

**International  
Comparative  
Legal Guides**



Practical cross-border insights into private client work

**Private Client  
2022**

**11<sup>th</sup> Edition**

Contributing Editors:

**Jonathan Conder & Robin Vos  
Macfarlanes LLP**

**ICLG.com**

## Industry Chapter

1

**STEP's Public Policy Focus 2021**  
Emily Deane, Society of Trust and Estate Practitioners (STEP)

## Expert Analysis Chapters

5

**After Brexit and the Pandemic, is the UK Open for Business?**  
Jonathan Conder & Ross Pizzuti-Davidson, Macfarlanes LLP

12

**Tax and Compliance in the Face of 'Unfathomable Debt'**  
Helen Ratcliffe & Lara Mardell, BDB Pitmans LLP

18

**Pre-Immigration Planning Considerations for the HNW Client – Think Before You Leap**  
Joshua S. Rubenstein, Katten Muchin Rosenman LLP

## Q&A Chapters

25

**Andorra**  
FINTAX ANDORRA: Jose Maria Alfin Martin-Gamero

32

**Argentina**  
Estudio McEwan: Juan P. McEwan & Agustín José Lacoste

40

**Belgium**  
Tiberghien: Griet Vanden Abeele, Emilie Van Goidsenhoven & Alain Van Geel

48

**British Virgin Islands**  
Walkers: David Pytches & Lucy Diggle

55

**Cayman Islands**  
Walkers: David Pytches & Monique Bhullar

61

**Denmark**  
Rovsing Advokater P/S: Mette Sheraz Rovsing & Troels Rovsing Koch

67

**France**  
Tirard Naudin A.A.R.P.I.: Maryse Naudin & Ouri Belmin

77

**Germany**  
POELLATH: Dr. Andreas Richter & Dr. Katharina Hemmen

85

**Gibraltar**  
Isolas LLP: Adrian Pilcher, Emma Lejeune, Stuart Dalmedo & Giovanni Origo

92

**Greece**  
Zepos & Yannopoulos: Anna Paraskeva & Eleni Skoufari

98

**Guernsey**  
Walkers: Rupert Morris, Rajah Abusrewil & Nitriisha Doorasamy

104

**Hong Kong**  
Charles Russell Speechlys LLP: Jeffrey Lee, Jessica Leung & Jessica Chow

111

**Ireland**  
Matheson: John Gill & Lydia McCormack

121

**Italy**  
Loconte&Partners: Stefano Loconte & Beatrice Molteni

130

**Japan**  
Mori Hamada & Matsumoto: Atsushi Oishi & Makoto Sakai

137

**Jersey**  
Walkers: Robert Dobbyn & Sevyn Kalsi

144

**Liechtenstein**  
Ospelt & Partner Attorneys at Law Ltd.: Dr. Alexander Wolfgang Ospelt & Philip Georg Raich

152

**Luxembourg**  
Arendt & Medernach: Eric Fort, Marianne Rau & Ellen Brullard

160

**Malta**  
Corrieri Cilia: Dr. Silvio Cilia & Dr. Louella Grech

168

**Monaco**  
GARDETTO LAW OFFICES: Jean-Charles Gardetto & Alexandre Al Suleiman

175

**Netherlands**  
Arcagna B.V.: Nathalie Idsinga & Wouter Verstijnen

182

**New Zealand**  
Cone Marshall Limited: Claudia Shan & May Cheah

## Q&A Chapters Continued

192

**Portugal**Kore Partners: Tiago Cassiano Neves,  
Julija Petkevica Neves & António Mendes

199

**Singapore**

WongPartnership LLP: Sim Bock Eng &amp; Tan Shao Tong

206

**Spain**Monereo Meyer Abogados: Gustavo Yanes  
Hernández, Christian Krause Moral, Michael Fries &  
Monika Bertram

213

**Switzerland**Walder Wyss Ltd: Philippe Pulfer, Philippe Kohler &  
Yacine Rezki

224

**Turks and Caicos Islands**Griffiths & Partners / Coriats Trust Company  
Limited: David Stewart & Conrad Griffiths QC

229

**United Kingdom**

Macfarlanes LLP: Jonathan Conder &amp; Robin Vos

246

**USA**Seward & Kissel LLP: Scott M. Sambur &  
David E. Stutzman

# Hong Kong

Charles Russell Speechlys LLP



Jeffrey Lee



Jessica Leung



Jessica Chow

## 1 Connection Factors

**1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?**

This is not relevant. Please see the answer to question 1.7 below.

