

Establishing A Business in Hong Kong





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foreword

For its free and open market economy, well-educated population, low tax regime, rule of law, geographical convenience to China and other parts of Asia, excellent modern infrastructure development and the benefits of various international treaties including the Mainland and Hong Kong Closer Economic Partnership Arrangement, Hong Kong is a popular and ideal place for foreign investment. According to an official survey, the total number of overseas and Mainland companies running business operations in Hong Kong was around 7,449 in 2013, with an increase of approximately 2.7% from the previous year.

This brochure provides a simple guide to the essential matters in establishing a business in Hong Kong. It begins with an introduction to different types of business vehicles, followed by essential steps for incorporation to specific chapters dedicated to taxation, employment, property, intellectual property related issues and dispute resolution.

We would be pleased to discuss the information in this brochure, and its application to your specific situation, in greater detail and welcome your comments and suggestions.

This publication is intended to be an outline of the law and procedures on this subject as at the date hereof for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm at (852) 2810 1212 or email us at onc@onc.hk.

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Important: The law and procedure on this subject are very specialised and complicated. This booklet is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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chapter I - business entities

1. forms of business entities

In Hong Kong, investors may carry on businesses through various types of business vehicles, such as sole proprietors, partnerships or companies.

Companies incorporated in Hong Kong can be limited or unlimited, private or public, limited by shares or by guarantee. The fundamental difference between a company and other business vehicles is that it is treated in law as a legal person which is independent of its members. Generally speaking, liabilities arising in the course of business operated through company accrue to the company itself, instead of its members or directors. Further, the liability of each shareholder of a limited company is limited to the amount unpaid on the shares held by them. However, one should take note that the liability of each shareholder of an unlimited company is unlimited.

Instead of incorporating a company in Hong Kong, some overseas investors, due to various reasons that we will discuss later in this chapter, choose to set up a non-Hong Kong company as its branch office or establish a representative office in Hong Kong.

Apart from the aforesaid, those who are interested to set up a charitable organisation or a society usually incorporate a company limited by guarantee.

Among the above-mentioned business vehicles, most overseas investors establish their businesses in Hong Kong via:

- (a) limited company;
- (b) non-Hong Kong Company (in the form of branch office); or
- (c) representative office.

2. limited company

Limited companies consist of private and public limited companies with the former being the more prevalent form of business.

In the Articles of Association of a private limited company, the following restrictions are required to be set out:

- (a) rights of its members to transfer the company's shares are restricted;
- (b) number of its members is limited to 50; and

- (c) invitation to the public for subscription of its shares or debentures is prohibited.

For public company, it does not have the above restrictions contained in its Articles of Association. However, it is subject to more stringent disclosure requirements, such as submission of annual audited accounts with annual return and full disclosure of relevant information to the public. In fact, many of them are listed on The Stock Exchange of Hong Kong Limited as listed companies.

A limited company may carry on business in more than one place(s) in Hong Kong by establishing branch office(s), provided that it has applied a branch business registration certificate for each branch office.

Very often, a private limited company is utilised as a vehicle for joint venture, which generally is an arrangement between two or more parties running a business together. The rights and obligations of joint venture partners and the management of the joint venture are regulated by shareholders' agreement entered into by those partners.

3. non-hong kong company (in the form of branch office)

Overseas investors may establish a branch office for carrying on businesses in Hong Kong under Part XVI of the Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (the “CO”), which is generally known as a “non-Hong Kong company”.

A non-Hong Kong company is required to apply to the Companies Registry (the “CR”) for registration within 1 month after its establishment of a place of business in Hong Kong. Further, before commencement of any business in Hong Kong, it shall make a business registration application.

At all times, a non-Hong Kong company must have at least 1 authorised representative in Hong Kong for accepting on behalf of the company service of process and any notices required to be served on the company. The authorised representative must be a:

- (a) a natural person resident in Hong Kong;
- (b) a firm of solicitors or a solicitor corporation; or
- (c) a firm or corporate practice of certified public accountants (practising).

Due to the following reasons, some overseas investors prefer to establish non-Hong Kong companies rather than subsidiaries in Hong Kong:

- (a) tax advantages in the home jurisdiction of the overseas investors;
- (b) transfer of shares of a non-Hong Kong company is not subject to stamp duty in Hong Kong; and
- (c) operation of a non-Hong Kong company could be terminated by notifying the CR.

However, the disadvantages of having non-Hong Kong companies instead of subsidiaries are that:

- (a) the parent is liable for the debts of its non-Hong Kong companies;
- (b) a non-Hong Kong company is required to file its accounts on the public record; and
- (c) more time is required for registration of a branch office than incorporation of a subsidiary.

4. representative office

When compared with non-Hong Kong company (in the form of branch office), a representative office serves limited functions. It must not carry on business in Hong Kong and should not generate any profits. Generally, it is not allowed to enter into any business contracts in Hong Kong that creates legal obligations, except those contracts with landlord for leasing office or employment contracts. Thus, overseas investors usually establish representative offices for conducting liaison work.

Representative offices are not required to be registered with the CR. Yet, they have to apply for the Business Registration Certificate within 1 month from its date of commencement of business in Hong Kong.

5. incorporation of private limited company

5.1 time

The process of incorporation starts with the submission of the following documents to the CR with the prescribed fees:

- (a) the company's signed Articles of Association; and
- (b) a duly completed and signed Incorporation Form (Form NNC1) and a notice to the Business Registration Office (Form IRBR1).

Generally, the incorporation will take around 4 working days after delivery of the above documents to the CR. A Certificate of Incorporation certifying the name and the date of incorporation and a Business Registration Certificate will be issued.

Those who require a private limited company urgently can buy a shelf company, which is usually available from professional advisers. Such shelf companies will most likely be ready to trade. If the name of the shelf company needs to be changed, it will take around 4 working days for obtaining a Certificate of Incorporation on Change of Name.

Alternatively, one may deliver the incorporation documents in electronic form by using e-Registry maintained by the CR. A Certificate of Incorporation and a Business Registration Certificate in electronic form will normally be issued within 1 hour for private limited companies which adopt the model Articles of Association provided at the e-Registry.

