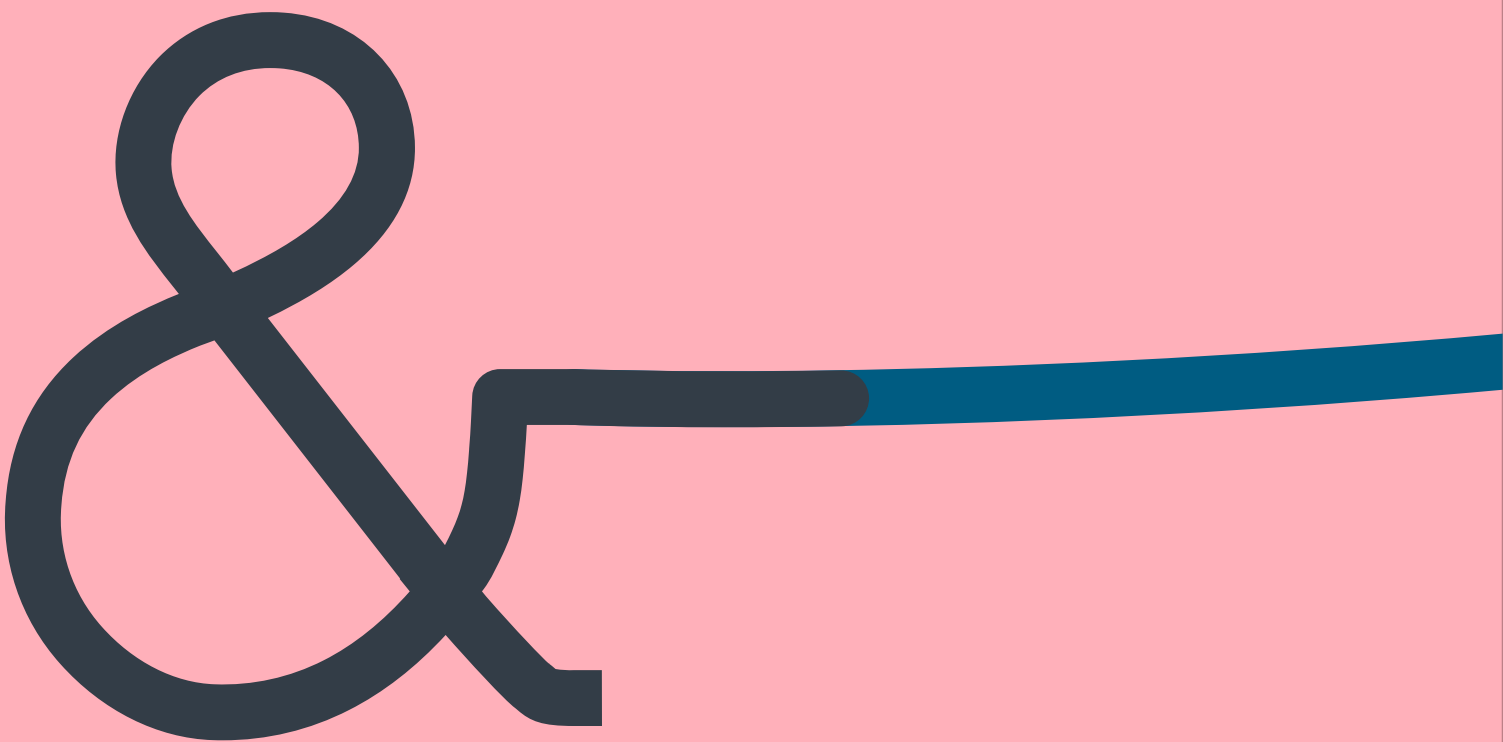


Bird & Bird

# Setting up a business in Hong Kong

2022



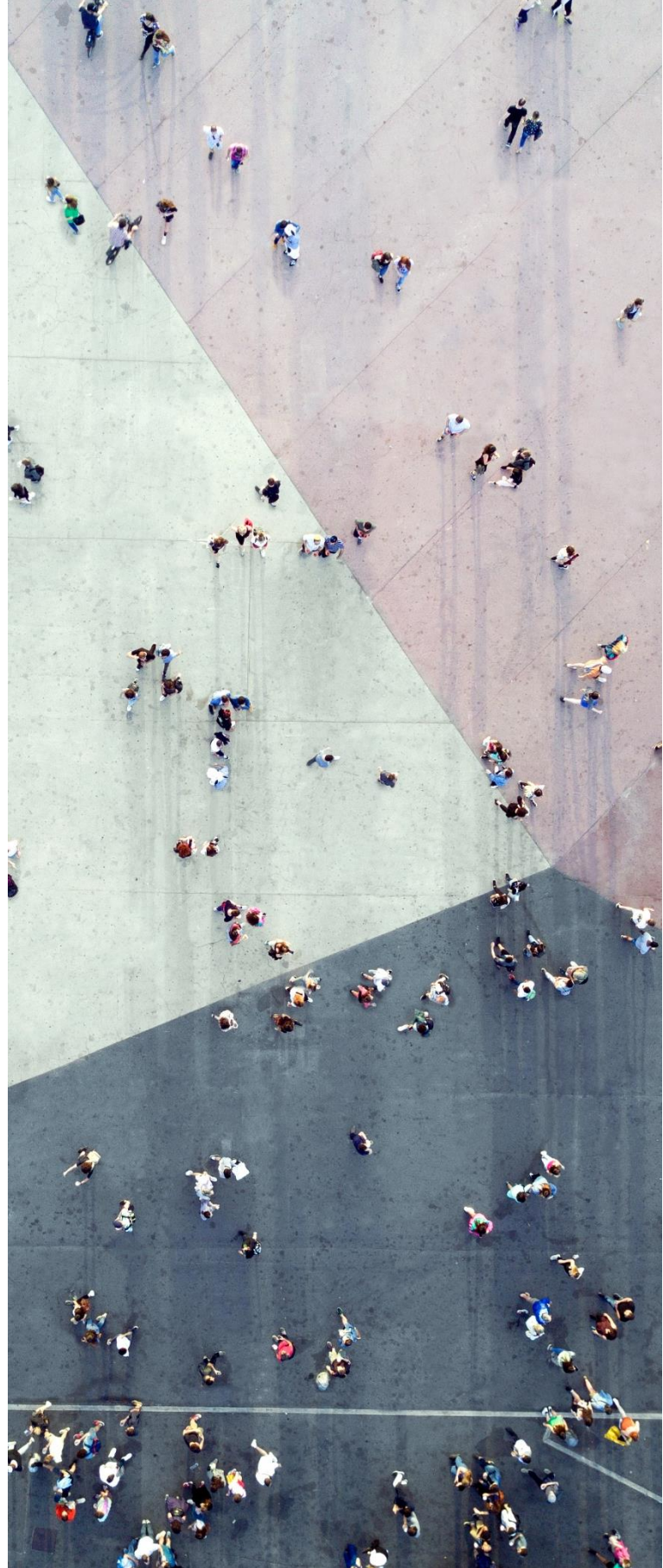


The Singapore and Hong Kong team is a small team, but they make up for lack of numbers in their efficiency and availability. They are always accessible and easy to deal with. They are also priced competitive and very commercial in their outlook.

*Legal 500 Asia-Pacific, 2021*

# Setting up a business in Hong Kong

Hong Kong is a welcoming environment to foreign investors. Bank accounts may be held in any foreign currency and there are no specific laws governing inward investment. Hong Kong's access to the markets in Mainland China coupled with its prominence in financial services and flexible employment law make it a highly attractive location to conduct business.





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The close working relationship between the offices in Asia and around the world allows for a one-stop-shop approach, enabling the team to coordinate complex projects across multiple jurisdictions

*WTR 1000, 2021*

# Setting up a business in Hong Kong

## *Hong Kong is a welcoming environment to foreign investors*

In Hong Kong, bank accounts may be held in any foreign currency and there are no specific laws governing inward investment. Hong Kong's access to the markets in Mainland China coupled with its prominence in financial services and flexible employment law makes it a highly attractive location to conduct business.