**1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?**

This is not applicable.

**1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?**

Hong Kong adopts the territorial source principle of taxation. The concept of residence is generally irrelevant in determining an individual's Hong Kong tax liability, except for double tax treaty purposes (see the answers to questions and 1.4 and 1.7 below).

An individual will be liable to Hong Kong income tax on Hong Kong-sourced income, irrespective of his/her residency. Profits tax is charged on profits that arise in or are derived from Hong Kong. However in determining whether the profits are Hong Kong sourced, the Inland Revenue Department (IRD) will look at factors such as the principal place of business and where business decisions are made.

**1.4 If residence is relevant, how is it defined for taxation purposes?**

In most double tax treaties, an individual is considered a Hong Kong resident if he/she (i) stays in Hong Kong for more than 180 days during a year of assessment, or (ii) stays in Hong Kong for more than 300 days in two consecutive years of assessment (one of which is the relevant year of assessment), or (iii) ordinarily resides in Hong Kong. Generally, an individual "ordinarily resides" in Hong Kong if he/she has a permanent home in Hong Kong where he/she or his/her family lives. The IRD will also look into factors such as the number of days he/she spends

in Hong Kong and whether he/she has a home available to him/her outside of Hong Kong. A company is considered a Hong Kong resident for double tax treaty purposes if it is incorporated in Hong Kong or if it is centrally managed and controlled in Hong Kong.

**1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?**

This is not relevant. Please see the answer to question 1.7 below.

**1.6 If nationality is relevant, how is it defined for taxation purposes?**

This is not applicable.

**1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?**

Hong Kong adopts the territorial source principle of taxation. Only profits/income arising in or derived from Hong Kong are chargeable to tax in Hong Kong. Tax is not levied based on a person's domicile, habitual residence, residence or nationality.

The question of whether the profits/income arise in or are derived from Hong Kong is a question of fact depending on the nature of the profits/income and of the activities that give rise to such profits/income.

**1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?**

The IRD has issued guidance entitled "Tax Issues arising from the COVID-19 Pandemic". Their approach to COVID-19-related tax issues is broadly in line with the guidelines released by the Organisation for Economic Co-operation and Development (OECD) in January 2021 and December 2020. Temporary COVID-19-related changes in which the individual is physically present and exercises his/her employment or where

a corporate conducts its business are unlikely to *automatically* alter the individual or the corporate's tax residency or create a new permanent establishment. The IRD may treat these COVID-19-related arrangements differently after public health restrictions are lifted. The IRD will interpret and apply these guidelines based on the facts and circumstances of each case.

## 2 General Taxation Regime

### 2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

There is no gift tax or wealth tax in Hong Kong.

There is also no estate duty in Hong Kong for the application for a grant of representation in respect of deaths occurring on or after 11 February 2006.

### 2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

All profits (excluding profits arising from the sale of capital assets) derived from a person (including a corporation) carrying out business in Hong Kong are liable to profits tax according to the two-tiered tax rates with effect from the 2018/19 year of assessment.

Profits tax is chargeable on corporates at 8.25% on the first HK\$2,000,000 of the assessable profits and 16.5% on the remaining assessable profits. For unincorporated businesses, profits tax is chargeable at 7.5% on the first HK\$2,000,000 of the assessable profits and 15% on the remaining assessable profits.

Salaries tax is chargeable on income derived from exercising an employment in Hong Kong at progressive rates from 2% to 17%. The maximum salaries tax rate will be limited to tax at the standard rate (15%) on the net accessible income prior to the deduction of personal allowances.

For the 2020/21 year of assessment, profit and salaries tax for all businesses and individuals are reduced by HK\$10,000.

There is no capital gains tax in Hong Kong.

### 2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

There are other taxes and duties that apply to all parties of an applicable transaction in Hong Kong. It is not dependent of the residence of the parties.