5.2 fees

Currently, the fees payable to the relevant governmental authorities for incorporating a private limited company include:

- (a) an application fee of HKD1,720; and
- (b) an annual business registration fee of HKD2,250.

5.3 share capital

According to the Companies Ordinance, a company must state in its articles of association the following:

- (a) the total number of shares that the company proposes to issue on the company's formation;
- (b) the total amount of share capital to be subscribed by the company's founder members on that formation and the number of shares and total amount of share capital to be subscribed by each member; and
- (c) the amount to be paid up and to be regarded as paid up, and the amount to remain unpaid or to be regarded as remaining unpaid, on the total number of

shares that the company proposes to issue on that formation.

5.4 shareholder

There should be at least 1 shareholder, who can be a corporation or an individual of any nationality, domicile or residence. The name, address and shareholding of each of the shareholders are required to be disclosed to the CR and are open to public.

5.5 director and company secretary

There should be at least 1 natural person as a director and 1 company secretary. While the director can be a non-Hong Kong resident, the company secretary must ordinarily reside in Hong Kong as individual or has registered office or place of business in Hong Kong as a corporate secretary.

In addition, private companies which are members of a group of companies of which a listed company is a member cannot appoint a body corporate as their director.

A shareholder can act as a director and the company secretary of the company. However, a sole director is prohibited from acting as a company secretary of the same company.

The name, residential address and identification information of the directors are required to be disclosed to the CR and are open to public for inspection.

For company secretary, he or she could provide his or her correspondence address to the CR and this address will be open to public for inspection. If he or she fails to do so, the registered office of the relevant company will be used as his or her correspondence address. In addition, the company secretary is still required to disclose his or her identification information to the CR.

5.6 auditors

Auditors shall be appointed after the incorporation for preparing audited accounts of the company. The audited accounts should be presented to the shareholders in every annual general meeting of the company.

5.7 registered office

There must be a registered office address in Hong Kong as legal address for receiving services of notices and proceedings. Such address could be different from its business address.

chapter II – continuing obligations

1. business registration

Every business in Hong Kong, whether sole proprietorship, partnership, limited company, branch, non-Hong Kong company (in the form of branch office) or representative office, is required to obtain a Business Registration Certificate once it commences business. If a company carries on a business using more than one business or trade name, it will be required to obtain a Business Registration Certificate for each of them.

A Business Registration Certificate could be renewed annually or every 3 years. The Business Registration Office will send out a business registration renewal demand note approximately 1 month before the current Business Registration Certificate expires. The prescribed business registration fee shall be paid accordingly.

The Business Registration Certificate must be displayed at the place of business as set out therein.

2. continuing obligations of private limited companies

2.1 statutory books

Every private limited company is required to keep at its registered office (or a prescribed place) a register of its directors, members, secretaries, debenture holders and charges. The company shall update them once there is any change. Further, documents relating to the securities created by the company, accounting records and minute books should also be kept.

2.2 statutory returns

Every private limited company is required to file statutory returns with the CR from time to time. The table below set out some of the major statutory returns to be filed with the CR.

<u>Statutory Returns</u>	<u>Prescribed Filing Time</u>
Annual Return (Form NAR1)	within 42 days after each anniversary of its date of incorporation
Notice of Change of Company Secretary and Director (Form ND2A) <i>(Note: Nomination or cessation of nomination of the reserve director should use Form ND5)</i>	within 15 days after the date of change
Notice of Change in Particulars of Company Secretary and Director (Form ND2B) <i>(Note: Change in particulars of the reserve director of a local company should use Form ND7)</i>	Within 15 days after the date of change
Notice of Change of Address of Registered Office (Form NR1)	within 15 days after the date of change
Notice of Change of Company Name (Form NNC2)	with 15 days after the resolution for the change of company's name is passed. <i>(Note: a separate notice is required to be filed to the Business Registration Office as well)</i>
Return of Allotment (Form NSC1)	within 1 month after the first date of allotment

2.3 annual general meeting (“AGM”)

Every private limited company is required to hold its AGMs within the prescribed time set out in the Companies Ordinance, unless it is allowed to dispense with under the law.

In the following circumstances, a private limited company is not required to hold an AGM:

- (a) the company passed a written resolution for passing every resolution that is required to be done at an annual general meeting and provide the documents required to be laid at an annual general meeting to all members of the company before the date of written resolutions;
- (b) a single member company;
- (c) a company pass written resolution or a resolution at a general meeting passed by all members to dispense with the holding of AGMs under section 613 of the CO *(Note: the company is required to deliver a copy of the resolution to the CR for registration within 15 days after it has been passed); and*
- (d) a dormant company.

3. statutory returns to be filed by a non-hong kong company

Every non-Hong Kong company is required to file statutory returns with the CR from time to time. The table below set out some of the major statutory returns to be filed with the CR.

<u>Statutory Returns</u>	<u>Prescribed Filing Time</u>
Annual Return (NN3)	within 42 days after each anniversary of its date of registration <i>(Note: Audited accounts of the non-Hong Kong company are required to be filed with the annual return unless it is exempted under the CO.)</i>
Return of Change of Company Secretary and Director of Registered Non-Hong Kong Company (Form NN6)	within 1 month after the date of change
Return of Change in Particulars of Company Secretary and Director of Registered Non-Hong Kong Company (Form NN7)	within 1 month after the date of change
Return of Change of Authorised Representative of Registered Non-Hong Kong Company (Form NN8)	within 1 month after the date of change
Return of Change in Particulars of Authorised Representative of Registered Non-Hong Kong Company (Form NN8C)	within 1 month after the date of change
Return of Change of Address of Registered Non-Hong Kong Company (Form NN9)	within 1 month after the date of change
Return of Alteration of Corporate Name of Registered Non-Hong Kong Company (Form NN10)	within 1 month after the date of change <i>(Note: a separate notice is required to be filed to the Business Registration Office as well)</i>
Notice of Cessation of Place of Business in Hong Kong of Registered Non-Hong Kong Company (Form NN13)	Within 7 days after the date of ceasing to have the place of business

4. licenses, permits or consents

Certain kinds of businesses may not be carried on in Hong Kong without a license, permit or consent from regulatory authorities, such as banks, financial institutions, insurance companies, security dealers, broadcasters and telecommunications service providers.

chapter III – acquisition of shares, business or asset

To make an investment in a Hong Kong company, overseas investors may acquire its shares, business or asset.