Local knowledge is vital, especially in law and especially when our work involves multiple jurisdictions. Most of our work is cross-border and multi-jurisdictional. We excel at managing complex projects across multiple regions with a seamless one-firm approach. Lawyers in our team also regularly assist clients with their multi-jurisdictional cross-border activities throughout the Asia Pacific region including Australia, China, India, Indonesia, Japan, Malaysia, Singapore, South Korea, and Taiwan. With five offices in Asia-Pacific and over 20 other offices worldwide, we are strategically well placed to offer local expertise within a global context. Furthermore, Bird & Bird applies a "one firm" approach, giving clients a highly integrated service.

## *Choice of legal entity*

A company can carry on business in Hong Kong either by incorporating a subsidiary company or by establishing a branch.

Subsidiary	Branch
A subsidiary is a separate legal entity, entitled to contract in its own name and on its own behalf.	A branch has no separate legal personality, remains as part of the parent company and contracts as a branch on behalf of the parent company.
Can have limited liability (depending upon preferred legal form).	The parent company is liable for the branch.
Normally takes 5 working days for incorporation of company limited by shares.	Slower registration process, may take up to 13 working days.
Incorporation filing fee is HK\$1,720. Capital duty was abolished with effect from 1 June 2012.	Registration of a non-Hong Kong company's branch office in Hong Kong requires a registration fee of HK\$1,720.
There is no minimum capital required to be subscribed. A Company can be established with HK\$1 issued share capital.	The business registration fee for a non-Hong Kong company's branch office in Hong Kong is currently set at HK\$323 (for a 1-year certificate) or HK\$939 (for a 3-year certificate).
The business registration fee for a subsidiary is currently set at HK\$2,250 (for a 1-year certificate) or HK\$5,950 (for a 3-year certificate).	For a concession period of 12 months beginning on 1 April 2016, the business registration fee for a non-Hong Kong company's branch office in Hong Kong is set at HK\$250 (for a 1-year certificate) or HK\$866 (for a 3-year certificate).
For a concession period of 12 months beginning on 1 April 2016, the business registration fee for a subsidiary is set at HK\$250 (for a 1-year certificate) or HK\$3,950 (for a 3-year certificate).	

Subsidiary	Branch
<p>Directors do not need to be Hong Kong residents. They must have a company secretary and at least one director who is a natural person (i.e., an individual). The sole director must not also be the company secretary. A company having only one director must not have a body corporate as its company secretary if the sole director of such body corporate and the company is the same person.</p> <p>If the company secretary is a natural person, he must ordinarily reside in Hong Kong. If the company secretary is a body corporate, the address of its registered or principal office should be in Hong Kong.</p>	<p>There needs to be at least 1 authorised representative, who is resident in Hong Kong and authorised to accept legal notices served on the company. The authorised representative can be an individual or body corporate (firm or corporate practice of solicitors or professional accountants only).</p>
<p>Shareholders' meeting needs to take place annually (though written resolutions may be signed in place of having physical meetings).</p>	<p>The need for shareholders' meetings depends on detailed terms of the parent company's constitution.</p>
<p>Company accounts to be prepared and audited annually. They are not filed on any public register but are submitted to the tax authorities.</p>	<p>Need for company accounts depends on requirements of the law of its place of incorporation of the parent company.</p>
<p>Subsidiaries are subject to the same tax regime and tax rates as other private limited companies in Hong Kong. Profits tax is payable on profits arising in, or derived, from trades and business in Hong Kong. Offshore profits are beyond the general scope of Hong Kong tax. In general, Hong Kong has a flat profits tax rate of 16.5%.</p> <p>There are no capital gains taxes or value added taxes in Hong Kong. Dividends are generally payable free of withholding tax, though royalty payments may be subject to withholding.</p>	<p>Profits tax (at a rate of 16.5%) is payable on profits arising in or derived from trades and business in Hong Kong by the branch.</p> <p>There are no capital gains taxes or value added taxes in Hong Kong. Dividends are generally payable free of withholding tax, though royalty payments may be subject to withholding.</p>
<p>Can benefit from double tax treaties.</p>	<p>Can benefit from double tax treaties.</p>
<p>Intra-group transactions require arm's length terms.</p>	<p>Intra-company allocations require arm's length terms.</p>

# Setting up a business in Hong Kong

## *Hong Kong Private Limited Company*

- 1 Structure:** A private company incorporated in Hong Kong must have at least one director, one company secretary and one registered shareholder. One of the directors must be a natural person. The company secretary and the shareholders can either be natural persons or a body corporate. The company secretary must be resident in Hong Kong. There are no other residency requirements for officers or shareholders of the company. A sole director must not also be the company secretary. A company having only one director must not have a body corporate as its company secretary if the sole director of such body corporate and the company is the same person.
- 2 Characteristics:** A private company may be limited by shares. This means that the liability of shareholders will be limited to the unpaid capital on their issued shares in the company. A private company must restrict the right to transfer its share, limit the number of shareholders to 50 (excluding employees and former employees), and prohibit any invitation to the public to subscribe for any shares of debentures of the company.
- 3 Company name:** Any company name identical to that of an existing company is not permitted. A company name may be in English, Chinese or both, but subject to restrictions on the use of certain words by the Companies Registry.
- 4 Registered office:** Every Hong Kong private limited company must have a registered office in Hong Kong for communications and notices. Any change of address of the registered office must be notified to the Registrar of Companies for public filing.
- 5 Accounts and audits:** The accounting records of the company must be audited for each financial year and approved by shareholders in an annual general meeting. There is an exemption for small companies.
- 6 Share capital:** There is no prescribed minimum or maximum share capital for any type of company in Hong Kong. A company can be formed with different types or classes of shares including ordinary, preference or deferred shares with special rights attached to them. These must be set out in the company's Articles of Association. If no separate share classes are designated, then the shares will be considered ordinary shares.
- 7 Annual general meeting:** Every Hong Kong private limited company must hold an annual general meeting of its shareholders nine months after the end of its accounting reference period for that financial year. If the first accounting period exceeds twelve months, then the private company must hold an annual general meeting nine months after the anniversary of the company's incorporation.
- 8 Annual returns:** Annual returns must be delivered to the Registrar of Companies for registration within 42 days after the anniversary of the date of the company's incorporation.
- 9 Taxation:** Profits tax is levied in Hong Kong against all companies, at the rate of 16.5% (for the year of assessment 2008/09 onwards), which carry on a trade, profession, or business in Hong Kong in respect of profits arising in or derived from Hong Kong. Offshore profits are beyond the general scope of Hong Kong tax. There are no capital gains taxes or value added taxes in Hong Kong. Dividends are generally payable free of withholding tax, though royalty payments may be subject to withholding.
- 10 Business Registration Certificate:** Every company incorporated in Hong Kong must obtain a Business Registration Certificate. The application must be made within one month from the start of business. If a company carries on a business using one or more business or trade names, a Business Registration Certificate is required for each such name. A branch business registration certificate is needed for each separate office of the company in Hong Kong. Incorporation filing fee is HK\$1,720. Capital duty was abolished with effect from 1 June 2012. There is no minimum capital required to be subscribed. A Company can be established with HK\$1 issued share capital. For a concession period of 12 months beginning on 1 April 2016, the business registration fee for a subsidiary is set at HK\$250 (for a 1-year certificate) or HK\$3,950 (for a 3-year certificate).

**11 Formation:** Under the one-stop company and business registration service, a company may be incorporated in Hong Kong by submitting the prescribed forms, documents and fees to the Companies Registry and it will be deemed to have made a business registration application at the same time. The Certificate of Incorporation and the Business Registration Certificate may be issued within four working days. The company legally exists from the date of incorporation.

## *Branch Office of a Foreign Company*

- 1 Introduction:** Foreign companies (non-Hong Kong companies) that establish a place of business in Hong Kong such as a branch office must register prescribed particulars with the Companies Registry within one month from establishment of that office. The foreign company and its branch office in Hong Kong are the same legal entity, and do not have separate legal liability.
- 2 Place of business:** Generally, if a foreign company enters legally binding contracts in the course of business from a continuing location in Hong Kong, then it will have established a place of business in Hong Kong. A place of business can include a share transfer office and a share registration office.
- 3 Translation of registration documents:** A certified English or Chinese translation of registration documents must be provided if registration documents are not in English or Chinese.
- 4 Accounts:** A foreign company must file a certified copy of its annual accounts at the Company Registry in Hong Kong, if it is required to do so in its home jurisdiction, subject to exceptions. After registration of the branch office, the foreign company must file a certified copy of its latest published accounts annually, along with an annual return.
- 5 Annual filing:** A foreign company must file an annual return within 42 days of the anniversary of its registration in Hong Kong. The foreign company must promptly file updated particulars with the Companies Registry in Hong Kong for changed details on the public record in its home jurisdiction.
- 6 Authorised representative:** A foreign company that registers a place of business in Hong Kong must also appoint an authorised representative in Hong Kong. The authorised representative

may be a natural person, solicitors' firm, or accountancy practice.

- 7 Taxation:** Profits tax is levied in Hong Kong against a foreign company that carries on a trade, business, or profession in Hong Kong at the rate of 16.5% (for the year of assessment 2008/09 onwards) in respect of profits arising in or derived from Hong Kong. There are no capital gains taxes or value added taxes in Hong Kong. Dividends are generally payable free of withholding tax, though royalty payments may be subject to withholding tax.
- 8 Business Registration Certificate:** A foreign company that has a branch office must obtain a Business Registration Certificate from the Inland Revenue Department. Under the one-stop company and business registration service, a foreign company that has a branch office will only be required to lodge one single application for both company and business registration. Registration of a non-Hong Kong company's branch office in Hong Kong requires a registration fee of HK\$1,720. For a concession period of 12 months beginning on 1 April 2016, the business registration fee for a non-Hong Kong company's branch office in Hong Kong is set at HK\$250 (for a 1-year certificate) or HK\$866 (for a 3-year certificate).
- 9 Registration:** Particulars of a foreign company may be registered in Hong Kong by submitting the prescribed forms, documents, and fees to the Companies Registry. The Certificate of Registration and the Business Registration Certificate may be issued within 13 working days.

## *Representative Office of a Foreign Company*

- 1 Introduction:** Foreign companies can have a business presence in Hong Kong by setting up a representative office. If a foreign company in Hong Kong has an office in Hong Kong but does not enter into legally binding contracts in Hong Kong, then that office is referred to as a representative office.
- 2 Limited activities:** The activities conducted by a representative office are limited. A representative office cannot transact any business which creates legal obligations that would amount to the establishment of a place of business. Its activities are limited to liaison with offices in other parts of the world, and business representation, customer promotion and customer liaison in Hong Kong.



- 3 **Business registration:** A foreign company that has a representative office must obtain a Business Registration Certificate from the Inland Revenue Department within one month from the establishment of its office.
- 4 **Taxation:** A representative office is a costs centre. It does not incur profits or liability in Hong Kong and may be exempted from filing profits tax returns by applying to the Inland Revenue Department.

## Employment

- 1 **Legislation:** The Employment Ordinance (“EO”) (Cap. 57) is the primary piece of legislation affecting employment in Hong Kong. The EO prescribes certain basic rights and protection for all employees, including maternity leave, paternity leave, rest days, annual leave, sick leave, long service leave, severance pay, and rights upon termination of employment.
- 2 **Mandatory Provident Fund:** The Mandatory Provident Fund Schemes Ordinance (Cap. 485) requires that every employer in Hong Kong contribute an amount equal to at least 5% of an employee’s salary (up to a maximum contribution of HK\$1,500 per month) to a retirement scheme that is registered as an MPF scheme. Every employee will also be required to contribute at least 5% of his or her salary (again up to a maximum of HK\$1,500 per month) to the scheme.
- 3 **Insurance coverage:** Pursuant to the Employees Compensation Ordinance, employers are required to maintain insurance coverage in respect of work-related injuries. There is no statutory requirement to provide medical benefits otherwise.
- 4 **Employment visa:** All persons having no right of abode or right to land in Hong Kong, must obtain an entry permit/employment visa before coming to Hong Kong for the purpose of employment. Applications should be made through the sponsor (usually the employer company in Hong Kong) prior to the employee’s arrival in Hong Kong.

## Commercial Contracts

- 1 **Introduction:** Hong Kong has a common law system similar to England, Australia, and other Commonwealth countries. There is considerable freedom in Hong Kong for all types of collaboration, licensing, and distribution agreements. There are certain restrictions against unfair contract terms in contracts, under

the Control of Exemption Clauses Ordinance (Cap. 71) and the Unconscionable Contract Ordinance (Cap. 458).

- 2 **Competition:** The Competition Ordinance (Cap. 619) came into effect on 14 December 2015. The law prohibits anti-competitive agreements and abuse of market power in all sectors and anti-competitive mergers in the telecommunications sector.
- 3 **Industry specific laws:** Overseas companies should be aware of industry specific laws that apply to their businesses, such as the Banking Ordinance (Cap. 155) and the Securities and Futures Ordinance (Cap. 571) which regulate the way companies enter into contracts with consumers. The Communications Authority was set up on 1 April 2012 as a unified regulator for the broadcasting and telecommunications sectors. The Authority is an independent statutory body with a role to enforce the relevant ordinances including the Broadcasting Ordinance (Cap. 562) and the Telecommunications Ordinance (Cap. 106).

## Data Protection / Privacy

Businesses in Hong Kong need to comply with the Personal Data (Privacy) Ordinance (Cap. 486), which is the primary piece of data protection legislation in Hong Kong.

The PDPO covers all “personal data” relating directly or indirectly to a living individual, from which it is possible to ascertain the identity of the individual and which is in a form in which access or processing is practicable.

Under the PDPO, “data users” (i.e., organisations collecting, holding, and processing or using the data) must follow the data protection principles set out under the PDPO concerning:

- the purpose and manner of collection of data.
- the accuracy and duration of retention of data.
- use of data.
- security of data.
- information to be made available regarding the data user’s policies and practices; and
- requests for access to personal data.

The Personal Data (Privacy) (Amendment) Ordinance 2012 introduced various amendments to the PDPO. In particular, new requirements must be observed by data users who intend to use personal data in direct marketing. The new

provisions on direct marketing took effect on 1 April 2013.

A new section 33 of the PDPO prohibits the transfer of personal data to places outside Hong Kong unless one of several conditions is met. One of these conditions is that the data user has taken all reasonable precautions and exercised all due diligence to ensure that the personal data concerned are given equivalent protection to that provided for by the PDPO. This section is expected to come into force at the end of 2016.

## *Intellectual Property*

The law in Hong Kong affords legal protection of different rights in intellectual property, including trademarks, patents, designs, and plant varieties (for which registration is required for effective protection) and integrated circuit designs and copyright (for which registration is not required).

In cases of infringement of intellectual property rights, affected parties may seek criminal enforcement as well as civil remedies. The Customs and Excise Department in Hong Kong carries out the criminal enforcement of copyright and trademark infringements.

Businesses should note that company name registration under the Hong Kong Companies Ordinance (Cap. 622) does not provide protection against infringing trademark use.

Business or company names that have been registered in Hong Kong should also be registered separately as trademarks if proprietors wish to prevent them from being registered or used by others as trademarks.

## *Contact us*

If you would like further information on setting up business in Hong Kong, please e-mail our Set up Desk at [new.company@twobirds.com](mailto:new.company@twobirds.com) and we will contact you within 24 hours.

This summary gives general information only as of May 2022 and is not intended to give a comprehensive analysis. It should not be used as a substitute for legal or other professional advice, which should be obtained in specific circumstances.



The team is able to offer pragmatic advice with a view to making things happen and has deep understanding of the regulatory framework.

*Legal 500 Asia-Pacific, 2021*



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