Property tax is charged to the owner of any land or buildings (except government and consular properties) situated in Hong Kong at the standard rate of 15% on its net assessable value. The net assessable value is calculated by deducting the 20% statutory allowance for repairs and outgoings and other payments (including rates paid by the owner) from the assessable value, being the actual consideration payable to the owner in respect of the right of use of the property.

Individuals and corporates are liable to profits tax on rental income derived from letting property in Hong Kong. However, property tax can be: (i) exempted; or (ii) if it has been paid, set off against the amount of profits tax payable if certain conditions are met. Individuals who are subject to both profits tax and property tax may qualify for a reduction in tax liability through the election of Personal Assessment.

Stamp duty is also chargeable on documents specified in the First Schedule to the Stamp Duty Ordinance. Hong Kong stamp

duty applies to any lifetime transfer or disposition of Hong Kong immovable assets and stocks. Exemptions may be available if conditions are met. Examples of exemptions include distributions from trustees to beneficiaries or distributions to beneficiaries of an estate under a will or the law of intestacy. There are three different types of stamp duty in Hong Kong, namely *ad valorem* stamp duty (AVD), buyer's stamp duty (BSD) and special stamp duty (SSD) (see answer to question 4.3 below).

AVD is chargeable on a transfer of Hong Kong stock. With effect from 1 August 2021, the AVD rate chargeable on the contract notes for the sale and purchase of Hong Kong stock is 0.13% of the consideration (or the market value if it is higher) for each of the buyer and the seller. In the case of a voluntary disposition (where contract notes are not required), the chargeable rate on the instruments of transfer is HK\$5 plus 0.26% of the value of stock. In the case of transfers of immovable property in Hong Kong, AVD is chargeable based on the sale price or the market value of the property (whichever is higher). SSD and BSD may also be chargeable (please see the answer to questions 4.1 and 4.3 below).

### 2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

With a few exceptions, every person carrying on business in Hong Kong must register their business with the IRD and pay the required fee and levy. Businesses registered within the period from 1 April 2021 to 31 March 2022 are waived from paying the business registration levy. Business operators may select business registration certificates that are valid for one year or three years. The business registration certificate has to be renewed one month before the business registration certificate expires.

Generally, all properties in Hong Kong are liable to the assessment of rates, which are charged at 5% of their rateable value. Government rent is calculated at 3% of the rateable value of the property situated on the land leased (which covers most part of Hong Kong) and is adjusted in step with any subsequent changes in rateable value.

Motor vehicles for use on the road are subject to first registration tax (FRT). Electric private cars may benefit from concessions from HK\$97,500 up to HK\$287,500. FRT for all other electric vehicles (i.e. electric commercial vehicles and electric motorcycles) are fully waived from 1 April 2018 to 31 March 2024. The Government proposed in the 2021/22 budget to amend the Motor Vehicles (First Registration Tax) Ordinance to increase the FRT for privately owned cars by 15%.

Liquor, tobacco, hydrocarbon oil and methyl alcohol are subject to excise duties irrespective of whether they are imported or locally manufactured.

Betting duty is chargeable on bets on horse races, lotteries and football matches.

There is no sales tax or VAT in Hong Kong.

### 2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

Please see the answer to question 2.6 below.

### 2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

Section 61 of the Inland Revenue Ordinance (IRO) empowers the IRD to disregard certain transactions or dispositions with

the effect of reducing the tax payable if the IRD is satisfied that the transaction is artificial or fictitious or that any disposition is not in fact given effect to.

Section 61A of the IRO allows the IRD to disregard or reconstruct any transaction entered into for the sole or dominant purpose of enabling a person to obtain a tax benefit. “Transaction” is defined to include a transaction, operation or scheme carried out in the form of a unilateral scheme or plan or by a sole protagonist.

### 2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

As part of Hong Kong’s commitment to counter base erosion and profit shifting initiated by the OECD, the Inland Revenue (Amendment) (No.6) Ordinance 2018 was enacted on 13 July 2018 to formally put in place a transfer pricing regulatory regime and to introduce legal requirements for transfer pricing documentation into Hong Kong legislation.

On 5 October 2021, the European Union announced the inclusion of Hong Kong on its watchlist on tax-cooperation, as it considered that the non-taxation of certain foreign-sourced passive income in Hong Kong might lead to situations of “double non-taxation”. In response, the Hong Kong Government indicated that the IRO may be amended by the end of 2022, to target corporations with no substantial economic activity in Hong Kong that make use of passive income to evade tax across a border, with the relevant measures implemented in 2023.