1. acquisition of shares

Shares acquisition means an acquisition of all or part of the issued shares of a target company.

Generally, the vendor and the purchaser will execute a sale and purchase agreement, an instrument of transfer and bought and sold notes for such acquisition. Sale and purchase of shares in a Hong Kong company attract stamp duty at the rate of 0.2% of the amount of the consideration or of its net asset value, whichever is higher.

It should be noted that there maybe some provisions in the Articles of Association or shareholders' agreement of the target company that restrict the transfer of its shares. For instance, pre-emption clauses are usually provided in the shareholders' agreement for restricting the transfer of share(s) to non-existing shareholder(s). As such, before entering the sale and purchase agreement, the purchaser should instruct professional parties to conduct legal and/or financial due diligence against the target company in all aspects.

2. acquisition of business

For those who are interested in a target company's business, but not only its assets, they may consider an acquisition of business. At the time of purchase, the purchaser will acquire the target business as a going concern and the assets that make up of the business. No stamp duty will be involved in an acquisition of business (unless such acquisition involves a transfer of property).

In order to minimise its risk, the purchaser will usually instruct professional parties to conduct legal and/or financial due diligence against the target company in all aspects.

Generally, the vendor and the purchaser will execute a transfer of business agreement and other ancillary agreements, such as novation of contracts and assignment of accounts receivable. Notices to third parties, such as suppliers and customer, are also required to be sent out for notification purpose.

The purchaser must take note that, notwithstanding any agreement between the parties to the contrary, the purchaser shall be liable for all the debts and obligations arising out of the business carry on by the vendor, unless a notice of transfer is published in the Gazette and newspapers in accordance with the Transfer of Business (Protection of Creditors) Ordinance (Chapter 49 of the Laws of Hong Kong) (the “**TBO**”).

3. acquisition of asset

Investors may be interested in some particular assets (tangible or intangible) of a target company and plan to acquire them for furtherance of its business. They should be aware that, in some circumstances, such acquisition may be construed as a transfer of business and the provisions set out in the TBO shall apply. Under such circumstances, if no notice of transfer is published in the Gazette and newspapers in accordance with the TBO, the purchaser is liable for all the debts and obligations arising out of the carrying on of business by the vendor.

In determining whether there had been a transfer of business, the court will consider all the surrounding circumstances. The court will consider, inter alia, whether the effect of the transaction was to put the purchaser in possession of a going concern the activities of which he could carry on without interruption. The court may conclude that there is a transfer of business if a number of factors can be established. These factors include use of the name of the vendor or similar name, assignment of goodwill, use of same fixtures, fittings and equipment, use of same personnel, use of the same stock in trade, conduct of business in the same or similar nature or servicing the same customers. Nevertheless, this is not an exhaustive list of factors to be considered by the court and each transfer should be determined on a case-by-case basis. If the purchaser has any concern on it, it would be prudent to seek legal advice beforehand.

chapter IV – bank account opening

1. required documents

Following the enactment of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615 of the Laws of Hong Kong) in 2012, banks in Hong Kong are required to undertake various customer due diligence measures.

Depending on the business structure and the bank that investors choose, the process and documents required for opening a business bank account vary. Normally, for private limited companies, banks require certified copies of the following documents of the company:

- (a) Certificate of Incorporation and Certificate of Incorporation on Change of Name (if any);
- (b) Latest Business Registration Certificate;
- (c) Memorandum and Articles of Association (for company incorporated under the Companies Ordinance (Chapter 32 of the Laws of Hong Kong) and resolution(s) for amendments of the same (if any);
- (d) Articles of Association (for company incorporated under the Companies Ordinance (Chapter 662 of the Laws of Hong Kong);
- (e) Various forms filed with the CR, such as Annual Return;
- (f) Organisation chart shows the percentage of shareholding, the country of incorporation, the country of business address of each intermediate company(ies) up to ultimate individual beneficial owner(s) of the company;
- (g) Identification documents and residential proof of each of the director(s), account signatory(ies) and ultimate beneficial owner(s) of the company; and
- (h) Extract of the board resolution approving the opening of a corporate bank account.

For conducting due diligence exercise, most of the banks in Hong Kong may request the account signatories, directors and shareholders to be physically present in Hong Kong at the time of opening corporate bank account, whereas some banks may accept that the documents are signed at one of its overseas branch in the presence of their officers. As such, it would be prudent to ask the bank officers beforehand.

2. initial minimum deposit

Some established banks in Hong Kong set HKD10,000 as the minimum deposit amount for opening a corporate bank account. In addition, they usually require the corporate client to keep its account balance at the required standard. Otherwise, monthly service fees will be charged.

chapter V - employment

Rights and benefits of employees in Hong Kong are well protected by the Employment Ordinance (“**EO**”) (Chapter 57 of the Laws of Hong Kong). Generally speaking, employees are entitled to enjoy rest days, statutory holidays, paid annual leave, sick leave and maternity leave in accordance with the provisions in the EO. Further, they may receive severance and long service payments upon termination of employment, provided that the conditions set out in the EO have been fulfilled.

1. rest days, holidays and leave

1.1 rest days

An employee employed under a continuous contract (employed to work for at least 18 hours per week for at least 4 consecutive weeks) has the right to enjoy not less than 1 rest day in every period of 7 days. Rest days are fixed by the employer, which may be on regular or irregular basis. An employer may substitute any rest day (with the consent of the employee) within the same month before the original rest day or within 30 days after it.

An employer may not compel the employee to work on the rest days except in some emergency situations. In such event, the employer should give the employee a prior notice and arrange a substituted rest day within 30 days after the original rest day.

Whether a rest day is paid or not is to be agreed by both employers and employees and such arrangement should be set out in the employment agreement.

1.2 statutory holidays

An employee, irrespective of his length of service, is entitled to have statutory holidays. However, only an employee who is employed under a continuous contract, for not less than 3 months immediate before the statutory holiday, is entitled to receive holiday pay.