## 3 Pre-entry Tax Planning

### 3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

This is not applicable as there is no gift tax, wealth tax or estate duty in respect of deaths on or after 11 February 2006 in Hong Kong.

### 3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

This is not applicable as Hong Kong adopts the territorial source principle of taxation. There is no capital gains tax in Hong Kong.

### 3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There may be planning opportunities to mitigate the potential tax exposure under the relevant tax agreement between his/her home country/territory and Hong Kong (if available).

## 4 Taxation Issues on Inward Investment

### 4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

Gains on the sale of capital assets are not subject to Hong Kong profits tax. There is no tax on dividends.

Depending on the nature of the income and the investment, profits tax, property tax and stamp duty may be chargeable for non-residents. For more details, please see answer to question 4.3 below.

### 4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Importation of motor vehicles for use on the road is subject to FRT. For more details, please refer to the answer to question 2.4.

Liquor, tobacco, hydrocarbon oil and methyl alcohol are subject to excise duties, irrespective of whether they are imported or locally manufactured.

### 4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Non-Hong Kong Permanent Residents (HKPR), i.e. those who do not hold a permanent identity card issued by the Immigration Department are regarded as non-residents for stamp duty purposes and may be subject to BSD, SSD and AVD.

BSD is payable by the buyer or the transferee at a flat rate of 15% for purchases made on or after 27 October 2012. Exceptions include the acquisition of a residential property by a HKPR jointly with non-HKPR close relative(s) (i.e. spouse, parents, children, brothers and sisters).

AVD is payable at the rate under Part 1 of Scale 1 of the SDO, i.e., a flat rate of 15% on an agreement for sale for the acquisition or a conveyance on sale of any residential property executed after 5 November 2016. This is applicable to both HKPR and non-HKPR. Lower rates (1.5% to 4.25%) will apply if a HKPR acquires a residential property together with a non-HKPR close relative (i.e. spouse, parents, children, brothers and sisters), and they do not own any other residential property in Hong Kong at the time of acquisition. However, irrespective of whether the purchase/transferee is a HKPR, AVD is chargeable at a flat rate of 15% on instruments executed on or after 12 April 2017 for the sale and purchase or transfer of *more than one* residential property.

For properties acquired on or between 20 November 2010 and 26 October 2012 and disposed of within 24 months, SSD is payable by the buyer and seller on top of AVD at regressive rates from 5% to 15% (depending on the holding period). For properties acquired on or after 27 October 2012 and disposed of within 36 months, SSD is payable at regressive rates from 10% to 20%. The SSD charge applies to both HKPR and non-HKPR.

## 5 Taxation of Corporate Vehicles

### 5.1 What is the test for a corporation to be taxable in your jurisdiction?

Persons (including corporations, partnerships, trustees and bodies of persons) carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong.

### 5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

The main tax liabilities payable by a corporation are profits tax and, if applicable, property tax (please see the answer to question 2.3 above).

### 5.3 How are branches of foreign corporations taxed in your jurisdiction?

Hong Kong adopts the territorial source principle of taxation. Branches of foreign corporations with a place of business in

Hong Kong are effectively taxed in the same manner as Hong Kong incorporated companies. Commencing from the year of assessment of 2019/20, income or loss will be attributed to a non-resident's permanent establishment in Hong Kong in accordance with the separate enterprises principle by adopting the Authorised OECD Approach.

The IRD concluded that a non-treaty person with a representative office in Hong Kong is regarded as having a permanent establishment or fixed place of business in Hong Kong for tax purposes, as long as the overall activity carried out by such person is not preparatory or auxiliary.

## 6 Tax Treaties

### 6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

Yes. Hong Kong has concluded comprehensive double taxation agreements (DTA) with more than 40 jurisdictions. Relief from double taxation in respect of income derived by a person from services rendered in a DTA territory will be provided by way of tax credit. The amount of any relief granted must not exceed the amount of the relief that would be granted had all foreign tax minimisation steps been taken (such as claiming or securing the benefit of relief, deductions, reductions or allowances and making elections for tax purpose).

Following the recent conclusion of Protocol V of the "Arrangement between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income", Hong Kong and Macao has also signed a DTA to promote the economic growth of the Guangdong-Hong Kong-Macao Greater Bay Area.

### 6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

They generally follow the OECD model.

### 6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

There is no gift tax in Hong Kong. There is also no estate duty in Hong Kong for the application for a grant of representation in respect of deaths on or after 11 February 2006.

### 6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

This is not applicable.

## 7 Succession Planning

### 7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

Hong Kong adopts the common law rules where intestate succession of movable property is governed by the law of the deceased's domicile at death and, in the case of immovable property, by the law of the place where the immovable property is situated.

The essential validity of a will disposing movable property is determined under the law of the testator's domicile. In the case of a will disposing immovable property, it is determined under the law of the place where the immovable property is situated.

On formal validity, the Wills Ordinance provides that a will shall be treated as properly executed if its execution conformed to the internal law in force in: (i) the territory where it was executed; (ii) the territory where, at the time of its execution or of the testator's death, he/she was domiciled; (iii) the territory where, at the time of its execution or of the testator's death, had his/her habitual residence; or (iv) in a state of which, at either of those times, he/she was a national.

### 7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

Please see the answer to question 7.1 above.

### 7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

Hong Kong recognises full testamentary freedom. However, where a deceased person made a disposition either by his/her will or by the laws of intestacy, a person entitled under the Inheritance (Provision for Family and Dependants) Ordinance may make a claim against the estate of the deceased on the grounds that the deceased failed to make reasonable financial provision for him/her, provided all requirements under the Inheritance (Provision for Family and Dependants) Ordinance are met.

## 8 Trusts and Foundations

### 8.1 Are trusts recognised/permitted in your jurisdiction?

Yes, they are.

### 8.2 How are trusts/settlers/beneficiaries taxed in your jurisdiction?

There is no tax directed specifically to trusts, settlors or beneficiaries. The same principles for taxes discussed in sections 1–6 above apply.

### 8.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

There are no forced heirship rules in Hong Kong. However, where a person made a disposition for which the full valuable consideration was not given (e.g. a contribution to a trust) less than six years before his/her death, with the intention of defeating an application for financial provision against his/her estate, the court may, upon application, order the donee (e.g. the trustees of a trust) to provide such sum of money or other property.

### 8.4 Are private foundations recognised/permitted in your jurisdiction?

There are no private foundations under Hong Kong law.

### 8.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

There is no tax directed specifically to foundations, founders or beneficiaries. The same principles for taxes discussed in sections 1–6 above apply.

### 8.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Please see the answer to question 8.3 above.

## 9 Matrimonial Issues

### 9.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Civil partnerships and same-sex marriages are not permitted or recognised in Hong Kong. Family Courts in Hong Kong have no authority to pronounce a decree of divorce, nullity, judicial separation or presumption of death and dissolution of marriage or to make any other order in respect of same-sex marriages. However, under the Married Persons Status Ordinance, a married person's status can apply to parties to a marriage celebrated or contracted outside Hong Kong according to the law in force at the time and in the place where the marriage was performed.

In addition, recent case law has shown that the benefits that come with traditional heterosexual marriages are becoming more accessible for non-traditional families.

A person who has entered into a same-sex civil partnership, same-sex civil union, same-sex marriage, opposite-sex civil partnership or opposite-sex civil union outside Hong Kong is eligible to apply for a dependent visa/entry permit for entry into Hong Kong provided that all the other eligibility criteria are met.

Same-sex couples who are married outside Hong Kong and are subject to Hong Kong salaries tax are now entitled to joint assessment election. This was previously enjoyed by heterosexual married couples. Further, if one of them is a civil servant, his/her spouse is now entitled to employment benefits provided under the Civil Service Regulations.

The Housing Authority's policy to exclude same-sex couples who have entered into lawful and monogamous marriages overseas from being eligible to apply for public rental housing as "ordinary families" was held to be unlawful and unconstitutional.

The exclusion of parties to same-sex marriages from legal entitlements and benefits under the Intestates' Estates Ordinance and the Inheritance (Provision for Family and Dependents) Ordinance was held to constitute unlawful discrimination on the grounds of sexual orientation.