If the employer requires the employee to work on the statutory holidays, the employer should give the employee prior notice and grant alternative statutory holidays within 60 days before or after the relevant statutory holidays.

It is of paramount importance for an employer to note that any form of payment to the employee in lieu of granting a statutory holiday is not allowed in Hong Kong.

1.3 annual leave

Under a continuous contract of employment for every 12 months, an employee is entitled to paid annual leave, which will increase progressively from 7 days to a maximum of 14 days, depending on his length of service.

An employee may choose to receive payment in lieu of the part of his annual leave entitled which exceeds 10 days.

1.4 paid sick leave

An employee employed under a continuous contract for 1 month or more has the right to enjoy sickness allowance, provided that the sick leave is taken for not less than 4 consecutive days and the employee has accumulated sufficient number of paid sickness days. Moreover, the employee is required to produce an appropriate medical certificate in relation to the sick leave.

In general, the daily rate of sickness allowance is four-fifths of the average daily wages of the employee in the twelve months immediately before the sickness day. If the employee is employed for less than 12 months, the calculation should be based on the wages of that employment period.

2. minimum wage

Under the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong), the statutory minimum wage applies to all employees, regardless of whether they are monthly-rated, daily-rated, permanent, casual, full-time, part-time or other types of employees. There are some exceptions to the statutory minimum wage, such as student interns, live-in domestic workers and persons employed by his/her family member's company who lives in the same dwelling as the employer. The current statutory minimum wage rate is HKD30 per hour which is subject to a review at least once in every 2 years.

3. severance payment and long service payment

3.1 severance payment

An employer is required to pay an employee (who has been employed for not less than 24 months under a continuous contract) severance payment upon termination of employment, provided that:

- (a) the employment is terminated by reason of redundancy; or
- (b) the fixed term of the employment contract expires without renewal by reason of redundancy.

Generally, the amount of severance payment for monthly rated employees is calculated as follows:

(Last month wages or HKD22,500, whichever is lower) x 2/3 x reckonable years of service

It should be noted that an employee whose employment has been terminated by the employer shall be deemed that his/her employment is terminated by reason of redundancy unless the contrary is proved.

3.2 long service payment

An employer is required to pay an employee (who has served not less than 5 years under a continuous contract) long service payment if the employment is terminated by the employer, provided that:

- (a) the employee is not dismissed due to his misconduct or by reason of redundancy;
- (b) the fixed term employment contract expires without renewal;
- (c) the employee dies during the employment;
- (d) the employee has been issued a certificate by a registered medical practitioner or a registered Chinese medical practitioner, certifying that he is permanently unfit for his present job and he resigns; or
- (e) the employee resigns at the age of 65 or above.

Generally, the amount of long service payment for monthly rated employees is calculated in the same way as that of severance payment above. It should be noted that an employee is only entitled to either severance payment or long service payment for the same period of time.

4. mandatory provident fund scheme (“MPF Scheme”)

Under the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong (“**MPFO**”), both the employer and the employee must make contribution to the MPF Scheme unless the exemptions under the MPFO are applicable to them.

Subject to the maximum and minimum level of relevant income (currently HKD30,000 and HKD7,100 per month respectively), an employee is required to contribute not less than 5% of his income to the MPF Scheme. Thus, the maximum contribution by the employee is HKD1,500 per month. However, the employee is not required to make such contribution for the first thirty days of his new employment.

The employer is also required to make 5% of the employee’s income (the maximum level of income is also HKD30,000 per month currently) to the MPF Scheme. It should be noted that an employer is not required to arrange MPF for employees who have not been employed for more than sixty days.

5. employees’ compensation insurance

Every employer in Hong Kong is required to have a valid insurance policy cover his liabilities under the Employees’ Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) and at common law for injuries at work in respect of all his employees. Failing which, such employer will be liable to a maximum fine of HKD100,000 and imprisonment for two years. He may also be liable to pay a surcharge to the Employees Compensation Assistance Fund Board, with reference to Employees’ Compensation Assistance Ordinance (Chapter 365 of the Laws of Hong Kong).

6. anti-discrimination ordinances

Apart from the above employment-related ordinances, employers must also comply with various anti-discrimination ordinances in recruitment and during and after the termination of employment contract. Employers are also responsible for preventing sexual harassment by any employee against other employees and job seekers. The relevant ordinances in Hong Kong include Sex Discrimination Ordinance (Chapter 480 of the Laws of Hong Kong), Disability Discrimination Ordinance (Chapter 487 of the Laws of Hong Kong), Family Status Discrimination Ordinance (Chapter 527 of the Laws of Hong Kong) and Race Discrimination Ordinance (Chapter 602 of the Laws of Hong Kong).

7. personal data (privacy) ordinance

Under the provisions of the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong), employers are also required to protect the privacy of their employees' personal data from recruitment to after the termination of employment contract.

8. visas

8.1 lawfully employable persons

In Hong Kong, employers are required to ensure that their employees are lawfully employable, failing which, the employers will be liable to a fine of HKD350,000 and to imprisonment for 3 years.

Generally speaking, the following categories of persons are lawfully employable under the laws of Hong Kong:

- (a) all holders of Hong Kong Permanent Identity Card
- (b) holders of Hong Kong Identity Card who are free to take up employment in Hong Kong without the Director of Immigration's prior permission and has not breached any condition of stay (if any)

8.2 permitted activities for visitors

A visitor to Hong Kong shall not take up any employment, establish or join in any business or become a student in Hong Kong. However, a visitor may 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.

8.3 visitor visas

Nationals of around 170 countries may visit Hong Kong without a visa or entry permit for 7 to 180 days.

If a visa or an entry permit is required, a visitor should submit the completed application to the Immigration Department by post or through a local sponsor. Alternatively, the applicant may submit the application through the Chinese diplomatic and consular missions nearest to the place of residence. A holder of foreign passport living in Mainland China may submit the applications to the office of the Hong Kong government in Beijing.

8.4 investment visas

A visa or an entry permit is required if a visitor is interested in establishing or joining in businesses in Hong Kong. The visitor should first nominate a local sponsor, and then submit the application to the Immigration Department by post or through the local sponsor.