The former same-sex partner of the biological mother of the children succeeded in the application for joint custody, shared care and control over the children on the grounds that it would be in the best interests of their children, who were accustomed to having two mothers and were close to both mothers.

### 9.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There is no matrimonial property regime in Hong Kong. In the event of a divorce, matrimonial property is divided based on the factors set out in the Matrimonial Proceedings and Property Ordinance. Please refer to question 9.4 for the main principles that apply in Hong Kong.

### 9.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre/post-nuptial agreements are not binding in Hong Kong. Nuptial agreements entered into by parties with a full appreciation of its implication should be given effect if it is considered fair and reasonable in the circumstances (including whether to depart from the yardstick of equal division). The weight to be attached to it in each case is discretionary.

### 9.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

Courts in Hong Kong will consider all the factors in the Matrimonial Proceedings and Property Ordinance when deciding how matrimonial assets are to be divided. Factors include the parties' financial resources, financial needs, standard of living, age, loss of benefit (e.g. pension) and whether the parties have any physical or mental disability.

A five-step process guides all judges of matrimonial cases on how to approach the above factors when exercising their discretion:

- Step 1: Identify the parties' assets.
- Step 2: Assess the parties' financial needs.
- Step 3: Consider the sharing principle if assets exceed needs.
- Step 4: Consider whether there are good reasons to depart from equal division.
- Step 5: Decide the outcome.

The following four principles to be adhered to when deciding on each case have also been identified:

- (i) Objective of fairness.
- (ii) Rejection of any gender or role discrimination.
- (iii) Yardstick of equal division.
- (iv) Rejection of minute retrospective investigation.

## 10 Immigration Issues

### 10.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

Hong Kong is a special administrative region of the People's Republic of China and has its own independent restrictions and qualifications with respect to entry into the region. If a person does not enjoy the visa waiver concession or if he/she wishes to stay beyond the entitled visa free period, he/she must obtain a visa/entry permit before coming to Hong Kong. Generally, the applicant must satisfy the following conditions before a visa/entry permit is granted:

- (a) the applicant's *bona fides* are not in doubt;
- (b) the applicant has adequate funds to cover the duration of his/her stay without working; and
- (c) where the application is for a transit visa/entry permit, he/she holds an onward ticket to the place of his/her destination unless the destination is the Mainland of China or Macao.

An applicant should also meet other immigration requirements, including, but not limited to, holding a valid travel document with adequate returnability to his/her country of residence or citizenship, being of clear criminal record and raising no security or criminal concerns to Hong Kong and having no likelihood of becoming a burden on Hong Kong.



### 10.2 Does your jurisdiction have any investor and/or other special categories for entry?

Yes, please see the answer to question 10.5 below.

### 10.3 What are the requirements in your jurisdiction in order to qualify for nationality?

A person is eligible to apply for a Hong Kong passport if he/she is:

- (a) a Chinese citizen;
- (b) a permanent resident of Hong Kong; and
- (c) a holder of a valid Hong Kong permanent identity card.

A person is regarded as being of Chinese nationality if he/she is a Hong Kong resident:

- (a) of Chinese descent who was born in Hong Kong or other parts of China; or
- (b) who fulfils the criteria of Chinese nationality in the Nationality Law of the People's Republic of China.

A person who is within one of the following categories is a permanent resident of Hong Kong:

- (a) a Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region (HKSAR);
- (b) a Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the HKSAR; and
- (c) a person of Chinese nationality born outside Hong Kong before or after the establishment of the HKSAR to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b) above.

### 10.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

No, there are none.

### 10.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

Yes, there are as follows:

- (i) a General Employment Policy for entrepreneurs who wish to enter or stay in Hong Kong for investment;
- (ii) a Quality Migrant Admission Scheme that seeks to attract highly skilled or talented persons to settle in Hong Kong;
- (iii) a Admission Scheme for Mainland Talents and Professionals designed for Chinese residents of the Mainland of China who possess special skills, knowledge or experience;
- (iv) a Technology Talent Admission Scheme that provides a fast-track arrangement for eligible technology companies/institutes to admit non-local technology talent to undertake research and development work for them in Hong Kong; and

- (v) an Admission Scheme for the Second Generation of Chinese Hong Kong Permanent Residents that allows second generations of emigrated Chinese HKPRs from overseas to return to work in Hong Kong.