Alternatively, the applicant may submit the application, together with the travel document, in person to the Chinese diplomatic and consular missions nearest to the place of residence. A holder of foreign passport living in Mainland China may submit the application to the office of the Hong Kong government in Beijing.

8.5 work visas

Applicants who possess special skills, knowledge or experience of value to and not readily available in Hong Kong may apply to come to work in Hong Kong under the General Employment Policy (GEP). The GEP does not apply to Chinese residents of the Mainland, who however may apply for work visas under the Admission Scheme for Mainland Talents and Professionals (ASMP), which has similar eligibility criteria as GEP.

Accompanying dependants have to submit related applications. All work visa applications should be submitted by the applicant or the sponsor (i.e. the employing company), either in person or by post to the Immigration Department. For GEP, the applicant may alternatively submit the application in person to the Chinese diplomatic and consular missions nearest to the place of residence. A holder of foreign passport living in Mainland China may submit the application to the office of the Hong Kong government in Beijing.

chapter VI - property

1. renting property

Rent in Hong Kong is among the highest in the world. Generally, there are no restrictions on who can rent properties in Hong Kong. Local and foreign individuals and corporations are entitled to rent properties.

After you have decided which property to rent, you will need to sign a provisional tenancy agreement or an offer letter with the landlord, i.e. the registered owner of the property. The provisional tenancy agreement or offer letter is usually in the prescribed form provided by the estate agent and contains the basic terms of the tenancy.

The provisional tenancy agreement or offer letter becomes binding once it is signed by the parties. It is advisable for the tenant to seek legal advice beforehand for protecting its rights and interests.

After signing the provisional tenancy agreement or offer letter, the tenant needs to enter into a tenancy agreement with the landlord, which sets out in length not only the terms of the tenancy but the rights and obligations of both the landlord and the tenant.

The signed tenancy agreement has to be stamped within 30 days after the date of execution. The rate of stamp duty in Hong Kong on tenancy agreement ranges from 0.25% of average yearly rent to 1% of the average yearly rent depending on the length of the term of the tenancy. Late stamping will attract penalty ranging from double the stamp duty payable to ten times the stamp duty payable.

If the term of the tenancy exceeds 3 years or if there is an option to renew, the tenancy agreement needs to be registered at the Land Registry within 1 month after the date of execution to secure priority.

Before delivery of vacant possession of the property by the landlord to the tenant, the tenant needs to pay the following:

- (a) security deposit;
- (b) first month's rent;
- (c) half of the stamp duty payable; and
- (d) half of the land registration fee payable (if any).

2. purchase of property

Hong Kong is a small but highly populated place and land supply is limited. Hence, purchase of property in Hong Kong is one of the best and most popular investments in Hong Kong. Generally, there are no restrictions on who can purchase properties in Hong Kong. Local and foreign individuals and corporations can purchase properties in Hong Kong either for self-use or investment without restriction.

After you have identified and decided which property to purchase, you will need to sign a provisional agreement with the vendor, i.e. the registered owner of the property. The provisional agreement is usually in the prescribed form provided by the estate agent and contains the basic terms of the sale and purchase of the property, including the purchase price, the deposit, the completion date, subject to existing tenancy or vacant possession, stamp duty payable by the purchaser, etc.

The provisional agreement becomes binding once it is signed by the parties. It is advisable for the purchaser to seek legal advice beforehand for protecting his or her rights and interests.

In Hong Kong, the vendor and the purchaser must separately appoint his or her own solicitors to act for him or her in the sale and purchase transaction. It is only in limited circumstances that the vendor and the purchaser can appoint the same solicitors to act for both of them.

Upon signing the provisional agreement, an initial deposit ranging from approximately 3% to approximately 5% of the purchase price will be payable by the purchaser to the vendor or the vendor's solicitors.

After signing the provisional agreement, the purchaser needs to enter into a formal agreement for sale and purchase with the vendor. Upon signing the formal agreement, a further deposit (which, in most cases, together with the initial deposit will account for 10% of the purchase price) will be payable by the purchaser to the vendor or to the vendor's solicitors.

Upon completion of the sale and purchase of the property, the purchaser will pay the balance of purchase price to the vendor who will execute an Assignment of the property to the purchaser. Completion of the sale and purchase of the property should not take place less than 1 month from the date of the provisional agreement.

The stamp duty on the agreement for sale and purchase and on the assignment is usually payable by the purchaser. The rate of stamp duty in Hong Kong is based on a

progressive scale. Before 23 February 2013, there was only one set of rates ranging from HKD100.00 for property valued at less than HKD2,000,000 up to a maximum of 4.25% for property valued at more than HKD21,739,120. However, after 23 February 2013, unless an exception applies, a new set of rates will be applicable ranging from 1.50% for property valued at less than HKD2,000,000.00 up to a maximum of 8.50% for property valued at more than HKD21,739,130.00. Common exceptions for both residential and non-residential properties include acquisition or transfer of a property between associated companies and inheritance of a property by the beneficiary of an estate. Some exceptions are specifically for residential properties, including acquisition of the first residential property by a Hong Kong Permanent Resident (“**HKPR**”) and transfer of residential properties between close relatives.

The ad valorem stamp duty is payable within 30 days after execution of the agreement for sale and purchase. Late stamping will attract penalty ranging from double the stamp duty payable to ten times the stamp duty payable.

To fight against speculators to artificially jerk up property prices with a view to make short-term profit, the Government has imposed various tax measures to increase the transaction cost of property speculation since 2010.

On 19 November 2010, the Government introduced, for the first time, the Special Stamp Duty (“**SSD**”) on top of the ad valorem stamp duty on transactions in residential properties acquired on or after 20 November 2010 and resold within 24 months after acquisition. On 26 October 2012, the Government further increased the rates and extended the holding period to 36 months for residential properties acquired on or after 27 October 2012. SSD does not apply to non-residential properties.

SSD is calculated based on the stated consideration for the transaction or market value of the property, whichever is higher, at the following rates for different holding periods by the vendor before the transaction:

Holding period	Acquired between 20 November 2010 and 26 October 2012	Acquired on or after 27 October 2012
6 months or less	15%	20%
More than 6 months but for 12 months or less	10%	15%
More than 12 months but for 24 months or less	5%	N/A
More than 12 months but for 36 months or less	N/A	10%

Both the purchaser and vendor are jointly and severally liable for SSD and SSD has to be paid within 30 days of the execution of the agreement for sale and purchase.

On 26 October 2012, the Government further introduced the Buyer's Stamp Duty ("**BSD**"), on top of both ad valorem stamp duty and SSD, for residential properties acquired by an individual who is not a HKPR or any company on or after 27 October 2012. BSD is charged solely on the purchaser at a flat rate of 15% on the consideration or the market value of the property, whichever is higher. Major exceptions for BSD include joint acquisition of a residential property by a HKPR with non-HKPR close relatives, transfer of residential properties between close relatives and transfer of residential properties between associated companies etc.

If the purchaser requires mortgage loan to complete the purchase, special attention should be paid to the latest prudential measures which lowered the maximum loan to value ratio to 40% or below for borrowers whose major income is derived from outside Hong Kong in most cases.

To secure priority, the agreement for sale and purchase, the assignment and the mortgage need to be registered at the Land Registry within thirty days after their respective dates of execution.

Thus, other than purchase price, a purchaser needs to pay the following:

- (a) estate agent's commission (usual rate is 1% of the purchase price but is negotiable);
- (b) purchaser's solicitors' legal costs and disbursements;
- (c) ad valorem stamp duty, SSD (if applicable) and BSD (if applicable) on the agreement for sale and purchase and the assignment; and
- (d) registration fee on the agreement for sale and purchase, assignment and mortgage.

chapter VII - Taxation

1. taxation in hong kong

Hong Kong's tax rates are among the lowest in the world under a relatively simple tax regime. There are certain types of taxes which individual and corporate investors in Hong Kong have to pay for their business or trade.

Generally speaking, taxes in Hong Kong are charged in accordance with the nature of income and are on a territorial basis. Having said that, there is no value-added tax, withholding tax, capital tax or consumption tax in Hong Kong.

A company incorporated and commenced business in Hong Kong is required to pay a levy for obtaining a Business Registration Certificate upon its incorporation and pay Business Registration Fees thereafter payable on an annual basis. Individuals or corporations carrying on business and trade in Hong Kong are chargeable to profits tax. Employees are subject to salaries tax if their income is arising in or derived from Hong Kong. Individuals or corporations who own property in Hong Kong and rent it out for generating income are subject to property tax. Stamp duty is levied on any transfer of property or transfer of shares of a company incorporated in Hong Kong.

The year of assessment starts on April 1 of every calendar year and ends on March 31 of the subsequent year.

2. profits tax

Assessable Profits

Profits tax applies to all individuals or corporations who carry on any trade, profession or business in Hong Kong and it is charged on all net profits (other than profits arising from the sale of capital assets) in the year of assessment, arising in or deriving from Hong Kong ("**Assessable Profits**").

Below are examples of non-assessable items when calculating profits tax (except for financial institutions):

- (a) interest derived from any deposits in Hong Kong with an authorised institution (such as a bank); or
- (b) profits made in respect of Renminbi sovereign bonds.

Deductions

Generally speaking, when computing the Assessable Profits, all expenses (including donation to approved charitable organizations), to the extent they have been incurred by an individual or corporation in the course of generating chargeable profits, are allowed as deductions.

The following expenditures are not deductible:

- (a) sums that have been expensed not for the purpose of producing the Assessable Profits;
- (b) losses of capital and any expenditure of capital nature;
- (c) rent of premises not occupied for the purpose of producing the Assessable Profits; and
- (d) any tax payable in Hong Kong other than salaries tax paid on employees' remuneration.

Tax Rate

From the year of assessment 2008/2009 onwards, the profits tax rate for corporations is 16.5%.

Businesses subject to profits tax enjoy a tax relief of (a) 75% of the 2007/2008 final tax, subject to a ceiling of HKD25,000 per case; (b) 75% of the 2011/2012 final tax, subject to a ceiling of HKD12,000 per case; and (c) 75% of the 2012/2013 final tax, subject to a ceiling of HKD10,000 per case.

Tax Returns

Individuals and corporations carrying on business in Hong Kong should file the tax returns to the Inland Revenue Department (the "IRD") within 1 month from the date of issuance. Usually, the newly established business receives its first profits tax return around 18 months from its date of commencement of business or date of incorporation. For others, the IRD usually issues the profits tax return on 1 April each year.

Books and records

Individuals and corporations carrying on business in Hong Kong should keep proper records of their income and expenditure for ascertaining the Assessable Profits for at least 7 years after the date of the transaction to which they relate.

3. property tax

Individuals or corporations who own property in Hong Kong are subject to property tax if they rent out the property for income.

Tax Rate

From the year of assessment 2008/2009 onwards, property tax is charged at the standard rate of 15% on the net assessable value of the building or land.

4. salaries tax

Salaries tax is imposed on all income arising in or derived from Hong Kong from an office, employment or pension in the year of assessment.

Chargeable Income

Apart from salaries and wages, chargeable income also includes directors' fees, commission, bonus, pensions, leave pay, tips, holiday journey benefits provided by the employer, value of a place of residence provided for an employee and share option gains.

Deductions

Individuals may claim deductions and allowances, such as expenses wholly, exclusively and necessarily incurred in the production of the Chargeable Income, donations paid to approved charities if the amount is not less than HKD100 and does not exceed 35% of the income after allowable expenses and depreciation allowances (from the year of assessment 2008/2009 onwards), mandatory contributions paid to MPF Scheme as an employee with the maximum deduction for a year of assessment being HKD12,000 (for years of assessment 2006/2007 to 2011/2012), HKD14,500 (for the year of assessment 2012/2013) and HKD15,000 (from the year of assessment 2013/2014 onwards).

Tax Rate

For the years of assessment from 2008/2009 to 2012/2013, salaries tax is charged at the following rate:

- (a) progressive rate (from 2% to 17%) on the Chargeable Income after deductions and allowances; or
- (b) standard rate of 15% on the Chargeable Income less total deductions,

whichever is lower.

Tax Relief

Persons subject to salaries tax are entitled to a tax relief of (a) 75% of 2009/2010 and 2010/2011 final tax, subject to a ceiling of HKD6,000 per case, respectively; (b) 75% of 2011/2012 final tax, subject to a ceiling of HKD12,000 per case; and (c) 75% of 2012/2013 final tax, subject to a ceiling of HKD10,000 per case.

Tax Returns

Usually, the IRD issues an Employers Return for the employers to fill in and submit. The employer should keep proper payroll record and submit the return within 1 month.

5. stamp duty

Stamp duty is chargeable on instruments of transfer and contract notes of Hong Kong stock as well as on the transfer, sale and lease of land or building in Hong Kong.

Tax Rate

The rate of stamp duty for the sale and purchase of Hong Kong stock is 0.2% of the consideration or the value of the shares, whichever is higher.

A progressive rate is imposed on the conveyance on sale of land property and agreement for sale of residential property respectively, at a progressive rate (from HKD100 to 4.25% of the property consideration). For details of special stamp duty and buyer's stamp duty, please refer to Chapter VI.

The lease of land or property is subject to a progressive rate (from 0.25% to 1%) depending on the lease period.

chapter VIII – intellectual property

1. intellectual property rights in hong kong

Intellectual property is the name commonly given to a group of separate intangible property rights, which includes trade marks, patents, copyright and designs. Protection of intellectual property rights is important to a business because it confers legal protection of business creativity.

2. trademarks and passing off

Investors may register a sign which is distinguishable of its goods or services from others and is capable of being represented graphically as a trademark in respect of its particular goods or services in Hong Kong. Generally speaking, the whole registration process takes around 9 to 12 months from the date of submission of the documents to the Trade Marks Registry.

Trademarks must be registered in order to obtain protection as registered trademarks. However, trademarks registered in Hong Kong do not automatically receive protection in other jurisdictions, including the Mainland China. As a result, investors are reminded to register their trademarks in places where they would like their trademarks to be protected from infringement.

Unregistered trademarks may be protected by the common law action of passing off. In such event, the unregistered mark owner must demonstrate that it has established reputation for the unregistered mark in Hong Kong. Further, such owner has to prove that the infringer's misrepresentation caused confusion to the relevant sector of the public who consume such goods or services. Nonetheless, passing off is usually a more difficult action to bring when compared with an action for infringement of a registered trademark. It is prudent to register trademarks as soon as possible.

3. patent

There are two types of patents in Hong Kong, namely, the standard patent and the short-term patent.

The period of protection of a standard patent is up to a maximum term of 20 years. However, a standard patent cannot be directly applied in Hong Kong. The grant of a standard patent in Hong Kong is based on the registration, and then the extension to

Hong Kong, of a patent granted by one of the following three patent offices:

- (a) the State Intellectual Property Office in the People's Republic of China;
- (b) the European Patent Office, in respect of a patent designating the United Kingdom; and
- (c) the United Kingdom Patent Office.

For a short term patent, the period of protection is up to a maximum term of 8 years and can be applied for in Hong Kong directly.

Similar to trademarks, the patent registration system in Hong Kong only provides protection in Hong Kong and does not extend to other jurisdictions.

4. copyright

Copyright is an automatic right which arises when a work is created. You need not register a copyright in Hong Kong in order to obtain protection under Hong Kong law.

5. registered designs

Designs such as the shape, configuration, pattern or ornament of an article or a product can be registered as registered designs so long as they appeal to and can be judged by the eye. In order to obtain protection as registered designs in Hong Kong, designs must be registered. Similar to trademarks and patent, the design registration system in Hong Kong only provides territorial protection.

6. trade secrets and confidential information

Trade secrets are confidential information such as product formulae, know-how, client lists and business plans not generally known to the public for which reasonable steps have been taken to maintain their confidentiality.

Unlike trademarks and patents, trade secrets cannot be protected by a registration procedure since that will require disclosure. Trade secrets are protected by the common law of confidence. The protection is perpetual so long as the confidential information does not become public knowledge.

chapter IX – dispute resolution

1. legal system in hong kong

Since the resumption of sovereignty by mainland China in 1997 Hong Kong has adopted the Basic Law, which is akin to a mini-constitution, as the highest law applicable in Hong Kong. It enshrines and puts in practice the important concepts of ‘One Country, Two Systems’ and ‘a high degree of autonomy.’ The Basic Law also guarantees that Hong Kong enjoys executive, legislative and independent judicial power, including that of final adjudication.

Under the Basic law, the laws previously in force in Hong Kong have been maintained. Hong Kong retains the English common law system, supplemented by local legislations. National laws of mainland China are not applied in Hong Kong except for those relating to national defence, foreign affairs and matters outside the limits of the autonomy of Hong Kong.

Strict adherence to the principles of rule of law and judicial independence is widely recognized as the most important attributes and cornerstones of the legal system in Hong Kong.

2. enforceability of hong kong judgments

For civil cases, the judgments of the Hong Kong High Court and above may be enforced in most common law jurisdictions or in consequence of international agreements and arrangements in a number of foreign countries.

3. reciprocal enforcement of judgments in hong kong and mainland china

As Hong Kong has become a part of Mainland China, international agreements relating to reciprocal enforcement of judgments are not applicable. Yet under the notion of ‘One Country, Two Systems’ there is no automatic mechanism for a Hong Kong court judgment to be enforced in mainland China, or vice versa. In July 2006, the Mainland China Supreme People’s Court and the Hong Kong Government entered into the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters (“**the Arrangement**”). The Arrangement provides an effective mechanism for mutual enforcement of certain types of judgments made by prescribed Mainland China and Hong Kong courts in the other’s

jurisdiction. The Arrangement came into effect in Mainland China and Hong Kong on 1 August 2008.

3.1 judgments which can be reciprocally enforced

Under the Arrangement, one may apply for reciprocal enforcement of a final judgment requiring payment of money in a civil and commercial case. Judgments other than monetary judgments, such as orders for specific performance or injunction, would not be covered. The judgment must also be made pursuant to a choice of court agreement in writing. Therefore, there must be a written agreement between the parties expressly designating a Mainland China court or Hong Kong court as the court having exclusive jurisdiction for resolving any dispute. Further, only judgments made by prescribed courts may be reciprocally enforced. In Hong Kong, this refers to judgments made by courts at District Court level or above. In Mainland China, this refers to judgments made by courts at Intermediate People's Court level or above or a Basic People's Court authorized to exercise jurisdiction over civil and commercial cases involving foreign parties.

A party seeking recognition and enforcement of such judgment must file an application with the relevant court within two years.

As the application of the Arrangement is complicated and the consequence of choosing China or Hong Kong as the sole jurisdiction for resolving disputes is far reaching, it is prudent to seek legal advice before entering into any agreement on this issue.

4. arbitration and mediation

Since the Civil Justice Reform was launched in 2009, Hong Kong courts encourage litigants to use an alternative dispute resolution procedure (“**ADR**”) if it considers appropriate. ADR means a process whereby the parties agree to appoint a third party to assist them to settle or resolve their disputes. Arbitration and mediation are two most common modes of ADR.

4.1 arbitration

Arbitration is a consensual dispute resolution process where the parties agree to submit their disputes to be resolved by an arbitral tribunal, whose award is enforceable as if a judgment made by the court.

Arbitration is different from litigation in that it is conducted in private, rather than in open court, and is heard by arbitrator(s) (most of them are professionals from different fields) rather than judge(s). In addition, arbitration procedures are generally less formal, and there are no restrictions on who may represent the parties in arbitration.

The advantages of conducting arbitration in Hong Kong include:

- (a) Flexibility – arbitration permits the parties to agree on arbitration procedures. The parties may either choose to follow the rules of an arbitral institution e.g. HKIAC Administered Arbitration Rules, or adopt “ad-hoc” arbitrations which follow no particular rules leaving the parties or tribunals to agree on the procedures
- (b) Free choice of arbitrator(s) – as disputes may involve technical issues, the parties may wish to appoint someone with sufficient experience and expertise to determine their disputes
- (c) Confidentiality – arbitration hearings are conducted in private and awards are generally not published to the public
- (d) Finality – unlike a court judgment, an arbitral award is subject to very limited rights of review by the court
- (e) Cost-effectiveness – parties may themselves agree to reduce the costs of arbitration, e.g. appoint a sole arbitrator and proceed with “documents only” arbitration
- (f) Enforceability – Hong Kong is a signatory member to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Arbitral awards made in Hong Kong are recognized and enforceable in other signatory members and vice versa. This is particularly important in the context of resolving disputes in Hong Kong; as compared to a judgment grant by the courts of Hong Kong, which is enforceable in only a handful of foreign countries, an arbitral award can be enforced in all 149 convention countries. Arbitral awards made in Hong Kong and mainland China are also mutually enforceable in accordance with the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region enacted in 1999.

4.2 mediation

Mediation is a voluntary and private dispute resolution process in which a trained and impartial third person, the mediator, helps the parties in dispute to reach an amicable settlement that is responsive to their needs and acceptable to all sides. A party is not required to accept the terms of settlement proposed in a mediation. Unlike an arbitral award or a court judgment, a mediation settlement takes effect as an agreement, rather than having it imposed upon the parties as an award or judgment.

The Mediation Ordinance was enacted in June 2012. It provides statutory footing to the existing mediation regime in Hong Kong.

The advantages of conducting mediation in Hong Kong include:

- (a) Efficiency and effectiveness – mediation is less risky, less formal and may save time and money, preserve dignity and maintain relationships of the parties in dispute. It also improves communication between the parties and enables them to control the outcome of their dispute;
- (b) Confidentiality – mediation communications are generally confidential and will not be disclosed to the court or tribunal;
- (c) Flexibility – mediation may result in settlements which go beyond the legal remedies that a court or tribunal may allow.

Although it is not mandatory for the parties to a dispute to engage in mediation, the court may make adverse costs order against a party who unreasonably fails to engage in mediation.

about us

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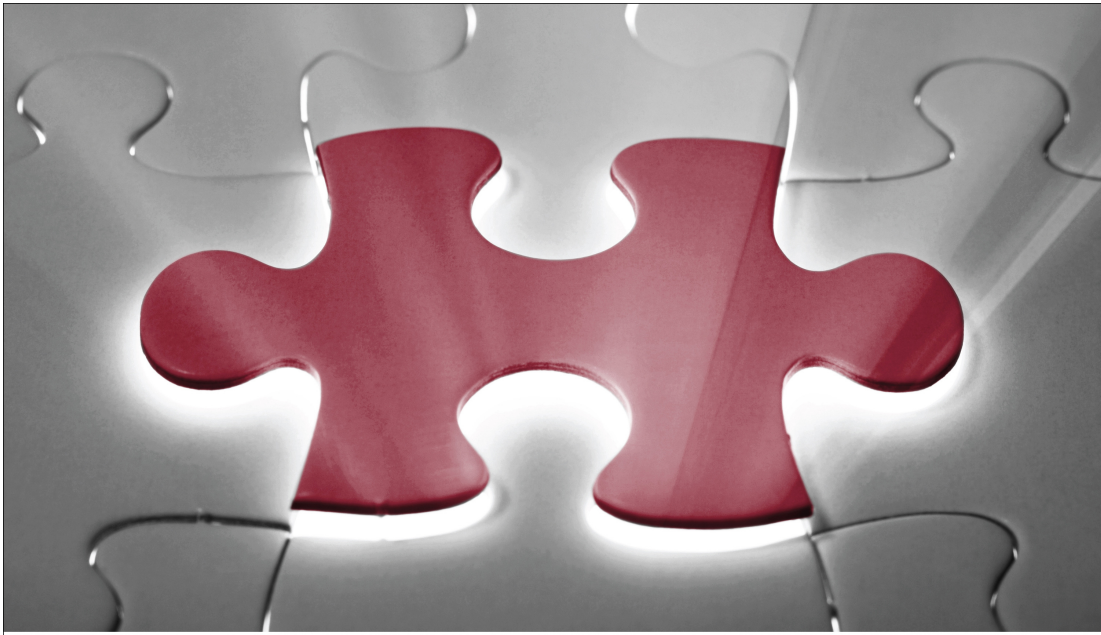
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