## 11 Reporting Requirements/Privacy

### 11.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Hong Kong has entered into a Model 2 intergovernmental agreement with the United States to facilitate financial institutions in Hong Kong to comply with the Foreign Account Tax Compliance Act. A legislative framework has been put in place in Hong Kong to implement automatic exchange of financial account information (AEOI) and common reporting standards. Under the AEOI standard, financial institutions are required to identify financial accounts held by tax residents of reportable jurisdictions or passive non-financial entities whose controlling persons are tax residents of reportable jurisdictions in accordance with due diligence procedures. Financial institutions are required to collect and provide information of these accounts to the IRD, which will then be exchanged with the reportable jurisdictions on an annual basis. That said, account holders may be requested to provide self-certifications on their personal information, including tax residence, so as to enable the financial institutions to identify the reportable accounts. The number of reportable jurisdictions increased from 75 to 126 with the enactment of the Inland Revenue (Amendment) (No. 2) Ordinance 2019.

### 11.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Please see the answer to question 11.1 above.

### 11.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

There is no register of owners/beneficial owners/trustees in Hong Kong. Registers of members/significant controllers/board members of companies in Hong Kong are not public. Persons of significant control of Hong Kong listed companies are, however, publicly available. The Hong Kong Companies Registry also provides an online system that allows the public to conduct searches on records of documents kept by the Companies Registry in relation to registered companies.



**Jeffrey Lee** is an International Partner (England & Wales) in the private wealth practice of Charles Russell Speechlys Hong Kong. Jeffrey specialises in wealth planning for international clients. He has particular expertise in advising non-UK domiciled persons moving to the UK on the structuring of their affairs to achieve tax-efficiency. Jeffrey also advises on complex international structuring, including their establishment for estate and succession planning, asset protection and personal tax mitigation.

**Charles Russell Speechlys LLP**

Suite 3418, Level 34  
Two Pacific Place  
88 Queensway  
Hong Kong

Tel: +852 2531 3409  
Email: [jeffrey.lee@crsblaw.com](mailto:jeffrey.lee@crsblaw.com)  
URL: [www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



**Jessica Leung** is a Senior Associate in the private wealth practice of Charles Russell Speechlys Hong Kong. Jessica advises high-net-worth individuals, trustees, and beneficiaries on trusts, wills, estate and succession planning and philanthropic activities. She also has experience in probate, mental capacity matters, and nuptial agreements.

**Charles Russell Speechlys LLP**

Suite 3418, Level 34  
Two Pacific Place  
88 Queensway  
Hong Kong

Tel: +852 2531 3405  
Email: [jessica.leung@crsblaw.com](mailto:jessica.leung@crsblaw.com)  
URL: [www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



**Jessica Chow** is an Associate in the private wealth practice of Charles Russell Speechlys Hong Kong. Jessica advises Hong Kong and international clients on private client matters. She has experience in drafting wills and trusts documentation for high-net-worth individuals with a range of wealth planning needs. She also advises on cross-border probate.

**Charles Russell Speechlys LLP**

Suite 3418, Level 34  
Two Pacific Place  
88 Queensway  
Hong Kong

Tel: +852 2531 3429  
Email: [jessica.chow@crsblaw.com](mailto:jessica.chow@crsblaw.com)  
URL: [www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)

Headquartered in London, with offices in the UK, Europe and the Middle East, Charles Russell Speechlys LLP opened its first Asian office in Hong Kong in 2017, offering private client services to successful entrepreneurial and family businesses, the creators and owners of private wealth and their advisors and financiers. Our expertise covers a range of trust and international tax planning. These include succession and estate planning, family office structuring and operations, charities and philanthropy, Hong Kong, UK and Canadian tax, mergers and acquisitions, as well as strategic alliances. We deal with disputes arising out of trusts, wills, estate administration, family business arrangements, and property. We have also expanded our offering with the additional of both local and international real estate capabilities to the office. Our team delivers a wealth of experience in relation to commercial property transactions.

[www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)

**CRS** | Charles Russell  
Speechlys

# ICLG.com



## Current titles in the ICLG series

Alternative Investment Funds  
Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business  
Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environment & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law  
Oil & Gas Regulation  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Technology Sourcing  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms