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# Commercial real estate investment guide

Hong Kong



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# Market overview

## Hong Kong

In 2024, the Hong Kong Government has rolled out multiple initiatives in its 2024-25 Budget Speech to boost local and tourist consumption demand to speed up market recovery and stability. The policy outlined several new measures aimed at revitalizing the city's economy, with a particular emphasis on major tax-related measures which may impact individuals, families, investors, family offices, etc.

Effective from 28 February 2024, the government has announced the scrapping of all property cooling measures which had been in place for a decade. These include the Buyer's Stamp Duty (BSD) targeting non-permanent residents, the higher rate of ad valorem stamp duty (AVD) for non-permanent residents and second-time purchasers and the Special Stamp Duty (SSD) aimed at homeowners who resold their property within two years. It is anticipated that the cancellation of these property measures will restore investor confidence in the property market and lead to an increase in transaction volume.

For the office market, the occupancy and rental rates have not experienced a significant change despite the economic revival. We have seen a notable trend of office downsizing and decentralization and demand for office upgrade with green and technological features. It remains hopeful that the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance effective on 19 May 2023, giving tax concession to family offices established in Hong Kong, will stimulate Grade-A premium office demand targeting high net-worth individuals and families.

Furthermore, the investment appetite in industrial assets and leasing activities is gloomed by the weak logistic demand, unstable interest rate and

global economic turbulence, which has led to a more conservative approach by investors on their expansion decision and a slowdown of industrial investment. However, there are signs of resilience especially in investment for mini-storage, cold storage, data and logistics centres due to the overall growth of storage demand, which are expected to dominate the industrial market in the near future.

While investment in retail, office buildings or units is not attractive for investors at the moment, investors might be able to take the chance to consider investment in distressed properties. The supply of distressed properties being put on market at a substantial discounted rates provides more choices for these potential buyers to shop and to diversify their investment portfolio.

With the full opening of the Hong Kong-China border, the retail sector, however, is experiencing a mild reboot as there has been a large outflux of local customers going to China for shopping or spending during holidays and weekends, but with the promotion of night-life campaign to promote shopping and entertainment experiences and the launch of various mega-events by the Government to promote international sports and cultural events, it is expected that the recovery of retail market will continue to pick up and will result in further reduction of shop vacancy rate, with commitment of tenants for a standard lease term of 2-3 years, compared to short term leases which dominated the market during the pandemic.

Whilst all sectors are anticipated to perform differently for the rest of the year, the investment appetite in the short term will largely depend on the interest rate environment. There will be more certainty for investors to own properties in Hong Kong with the legislative proposal for streamlining

the extension of lease term for non-renewable land leases. The influx of incoming tourists, talents and professionals from mainland China and overseas definitely represent a silver lining for Hong Kong's

property market to recover and stabilize its growth gradually. We are seeing efforts from the Government in making the city more flexible and innovative, catering to the dynamic changes in the Hong Kong's property market.



## Sale and purchase

### Real estate ownership

#### Forms of real estate ownership

Almost all Hong Kong land is Government owned. There is no privately-owned freehold land in Hong Kong (except St. John's Cathedral). Individuals or corporations in Hong Kong are typically granted leasehold interests in the land.

Briefly speaking, most of the land leases in Hong Kong were granted pre-1997 before the return of sovereignty to the PRC and will expire from June 2025 onwards to 30 June 2047. In light of the vast number of expiring land leases, the Government has introduced legislative proposal for streamlining the procedures for extension of land leases expiring from 2025 by introducing a bill into the Legislative Council by end of 2023. The streamlined process will entail the gazettal of notices before the expiry of lease terms only for those land leases that will not be extended. All leases not published in the Gazette will be extended for 50 years without premium payment but subject to payment of annual Government rent.

The principal legal interests in land include:

- Legal charge over land, i.e. mortgage interest;
- Equitable interest in the form of being the beneficiary of a trust, whether such a trust was intentionally created by a settlor, or arises by operation of the law in the form of a resulting or constructive trust; and
- Easements.

Generally, there are no legal restrictions as to who can own Hong Kong property.

#### Major property legislations

The Conveyancing and Property Ordinance (Cap. 219) (CPO) which regulates the ownership, proof of title, transfer, and mortgaging of properties in Hong Kong is the main legislation. Apart from the above, other governing legislation include:

- The Land Registration Ordinance (Cap. 128) which regulates the documents registration system in Hong Kong;

- The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) which regulates the relationship between lessors and lessees;
- The Government Leases Ordinance (Cap. 40) which regulates the regime of leasing land from the Hong Kong government;
- The Residential Properties (First-hand Sales) Ordinance (Cap. 621) which regulates and imposes requirements on the practices and arrangements relating to sale of first-hand residential properties in Hong Kong; and
- The Stamp Duty Ordinance (Cap. 117) which governs the stamp duty payable on, inter alia, transfer of properties in Hong Kong.

#### Transfer of real estate ownership

After preliminary negotiations occur and both parties settle on a price, a 'provisional agreement', which is legally binding between the purchaser and vendor, is drafted and entered into. It must be complied with and, if not replaced within the stipulated time (typically 14 days after the signing of the provisional agreement, to be extended by mutual agreement by the parties) by a formal sale and purchase agreement, may be relied on to govern the rest of the transaction or to sue for compensation for breach of contract. An initial deposit is usually paid on signing of the provisional agreement.

Such a provisional agreement usually contains the following terms:

- Address of the property;
- Price of the property;
- Details of the parties;
- Amount of the initial deposit (industry practice being 1% to 5%) to be paid on the signing of the provisional agreement;
- Amount of the further deposit (industry practice being 10% inclusive of the initial deposit) to be paid on the signing of the formal sale and purchase agreement;
- When the formal sale and purchase agreement is to be signed;

- The completion date (on which the vendor disposes of the legal title of property to the purchaser);
- Stipulating that the balance price is to be paid by the purchaser of the property by the completion date;
- The condition and/or occupancy status subject to which the premises is to be sold to the purchaser;
- The apportionment of legal expenses and stamp duty between the parties;
- The legal representation of the purchaser and the vendor;
- The amount of commission payable to the estate agent by the purchaser and/or vendor; and
- Liability for breach of agreement.

The vendor's solicitors will then draft a formal sale and purchase agreement based on the basic terms of the provisional agreement supplemented with more elaborated provisions on title of the property and other obligations and responsibilities of the parties whether before or after completion. Once both parties agree to the form and content, it will be executed and submitted for stamping at the Stamp Office and thereafter registered at the Land Registry.

On the date of completion, the purchaser will hand over the balance of the purchase price in exchange for a duly executed document of transfer (otherwise known as deed of assignment). All title deeds and means of access to the property (e.g. keys) are delivered to the purchaser, unless the property is bought via a mortgage in which case the title deeds will be furnished to the purchaser's mortgagee for retention until the mortgage is discharged in the future.

The assignment will also be stamped and registered at the Land Registry.

There is no prescribed form of transfer in Hong Kong. The typical legal document involves a provisional sale and purchase agreement, a formal sale and purchase agreement and a deed of assignment which must all be in writing,

duly signed and attested, stamped (save and except that a provisional sale and purchase agreement needs not be stamped if it is superseded by a formal sale and purchase agreement executed within 14 days from the date of the provisional agreement) and registered at the Land Registry.

#### Title registration

Title to real estate in Hong Kong is by a system of deeds registration (as opposed to title registration). This means that all instruments affecting real estate are registered with the Land Registry. Together these instruments make up the title. There is no single document of title, and electronic conveyancing is not available.

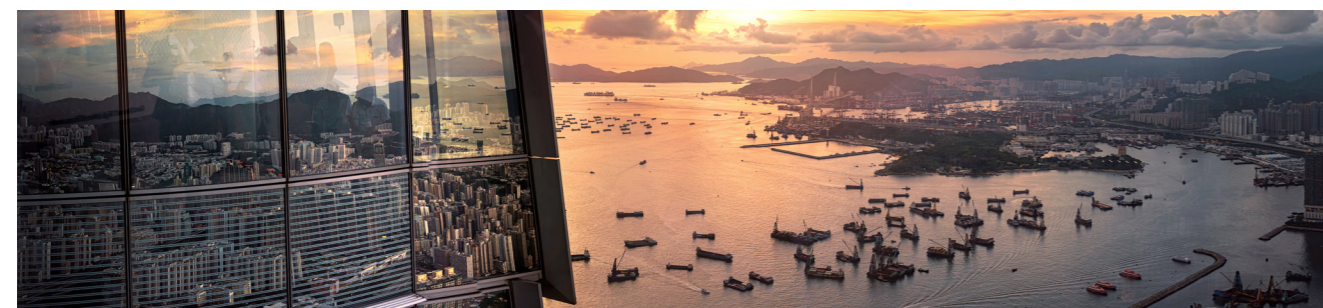
The Land Register is the public register of title. It shows the ownership particulars of each property and any encumbrances or instruments affecting the property registered against the property such as legal charges, releases, agreements for sale and purchase, and court orders.

The Land Register is managed by the Land Registry. The Land Register can be accessed online at: <https://www1.iris.gov.hk/eservices/common/selectuser.jsp>

The following documents are registrable in the Land Registry:

- Conveyances (deeds of assignment);
- Legal charges;
- Releases;
- Agreements for sale and purchase;
- Court orders affecting land interests;
- Leases; and
- Other instruments in writing affecting land interests.

If a document contains confidential information, the parties may choose to register a memorandum of the document. The memorandum will include only the details of the matters that need to be registered to protect priority without disclosing the confidential information.



	Asset transfers	Share transfers
<b>Pros</b>	It is relatively straightforward and inexpensive in terms of legal costs.	Stamp duty is payable at a lower rate on shares (at 0.2%) than it is on asset transfer (Please refer to Taxes page 19).
<b>Cons</b>	The transfer of residential and non-residential property can be subject to AVD at up to 4.25% (Please refer to Taxes page 19).	<ul style="list-style-type: none"> <li>• Investors may also need to buy all the liabilities of the company and legal and financial due diligence check is needed;</li> <li>• Relatively difficult in financing the acquisition of the shares in the company;</li> <li>• Ongoing obligations under the Companies Ordinance (Cap. 622) must be complied with;</li> <li>• More extensive due diligence (legal, financial, property etc.) is required; and</li> <li>• Not all properties are owned in corporate structures, so the pool of available assets may be reduced</li> </ul>

#### Asset vs share transfer for commercial real estate

Asset transfers involve the transfer ownership of property itself. On the other hand, share transfers involve buying and selling of shares in a company (either incorporated in Hong Kong or offshore, or in structures involving both) that holds properties.

Transfers are commonly affected by way of share transfer as well as asset transfer in Hong Kong.

Share transfers are becoming more common as the stamp duty payable on the sale and purchase of shares is much lower than the stamp duty applicable in the case of asset transfer (Please refer to Taxes page 19). After the announcement of Policy Address announced on 25 October 2023, the Government has implemented legislative amendments to the Stamp Duty Ordinance such that with effect from 17 November 2023, the stamp duty rate for share transfer has been reduced from 0.26% to 0.2% of the higher of the consideration and the value of the share.

#### Considerations for foreign ownership

There are no specific requirements or restrictions on non-resident entities and individuals to own or lease real estate (including shares in companies holding properties) in Hong Kong.

Foreigners are allowed to directly purchase the real estate assets in the private market. For the purchase of property before 28 February 2024, non-Hong Kong permanent residents are subject to payments of a higher rate of ad valorem stamp duty (AVD) and buyer's stamp duty (BSD).

After the delivery by Hong Kong Financial Secretary of the 2024–2025 Budget on 28 February 2024, the Government cancels all 'property cooling measures' with immediate effect such that the overall stamp duty payable by non-Hong Kong permanent residents will be at Scale 2 of the AVD rates which is at par with first-time residential home buyers who are Hong Kong permanent residents.

According to the Basic Law, no foreign exchange control policies shall be applied in Hong Kong.

#### Sale and purchase process

##### Typical process

The following is a summary of the legal due diligence process that is undertaken when acquiring commercial real estate in Hong Kong:

- The purchaser's solicitors will normally conduct legal due diligence in respect of the property;
- The purchaser's solicitors and vendor's solicitors will negotiate and agree on the terms of the formal sale and purchase agreement for signing by the parties;
- The purchaser's solicitors will conduct a land search at the Land Registry and may obtain copies of the relevant title deeds for inspection and for obtaining preliminary information about the property. Search fee at the Land Registry is nominal and results can be obtained instantly. They will usually then request the vendor's solicitors to deliver the title deeds (usually original and certified

copies) for inspection under an undertaking to return those title deeds upon demand and to keep them in safe custody. The purchaser's solicitors will cross check those title deeds against those registered in the Land Registry;

- The purchaser's solicitors would also request additional information to be provided by the vendor's solicitors e.g. whether there are any unregistrable and/or unregistered documents affecting the property such as tenancy agreements or trust arrangements;
- If there are any defects in the title, such as missing documents, unregistered documents, outstanding stamp duty or other payments, improper mode of execution of the predecessors-in-title of the property, suspected unauthorized building works or other encumbrances, the purchaser's solicitors may raise requisitions within a mutually agreed timeframe. The vendor's solicitors will need to respond to, or help rectify, those deficiencies in order to prove a good title. If requisitions are unsatisfactorily answered or the defect(s) on title is/are not remedied, the purchaser will usually reserve a right to annul the transaction in the formal sale and purchase agreement;
- The purchaser may also engage a surveyor to inspect the physical condition of the property, identify whether there are any unauthorized building works, ensure that all of the fixtures and equipment expressed to be sold are in fact existing and functional, and obtain an opinion on the price of the property;
- The purchaser's solicitors may also write to the management company of the property to check for any outstanding management fees, for underlying liability that the vendor shall be responsible for, breach of terms of the deed of mutual covenants or management agreement by the vendor;
- The purchaser's solicitors may also write to relevant Government authorities for any outstanding payment of Government rent and rates payable by the vendor and/or the status of rectification or investigation regarding any unauthorized building works;
- Prior to completion, the purchaser may inspect the property to see whether the property is subject to unregistrable interests such as any tenants, licensees or occupiers occupying in or the property and/or to check the physical condition of the property and the fixtures, fittings and furniture;
- If the property transaction is to be affected via a share sale, then corporate, financial and tax due diligence is also necessary;

- As the title of each property varies, there is no market standard form of reporting or standard form of enquiries raised by purchasers; and
- Vendors will also customarily be asked to represent and warrant in relation to the legal title and conditions of the property in the provisional and formal sale and purchase agreement.

#### Other notes

- Legal due diligence may not make apparent all unauthorized building works, which may render the title not being good and marketable.
- It is also important to pay attention to unregistrable interests such as tenancies, uncrystallized floating charges and other interests arising from resulting or constructive trusts that may not be found from the land search records obtained from the Land Registry, which might not have been disclosed by the vendor.
- Statutory Outline Zoning Plans set out the designated uses of land. Some uses need permission from the Town Planning Board before building works can commence.
- Building works (other than the minor works subject to the simplified requirements under the Minor Works Control System of the Buildings Department) must not be commenced without approval of the building plan and consent for the commencement of building works being obtained from the Building Authority, especially where the building works involve structural alteration of the property.
- A new building must not be occupied (except by no more than two caretakers) unless an occupation permit or temporary occupation permit has been issued by the Building Authority and the developer for the new building shall obtain a certificate of compliance or consent to assign from the Lands Department before the property can be validly assigned to the purchaser.

### Sale and purchase contract

#### General components of a sale and purchase agreement (SPA)

There are no formal requirements regarding the content and structure of a sale and purchase contract save and except that certain specific information is required to be included in the agreement under the Stamp Duty Ordinance (Cap.117) such as the name, address, identification of the parties, the property location, whether the property is residential or non-residential property, etc.

Typically, there are two types of SPAs in a transaction: preliminary agreements and formal agreements.

#### Preliminary agreements

Preliminary agreements are not required but are commonly used in Hong Kong. They are also known as provisional agreements. Most often, preliminary agreements are prepared by the real estate agent, who is often a party to the preliminary agreement. This gives the real estate agent a direct contractual right under which they can recover commission.

The preliminary agreement usually constitutes a binding contract if both seller and buyer sign it and it contains the following essential elements:

- Parties;
- Property;
- Price; and
- Completion date.

It is common to include terms in relation to:

- Timing for payment of the initial deposit and the further deposit and the amount of each deposit payable (e.g., typically 5% for initial deposit and 5% for further deposit, subject to the parties' negotiation);
- Timing for payment of the balance of the purchase price;
- The time of signing the formal agreement;
- Payment of the costs, stamp duty and agent's commission; and
- Express provision for remedies in the event of default.

#### Formal agreements

The formal SPA is usually entered into within 14 days of the signing of the preliminary agreement. This provides stamp duty timing benefits as the preliminary agreement will cease to be chargeable with any stamp duty provided that the formal agreement is executed within 14 days. If the parties cannot agree on the terms of the formal agreement and the preliminary agreement is binding, the parties may decide not to enter into a formal agreement.

In addition to the above provisions, the following provisions are usually included in a real estate contract:

- **Condition of property.** Does the buyer take the property on an as-is basis or to some other standard?
- **Possession.** Is vacant possession to be given on completion or is the property sold subject to tenancies?

- **Capacity of the seller.** Is the seller assigned as beneficial owner, trustee or mortgagee? If the seller is a foreign corporation, the agreement may incorporate a term to require the seller to provide the relevant incorporation and constitutional documents together with a legal opinion issued by a practicing law firm of the place of incorporation of the foreign corporation for proving its capacity and execution of the agreement and assignment.
- **Apportionment of rents and outgoings.** Rents and other outgoings are apportioned between the seller and buyer. Usually, the seller pays the outgoings of the property up to and inclusive of the actual day of completion and thereafter such payment shall be made by the purchaser.
- **Easements, rights and liabilities.** The seller usually warrants that the property is not adversely affected by encumbrances which the seller is aware of or could have ascertained on reasonable enquiry, other than:
  - Those disclosed in the agreement; or
  - Those which the buyer is aware of or could have ascertained through reasonable inspection of the property.
- **Requisitions.** The buyer has a right to raise requisitions on title within a specified period.
- **Documents of title.** The original and/or certified copy of the documents of title required for the purpose of giving title to the property will be delivered to the buyer.
- **Good title.** The seller must give and prove title to the property in accordance with section 13A and section 13 of the CPO.
- **Default.**
  - If the buyer defaults, the deposit will be forfeited, and the seller can rescind the agreement and resell the property. Any deficiency arising from such resale and expenses relating to it will be paid by the buyer;
  - If the seller defaults, the buyer can enforce specific performance of the agreement or claim for damages and demand for a return of all deposits paid. The buyer may be able to recover any deficiency on buying another property and expenses relating to it from the seller.
- **Proper assurance.** On completion, the seller must execute an assignment for transferring the legal title of the property to the buyer.

As for a typical share sale agreement, the above provisions apply except there is no need for a proper assurance clause as there will be no change in legal ownership of the property thus no separate assignment of the property is required. Furthermore, additional clauses dealing with the corporate aspects of the transaction are required.

### Transfer of occupational leases and income

If the property transaction is affected by a share transfer and not an asset transfer, there is no change of registered owner holding the property and the benefit of any occupational leases and income remains the same.

If the property is sold as an asset transfer subject to a lease, the sale and purchase agreement normally will specify that the purchaser will assume all the rights, obligations and liabilities under the subsisting lease and the purchaser is normally required to sign an indemnity to the vendor to indemnify the vendor for any claims made by the tenant in respect of the purchaser's failure to return the rental deposit to the tenant. A novation agreement should also be entered into to replace the purchaser as the new lessor who shall continue to receive the rental income after completion of the purchase of the property.

### Common rights, interests and burdens

Property interests include:

- Regular leaseholds;
- Licenses;
- Legal charge over land i.e. mortgage interest;
- Equitable interest in the form of being the beneficiary of a trust, whether such a trust was intentionally created by a settlor, or arises by operation of the law in the form of a resulting or constructive trust; and
- Easements.

These rights are created by registering the relevant instruments at the Land Registry. Such registration operates as deemed notice to any third-party. Unregistrable interests (i.e. interests that are simply not capable of being registered), such as trusts that arise by operation of law or leases for a term not exceeding three years, are protected by common law rules.

### Typical representations and warranties

There are no legal or legislative requirements for a seller to give a buyer any warranties. However, a buyer will often require a seller to give warranties in relation to the following matters:

- That the seller has not received any notices adverse to the seller's interest in the property;
- No third-party has any right or interest whatsoever, whether legal or equitable, in the property;

- That the property is not adversely affected by any encumbrances of which the seller is aware or which the seller could have ascertained on reasonable inquiry other than those disclosed in the agreement, or which the buyer is aware of or could have ascertained on reasonable inspection of the property;
- Tenancies, for example, that there is no change in the terms and conditions of the tenancy; that the rental deposit (less any lawful deduction according to the terms of the tenancy agreement) shall be transferred to the purchaser upon completion, etc.;
- That the property is not subject to any litigation;
- Corporate matters (for share sale);
- Seller's capacity; and
- Other matters arising out of the due diligence enquiries.

Whether or not the seller gives the warranties will depend on the bargaining power of the parties and the commercial imperatives behind the deal. Warranties can be limited by disclosure of specific matters and imposing time limits.

### Remedies against misrepresentations

The seller is liable to the buyer when he makes an untrue statement of fact, and the buyer relies on the untrue statement and enters into the sale and purchase and suffers a loss as a result of such reliance.

### Costs relating to sale and purchase of real estate

#### Tax

Under the Stamp Duty Ordinance (Cap.117) (SDO) the seller and/or the buyer may be liable for the payment of AVD, and for purchase before 28 February 2024, BSD and SSD, for acquisition and disposition of residential property. If stamp duty is paid on the agreement for sale and purchase, HK\$100 stamp duty is payable on the assignment.

If a purchaser acquires a property (whether it is non-residential or residential property) via a share transfer of a limited company, then the current stamp duty payable on each bought and sold note will be 0.1% (totaling 0.2%) of the higher of the purchase price or the net asset value of the shares as evidenced by the audited financial statement of the company. HK\$5 is also payable on the instrument of transfer.



Key exemptions:

Intragroup transfers between associated companies (defined as one having 90% or more beneficial ownership of issued share capital of another, or companies under common ownership by a third holding company of 90% or more of the respective issued share capital of each) of Hong Kong shares and Hong Kong properties may be exempt from stamp duty.

For specific tax rates, please refer to Taxes page 19.

### Broker/estate agent's fees

The broker/estate agent arranges for listing and viewing of the property. He/she also helps the seller and buyer to negotiate key terms of the sale and purchase. The broker/estate agent provides a standard provisional agreement (which may be reviewed and commented by lawyer) to be signed by the parties to record such key terms. He/she also assists buyers in matters like passing of keys and arranging for inspection of the property if vacant possession must be delivered on completion. Broker / estate agents' fees are usually charged at a usual rate of 1% of the purchase price but this is open to negotiation. Typically, the fees are payable by both the seller and the buyer.

### Legal fees

Lawyers are appointed to negotiate, prepare and execute the documents necessary for the conveyance of property (e.g. provisional and/or formal sale and purchase agreement,

assignment, and for share transfer, contract notes, instrument of transfer and the necessary board of directors' resolutions).

The buyer's lawyer will conduct title review and investigation of the property and raise requisitions to the title of the property, and the seller's lawyer will answer title requisitions raised by the buyer's lawyer (if any), and arrange to remedy any title defect(s).

For share transfer, the legal, corporate and financial due diligence will be carried out by the buyer's lawyers (who may be assisted by the buyer's financial/tax advisors in reviewing the financial and tax documents), and the seller's lawyers will answer any requisitions raised by the buyer's lawyers relating arising out of the due diligence exercise.

The seller's lawyers are also typically involved in discharging the existing mortgage (if any) for the seller, while the buyer's lawyers would help the buyer with the mortgage and other legal documentation for the financing of the purchase.

The buyer's lawyers will typically arrange stamping and registration of the relevant instruments.

There is no fixed scale of legal fees, and the parties will negotiate the applicable fees with their respective lawyers.

### Other fees

Stamp duty is applicable (see more in Taxes page 19).

# Investment vehicles

## Types of investment vehicles

### Legal forms of typical investment vehicles

There are four types of investment entities:

- Companies;
- Branches of foreign corporations;
- Partnerships; and

- Trusts\*.

\*Note: Unit trusts authorized by the Securities and Futures Commission under statutory requirements may be exempt from tax liabilities.

## Setting up an investment vehicle

### Minimum capital requirements

There is no minimum capital requirement in Hong Kong regarding the four investment vehicles.

	Costs
<b>Companies</b>	<p>Application fee for incorporation:</p> <p><b>Companies with share capital</b></p> <ul style="list-style-type: none"> <li>• HK\$1,720 (if delivered in hard copy form)</li> <li>• HK\$1,545 (if delivered in electronic form)</li> </ul> <p><b>Companies limited by guarantee</b></p> <ul style="list-style-type: none"> <li>• Members ≤25 – HK\$170 (if delivered in hard copy form) or HK\$155 (if delivered in electronic form)</li> <li>• Members &gt;25 but &lt;100 – HK\$340 (if delivered in hard copy form) or HK\$305 (if delivered in electronic form)</li> <li>• Members ≥100 – HK\$340 + HK\$20 per every additional 50 members (capped at a maximum fee of HK\$1,025) (if delivered in hard copy form), or HK\$305 + HK\$18 per every additional 50 members (capped at a maximum fee of HK\$925) (if delivered in electronic form)</li> </ul> <p>A business registration fee and levy are also payable to the Companies Registry. The business registration fee and levy are HK\$2,000 and HK\$250 for a one-year certificate, respectively, and HK\$5,200 and HK\$450 for a three-year certificate, respectively.</p>
<b>Branches of foreign corporations</b>	<p>To register a non-Hong Kong company, the following are required:</p> <ul style="list-style-type: none"> <li>• HK\$1,720 (if delivered in hard copy form) or HK\$1,545 (if delivered in electronic form) for the issue of a Certificate of Registration of Non-Hong Kong Company, and</li> <li>• HK\$295 (if delivered in hard copy form) or HK\$265 (if delivered in electronic form) lodgment fee (non-refundable).</li> </ul> <p>If the non-Hong Kong company has yet to register its business under the Business Registration Ordinance, the prescribed business registration fee and levy must also be paid.</p>
<b>Partnerships</b>	<p>Limited partnerships must be registered at the Companies Registry, otherwise all partners will have unlimited liability as the partnership will be deemed to be a general partnership. The registration fee is HK\$340 and an additional fee of HK\$8 for every HK\$1,000 or part thereof contributed by any limited partner.</p> <p>Furthermore, additional costs will be involved in engaging lawyers in preparing the partnership agreement.</p>
<b>Trusts</b>	<p>For authorized unit trusts, an application fee must be paid to the Securities and Futures Commission.</p> <p>The application fees involved are:</p> <ul style="list-style-type: none"> <li>• HK\$20,000 for a single fund,</li> <li>• HK\$40,000 for an umbrella fund, and</li> <li>• HK\$5,000 per sub-fund.</li> </ul> <p>Once authorization is granted, an authorization fee and the first annual fee are payable. The authorization fee and first annual fee are HK\$10,000 and HK\$6,000 for a single fund, HK\$20,000 and HK\$7,500 for an umbrella fund, HK\$2,500 and HK\$4,000 per sub-fund respectively.</p> <p>Furthermore, additional costs will be involved in engaging lawyers in preparing the trust deed.</p>

	Typical time frame for setting up the vehicle
<b>Companies</b>	To facilitate the incorporation of a company, one must submit an incorporation form, the articles of association of the company and the incorporation fee. The certificate of incorporation and business registration certificate will generally be issued within one hour after submission of the application at the e-Registry.
<b>Branches of foreign corporations</b>	The certificate of registration will be issued within 10 working days after submission of all registration documents and payment of the registration fees to the Companies Registry.
<b>Partnerships</b>	Once the partnership agreement is executed, the partnership is operative. For limited partnerships, the certificate of registration will be issued around five working days after submission of all registration documents and payment of registration fees to the Companies Registry.
<b>Trusts</b>	A unit trust is operative upon authorization from the Securities and Futures Commission, depositing of the trust property, collection of investor subscriptions and execution of the trust deed. A discretionary trust is operative upon execution of the trust deed.

	Governance and taxation
<b>Companies</b>	<p>The incorporation of a private company in Hong Kong requires at least:</p> <ul style="list-style-type: none"> <li>• One shareholder (but no more than 50 shareholders, and they need not be Hong Kong residents);</li> <li>• One director (can be either an individual or a company and need not be a Hong Kong resident);</li> <li>• One company secretary (must be a Hong Kong resident); and</li> <li>• One auditor.</li> </ul> <p>Each Hong Kong company must have a registered office in Hong Kong to which all official communications and notices, including service of process, may be addressed. The address of the registered office must be stated in the Incorporation Form filed at the Companies Registry.</p> <p>Companies must also hold an annual general meeting within nine months (for a private company or a company limited by guarantee) or six months (for an unlisted public company) after the end of their accounting reference period.</p>
<b>Branches of foreign corporations</b>	Non-Hong Kong companies must appoint an authorized representative, who will be responsible for accepting service of proceedings and notices in Hong Kong. This authorized representative must be either a resident in Hong Kong or a firm of solicitors or certified public accountants. Non-Hong Kong companies are required to continue having an authorized representative in place for at least 11 months from the date of cessation of business in Hong Kong.
<b>Partnerships</b>	Governance requirements for partnerships are determined by the partnership agreement, the Partnership Ordinance and the Limited Partnerships Ordinance.
<b>Trusts</b>	Governance requirements for trusts are determined by the trust deed. For unit trusts, there are additional requirements under the Code on Unit Trusts and Mutual Funds, which require the appointment of a custodian and management company.

	Tax
<b>Companies</b>	Companies or branches of foreign corporation only have to pay tax for profits arising or derived from Hong Kong.
<b>Branches of foreign corporations</b>	Companies or branches of foreign corporation only have to pay tax for profits arising or derived from Hong Kong.
<b>Partnerships</b>	A partnership is treated as a separate legal person for profits tax and are assessed according to the Inland Revenue Ordinance. The assessed profits will be apportioned on the basis of the agreed profit-sharing ratio and taxed accordingly.
<b>Trusts</b>	Trusts are subject to profits tax, with the exception of unit trusts authorised by the Securities and Futures Commission which may be exempt from tax liabilities.

	Compliance costs
<b>Companies</b>	Hong Kong companies must file an annual return with the Companies Registry every year. A private company must file an annual return within 42 days after the anniversary of the date of its incorporation. A public company or company limited by guarantee must file an annual return within 42 days after the date of the company's Annual General Meeting (if the financial year of a public company begins before 3 March 2014) or 42 days after the return date (if the financial year of a public company begins on or after 3 March 2014). The return date would be six months (for a public company) or nine months (for a company limited by guarantee) after the end of the company's accounting reference period. The filing fee for the annual return is HK\$105 for a private company, HK\$140 for a public company and HK\$105 for a company limited by guarantee. Public companies are subject to the additional requirement to submit their accounts with their annual return. All companies also have to pay for engaging a company secretary, having a registered office, holding an annual general meeting and keeping accounts.
<b>Branches of foreign corporations</b>	Non-Hong Kong companies must also file an annual return with the Companies Registry every year. A non-Hong Kong company must file an annual return within 42 days after the anniversary of the date of its incorporation. The filing fee for the annual return is HK\$180 for a non-Hong Kong company.
<b>Partnerships</b>	Limited partnerships must also file any changes to their registered particulars with the Companies Registry within seven days. It costs HK\$26 to register a statement of changes to the particulars of a limited partnership. Additional costs will be payable for changes in the sums contributed by any (new) limited partner (HK\$8 for every HK\$1,000 or part thereof contributed by any (new) limited partner).
<b>Trusts</b>	Managing a trust involves annual administration costs, which may be payable to the management company depending on the type of trust. Unit trusts are subject to an annual fee payable to the Securities and Futures Commission. A trust usually incurs annual administration costs, the amount of which will depend on the nature and activities of the trust. In the case of unit trusts, annual management fees and any performance related fees may also need to be paid to the management company. Unit trusts authorized by the Securities and Futures Commission must also pay an annual fee to the Commission. The amount of this annual fee is HK\$6,000 for a single fund; HK\$7,500 for an umbrella fund and HK\$4,500 per sub-fund.

### Client spotlight

#### Foreign investors

Share transfers of companies are popular with foreign investors because the stamp duty payable is lower.

#### Funds

Trusts are typically used by fund clients because they can invest in a wide range of properties and fund managers can manage the fund for investors. However, investors must pay management charges and fees; may have less control over underlying assets owned by the fund; and may not be able to cash out of the fund at a time of their choice.

#### Family offices / ultra high net worth individuals (UHNWIs):

Both asset and share transfers of companies are typically used by family office and UHNWI clients. For share transfers, stamp duty is payable at a lower rate compared with asset transfers.

# Real estate financing

## Common ways of financing commercial real estate acquisitions

The main sources of financing property acquisitions are:

- Borrowing from banks; and
- Equity raisings.

The amount of loans granted by banks in Hong Kong to borrowers to finance the property acquisition mainly based on the loan-to-value (LTV) ratio which varies depending on the nature of the property to be acquired (whether residential, commercial or industrial), the borrower's use of the property (whether for self-use or non-self-use), the borrower's financing profile (whether the borrower has borrowed or guaranteed other outstanding mortgages). With effect from 28 February 2024, the maximum LTV ratio for acquiring a self-use residential property in Hong Kong can be summarized in the table below, assuming that the borrower has not borrowed or guaranteed other loans:

Property value	LTV ratio
Not exceeding HK\$30 million	70%
More than HK\$30 million and not exceeding HK\$35 million	60–70% (capped at HK\$21 million)
More than HK\$35 million	60%

A lower maximum LTV ratio at 60% will apply for non-self use or company held residential properties and a maximum LTV ratio at 70% will apply for commercial and industrial properties, in both case, irrespective of the property value or consideration.

Following the US Federal Reserve's anticipation that the US interest rate increase cycle might be approaching an end, starting from 28 February 2024, the Hong Kong Monetary Authority has also suspended the interest rate stress test requirement for mortgages.

Furthermore, pursuant to the Mortgage Insurance Programme (MIP) launched by The Hong Kong Mortgage Corporation Limited, banks can provide mortgage loans on owner-occupied residential properties with higher LTV ratio of up to 90% with the mortgage insurance offered by the HKMC Insurance Limited, provided that certain eligibility criteria are met, e.g., the mortgagors not holding other residential properties in Hong Kong and are regular salaried persons, etc.

For subsidized sale flats, the Hong Kong Housing Authority has, starting from 1 March 2024, relaxed the arrangement on mortgage default guarantee by extending the current maximum mortgage default guarantee period of second hand market from 30 years (for Home Ownership Scheme and Green Form Subsidized Home Ownership Scheme) or 25 years (for Tenant Purchase Scheme) to 50 years. With the extended guarantee period, purchasers of these flats will therefore have mortgage loans over a longer period of tenor.

## Typical security created

Typical security interests include:

- Legal charge over the real property;
- Equitable mortgage over the real property (common for 'off-the-plan' sales);
- Debenture incorporating a fixed and floating charge over all assets of the borrower or the company holding the legal title of the property. These include assignment of leases, sale contracts, rental and sale proceeds, a charge over the rental account and any reserve account, and an assignment of insurances; and
- A charge over the shares of the borrower or the company holding the legal title to the property.

Most security documents must be filed with the Hong Kong Companies Registry within one month of execution, otherwise, it is void against all creditors and any future liquidator. The money secured under the charge becomes immediately repayable at the lender's option.



### Restrictions on foreign lenders

There are no restrictions on granting security over real estate to foreign lenders.

### Costs relating to the granting and enforcement of security

In Hong Kong, stamp duty is not payable on loan agreements, mortgages or security documents unless either:

- The mortgage is not made in favour of a recognized financial institution and gives an irrevocable power of attorney to the mortgagee with immediate and automatic right to sell the property; or
- It is a legal mortgage of Hong Kong shares when stamp duty of HK\$5 is payable on each instrument of transfer.

Registration fee at HK\$230/ HK\$450 (depending on the amount or value of the consideration or value of the property or share or interest affected) for registration of the charge instrument will be payable.

Note that the law does not impose a requirement on the time limit for the registration of an instrument, but late registration may lead to a loss of registration priority. If an instrument is duly presented for registration within one month after the date of its execution, it may retain a priority back to that date of execution. If it is registered outside the one-month period, the priority will be counted from the actual date of its due presentation for registration.



## Commercial leases

### Lease agreements

#### Types of leasing arrangements

The principal legislation which regulates leases of premises in Hong Kong, whether business or residential, is the Landlord and Tenant (Consolidation) Ordinance (Chapter 7).

Other relevant legislation can be found in the CPO and the Land Registration Ordinance (Chapter 128).

The law generally recognizes contractual agreements (whether oral or written) under which occupation and use of real estate is let for a certain period of time.

There are two types of arrangements:

- A lease; and
- A tenancy agreement.

A lease for a term exceeding three years must be executed as a deed in order to create a legal estate in land. A tenancy agreement for a term not exceeding three years takes effect in possession and does not need to be in writing, although writing is preferable.

#### Common terms in commercial leases

There are no prescribed form of commercial leases and parties are free to negotiate and agree on the terms of commercial leases. In practice, rent for commercial premises is usually divided into stages throughout the lease term whereby the rent payable would be a fixed rent which will be adjustable during the term of the lease such that the rent may increase by a certain percentage in stages, making reference to the turnover or the prevailing market rent, depending on the types of leases. There is, in general, no restrictions over the level of rent that could be charged.

In terms of apportioning costs, the lessor is generally liable for structural repairs and the capital and non-recurring costs whereas the lessee is obliged to keep the property in good and tenantable condition, usually fair wear and tear excepted, and shall bear the non-capital and recurring costs of the premises.

### Length of lease

Most commercial leases for office use in Hong Kong are for a term of two or three years. Terms for office use over two or three years are negotiable depending on the parties' bargaining power and/or market conditions. Commercial leases for retail use may tend to be longer than office use.

While most commercial leases contain an option to renew prior to the expiry of the lease term, it is noteworthy that an option to renew has to be expressed and clearly delineated in leases for it to be effective as illustrated in the case of *Tse Siu Hoi v Lee Dick Gold and Jewellery Limited* LDPE 1132/2014. It is desirable to specify by clear terms how the option should be exercised, and how the new rental is to be determined.

An option to renew is a registrable interest in the Land Registry and therefore a lease containing an option to renew extending the lease term to over 3 years is often registered in the Land Registry to safeguard the interest of the lessee.

A party, or either party, may elect to terminate the commercial lease according to its terms and conditions. Usually, the landlord will reserve a right to terminate and re-enter the premises upon the lessee breaching a condition or a covenant and having failed to remedy such breach within a stipulated period of time.

#### Regulation of leases

There are no specific regulations or laws which only apply to particular categories of real estate. All residential, commercial and industrial letting are principally governed by the said Landlord and Tenant (Consolidation) Ordinance (Chapter 7), the CPO, the Land Registration Ordinance (Chapter 128) and for aspects regarding the obligations and liabilities of landlords and tenants as occupiers of the premises towards third party, the Occupiers' Liability Ordinance (Chapter 314).

Note that the Hotel and Guesthouse Accommodation Ordinance (Chapter 349) provides for the regulation, control and safety of hotels.

## Managing leasing agreements

### Security of tenure

Under the Landlord and Tenant (Consolidation) Ordinance (Chapter 7), lessees do not have a right to continue to occupy the relevant real estate after the expiry of a commercial lease.

### Recovering real estate from a lessee

If there is a time limit provided in the lease for notifying the tenant for recovery of the premises from a lessee upon the expiration of lease term, the lessor needs to give oral or written notice within this period of time. If there is no such time limit, the lessor should give notice within a reasonable time before the expiration of the lease.

### Early termination by Landlord

Many leases include sale and redevelopment clauses which give the lessor a right to terminate the lease by giving a specified number of months' notice to terminate, if the lessor wants to sell or redevelop the building or, when the lessor is a corporation, if there is a change in the controlling shareholder of the landlord (e.g., in the case of transfer of shares of the lessor). Typically, the lessor has to give at least six months' notice in writing to the lessee. The lease will terminate upon the expiry of the notice.

A lease can be terminated prior to the date originally agreed if the landlord exercises his right of forfeiture. The lessor must comply with the notice provisions of section 58 of the CPO (relief from forfeiture) unless the forfeiture arises because of non-payment of rent or insolvency.

If the lessee fails to remedy a remediable breach and to make reasonable monetary compensation to the landlord's satisfaction within a reasonable time of service of the notice, the lessor can proceed to enforce the forfeiture.

The lessor can exercise the right of forfeiture either by physically re-entering the property, or by commencing legal proceedings for possession. If the lessor successfully obtains a judgment against the tenant, he/she will be able to apply to the Lands Tribunal or the appropriate Court for a Writ of Possession. Once the Writ of Possession is issued, the court bailiff will recover the possession of the property on the lessor's behalf.

### Termination by third-party

Authorities may invoke the Lands Resumption Ordinance (Chapter 124) and/or the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Chapter

276) to resume land, including leased property, compulsorily. If such Ordinances are invoked, compensation will be offered to the lessees according to the market value of their interest in the property.

For redevelopment purposes, one who meets both the applicable ownership threshold and other statutory requirements can apply to the Lands Tribunal under Land (Compulsory Sale for Redevelopment) Ordinance (Chapter 545) for compulsory sale of all the undivided shares in the lot. If the application is successful, the Lands Tribunal will make an order to sell the remaining undivided shares in the lot, and the lessee will be offered compensation by the Lands Tribunal.

With the granting of such order for sale, notwithstanding the terms of any lease or the provisions of the Landlord and Tenant (Consolidation) Ordinance (Chapter 7), all tenancies are terminated on the date on which the purchaser of the lot became owner of lot; and the affected tenants are required to deliver up possession of those properties immediately upon the expiration of six months immediately following the date above. It should be noted that if an order for sale is made, the Lands Tribunal may order compensation to be paid to a tenant (including any sub-tenant).

### Security for protecting against failure by lessee to meet obligations

Parties enjoy the freedom of contract. The lessor may require a guarantee from the lessee's bank and/or a deposit as a security for the due performance and observance of the terms and covenants in the tenancy agreement. In addition, the lessor may require the lessee to purchase comprehensive insurance regarding third-party liability against any person or property in the premises.

### Transfer of lease

The landlord does not usually allow the tenant to do any of the following:

- Assign or sublet the lease;
- Part with or share possession of the premises with others, including with companies in the same group; and
- Change control of the tenant (if the tenant is a corporation).

A breach of any of the above will give the landlord a right of re-entry and the right to forfeit the lease. It is possible to negotiate changes to these provisions. If the landlord claims damages against the tenant for the breach and the tenant defaults, the landlord may forfeit the deposit and claim against the guarantor (if any).

On the other hand, the Landlord may expressly provide for the right to assign all the rights and obligations of the lease to a third party in the lease and require the tenant to enter into a novation agreement or deed to record such transfer.

## Managing a leased real estate

### Restrictions on use

Lessees must abide by the user restrictions under the Government lease and any subsequent lease modifications. They are also restricted by the Occupation Permit for the building and the Deed of Mutual Covenant. Lessees must also abide by the laws and regulations relating to the permitted use of the premises, such as those in the Town Planning Ordinance and Outline Zoning Plans.

### Alterations

Leases typically limit the extent of or prohibit alterations or improvements of property. Structural repairs that involve alteration of the building's form and framework are usually not allowed. The lessor's consent should be sought when undertaking non-structural alterations.

## Rent

### Rent variation

In the majority of cases, leases set out a fixed amount of rent payable, or a mechanism to calculate the rent payable, for the entire duration of the lease term or at different stages of the lease term.

### Taxes for rental

Stamp duty is payable on the tenancy agreement or lease. The amount depends on the level of rent, the term of the lease and the length of the rent-free period granted (if any). Typically, both the lessor and lessee share the stamp duty payable equally.

## Costs for lessees other than rent

### Costs payable by lessees at start of lease

Upon execution of the lease, the lessee has to pay its half share of the stamp duty and registration fee (if applicable, i.e., for a lease exceeding 3 years or otherwise having an option to renew) payable. Typically, the lessee also needs to pay the fitting-out cost (if required by the term of the lease),

the deposit, and management charges and rental for the beginning month of the lease term in advance.

Term	Stamp Duty rate
Undefined or uncertain	0.25% of the yearly or average yearly rent
Does not exceed 1 year	0.25% of the total rent payable over the term of the tenancy agreement
Exceeds 1 year but not exceeding 3 years	0.5% of the yearly or average yearly rent
Exceeds 3 years	1% of the yearly or average yearly rent
Key money, construction fee etc. mentioned in the tenancy agreement	4.25% of the consideration if rent is also payable under the tenancy agreement. Otherwise, same duty as for a sale of immovable property
Duplicate or counterpart of the lease	HK\$5 each

### Maintenance and repairs

The maintenance and repair costs of the common areas are generally covered by the management charges. The burden to pay such management charges is open for negotiation between the parties.

For areas that are occupied by the lessees, the lessees are responsible for the maintenance and repair costs (unless for structural repair which is normally the obligation of the lessors).

### Utilities and telecommunications

Such services are usually subscribed by lessees directly with third-party suppliers.

### Insurance

Lessees typically pay a proportion of the premium for insuring the building. This amount is determined by the size of the premises occupied by the lessee compared to the total rentable space of the building. It is also typical for a lessor to require the lessee to purchase a comprehensive insurance for insuring the premises itself and provide evidence of premium payment at the request of the lessor.

# Taxes

## Tax on acquisitions

### Types of taxes

#### Ad Valorem Stamp Duty (AVD)

##### before 28 February 2024

Before 28 February 2024, for purchases on or after 5 November 2016, AVD at a flat rate of 15% of the purchase price, irrespective of the amount or value of consideration, would be applicable to all residential property transactions. But from 25 October 2023 onwards, the flat rate has been reduced by half to 7.5%.

##### Key exemptions:

- A Hong Kong permanent resident (HKPR) who is acting on his/her own behalf, and does not own any other residential property in Hong Kong at the time of acquisition will be subject to lower rates (AVD at Scale 2 rates, which varies according to the purchase consideration of the residential property or the market value, whichever is the higher);
- Nomination of, or transfer between, close relatives, irrespective of whether the transferee is a HKPR or is beneficial owner of another residential property in Hong Kong, will be subject to AVD lower rates (i.e., Scale 2 rates);
- Transfer of residential or non-residential property pursuant to a Court Order from a Hong Kong Court will be subject to AVD at lower rates (i.e., Scale 2 rates); and
- Intragroup transfers of property between associated companies may be exempt from AVD.

For purchase of more than one residential property under a single instrument executed on or after 12 April 2017, AVD at a flat rate of 15% of the purchase price or value of the property would be applicable. With effect from 25 October 2023, such rate is reduced to 7.5%.

For purchase of non-residential property, with effect from 26 November 2020, the AVD rate applicable for purchase of non-residential property from 26 November 2020 is at Scale 2 rates, but for any instruments for transferring non-residential properties executed before that date, the AVD

rates at Part 2 of Scale 1 ranging from 1.5% to 8.25% of the purchase price or property value were applicable.

##### Position on or after 28 February 2024

With effect from 28 February 2024, the flat rate of AVD has been amended to be the same as those of AVD under Scale 2. In other words, only one applicable AVD stamp duty rates (Scale 2 rates) will apply for property purchase after 28 February 2024, irrespective of whether the purchase is for residential properties or non-residential properties, or whether the property is acquired by HKPR or non-HKPR or body corporate.

The seller and the buyer are both liable for payment of AVD. However, the buyer usually contracts to pay the AVD.

Consideration/property value		Scale 2 Stamp Duty rates
Exceeds	Does not exceed	Rate
	\$3 million	\$100
\$3 million	\$3,528,240	\$100 + 10% of excess \$3 million
\$3,528,240	\$4.5 million	1.5%
\$4.5 million	\$4,935,480	\$67,500 + 10% of excess over \$4.5 million
\$4,935,480	\$6 million	2.25%
\$6 million	\$6,642,860	\$135,000 + 10% of excess over \$6 million
\$6,642,860	\$9 million	3%
\$9 million	\$10,080,000	\$270,000 + 10% of excess over \$9 million
\$10,080,000	\$20 million	3.75%
\$20 million	\$21,739,120	\$750,000 + 10% of excess over \$20 million
\$21,739,120		4.25%

#### Buyer's Stamp Duty (BSD)

##### Position before 28 February 2024

For purchases on or after 27 October 2012, BSD at a flat rate of 15% of the purchase price would be applicable to all

residential property transactions. From 25 October 2023 but before 28 February 2024, the BSD was reduced by half to 7.5%. The buyer was liable to pay the BSD.

##### Key exemptions:

- A HKPR who is acting on his/her own behalf, and does not own any other residential property in Hong Kong;
- Joint acquisition by a HKPR with one or more non-HKPR close relative(s) (i.e. spouse, parents, children, brothers and sisters) each acting on his/her own behalf;
- Nomination of, or transfer between, close relatives, whether or not they are HKPRs, each of them acting on his/her own behalf;
- Transfer of residential property pursuant to a Court Order from a Hong Kong Court; and
- Intragroup transfers of property between associated companies.

##### Position on or after 28 February 2024

Since 28 February 2024, BSD will no longer be charged on all residential property transactions.

#### Special Stamp Duty (SSD)

##### Position before 28 February 2024

While AVD and BSD target acquisition of residential property, SSD targets disposition.

Residential property acquired on or after 27 October 2012 and resold within 36 months was subject to SSD. For residential property disposed of from 25 October 2023 onwards but before 28 February 2024, such period was shortened to 24 months. The applicable SSD rate depended on the date of acquisition and the holding period of the property by the seller. Below is a table of the SSD rates:

##### Key exemptions:

- Nomination of a close relative(s) or transfer between close relative(s);
- Sale or transfer pursuant to a Court Order from a Hong Kong Court;
- Sale of the estate of a deceased person;
- Sale solely related to a bankrupt's estate or a company being wound up; and
- Intragroup transfers of property between associated companies.

Holding period	Property acquired on or after 20 November 2010 and before 27 October 2012	Property acquired on or after 27 October 2012 and disposed of before 25 October 2023	Property acquired on or after 27 October 2012 and disposed of on or after 25 October 2023 but before 28 February 2024
≤ 6 months	15%	20%	20%
> 6 months, ≤ 12 months	10%	15%	15%
> 12 months, ≤ 24 months	5%	10%	10%
> 24 months, ≤ 36 months	-	10%	

In order to enjoy the relevant exemptions, property buyers are required to make a statutory declaration to declare the truthfulness of the facts that trigger the exemption to come into place.

##### Position on or after 28 February 2024

Since 28 February 2024, SSD will no longer be charged on all residential property transactions.

The aforesaid new measures to AVD, BSD and SSD have been given full force and effect of law as from 28 February 2024 by way of the Public Revenue Protection (Stamp Duty) Order 2024.

With the above new measures in place, there is no longer any difference in stamp duty benefits in terms of purchasing a residential property or non-residential property, or whether in the name of a HKPR or a non-HKPR, or whether the purchaser already beneficially owns any residential property in Hong Kong.

## Recurring taxation

### Profits tax

Profits from a business conducted by a property owner in Hong Kong is subject to profits tax. The profits tax rate is 8.25% on assessable profits up to \$2,000,000; and 16.5% on any part of assessable profits over \$2,000,000. This includes running a business of letting real properties. Nevertheless, the amount of property tax paid may be set off against the profits tax payable.

### Property tax

Property tax is payable if the land owner lets his/her property and collects rent. The amount payable is 15% of the Net Assessable Value. The Net Assessable Value is calculated by taking the rental income less irrecoverable rent, rates paid by the owner(s) and 20% statutory allowance for repairs and outgoings.

### Other costs

Property owners must pay government rent, which cannot be offset. Typically, government rent is 3% of the property's rateable value.

Property owners are also subject to the payment of rates quarterly in advance. The percentage charge of rates is determined by the legislature and currently, rates is 5% of the property's rateable value. Owners may offset the payment of rates against the payment of property tax.

### Tax on sale of real estate

#### Types of taxes

The same types of taxes as acquisitions apply for sales but normally the buyer only contracts to pay the taxes. Please refer to Taxes page 19 for details.

#### Taxation of distributions

There are no such additional taxes as there is no withholding tax on dividends in Hong Kong.

### Tax treaties

Hong Kong has entered into Comprehensive Double Taxation Agreement/Arrangement (DTA) with several jurisdictions. Double taxation arises when two or more tax jurisdictions overlap, such that the same item of income or profit is subject to tax in each, and DTA prevents double taxation and fiscal evasion and encourage cooperation between Hong Kong and other international tax administrations.

Under the arrangement of DTA, Hong Kong adopts the territoriality basis of taxation, whereby only income/profit sourced in Hong Kong is subject to tax and that derived from a source outside Hong Kong by a local resident is in most cases not taxed in Hong Kong. Accordingly, Hong Kong residents generally do not suffer from double taxation. Many countries which tax their residents on a worldwide basis also provide their residents operating businesses in Hong Kong with unilateral tax credit relief for any Hong Kong tax paid on income/profit derived from Hong Kong. Hong Kong allows a deduction for foreign tax paid on turnover basis in respect of an income which is also subject to tax in Hong Kong.

For example, when a Japan tax resident collects rent on his Hong Kong property, the DTA between the Hong Kong and Japan taxes Hong Kong rental income in Hong Kong. Therefore, no tax is collectable on this foreign sourced rental income when it is brought back to Japan.

## Author



Polly Chu | Partner, Hong Kong

+852 3711 1633

[polly.chu@withersworldwide.com](mailto:polly.chu@withersworldwide.com)

[View profile](#)

Polly Chu has extensive experience in all aspects of real estate-related transactions including conveyancing, project conveyancing, development and redevelopment, financing and re-financing, mergers and acquisitions, property joint ventures, disposals and tenancy matters in respect of commercial, residential and industrial properties. She has advised a number of international renowned corporations in their retail leases for flagship stores, branches, shops-in-shops and outlets and strategic restructuring in the Asia-Pacific region including the PRC, Hong Kong, Macau, Taiwan and Singapore.

When it comes to other corporate matters, she also covers commercial and corporate transactions, including company secretarial, acquisitions and disposals of companies, corporate restructuring, joint venture, mergers & acquisitions, private equity investments and other general corporate governance, employment, and daily operational issues.



# Key contacts in APAC

## Real Estate



**Mabel Lui | Head Of Greater China Commercial  
Hong Kong**  
+852 3711 1638  
mabel.lui@withersworldwide.com



**Polly Chu | Partner | Hong Kong**  
+852 3711 1633  
polly.chu@withersworldwide.com



**Chau Hwei Lee | Partner | Singapore**  
+65 6922 4108  
chauhwei.lee@withersworldwide.com



**Toshihiko Tsuchiya | Partner | Tokyo**  
+81 3 6810 2562  
toshihiko.tsuchiya@withersworldwide.com



**Gerald Fujii | Partner | Tokyo**  
+81 3 6810 2563  
gerald.fujii@withersworldwide.com



**Naoki Ueyama | Partner | Tokyo**  
+81 3 6810 2564  
naoki.ueyama@withersworldwide.com



**Akinari Nakano | Partner | Tokyo**  
+81 3 6810 2569  
akinari.nakano@withersworldwide.com

## Tax



**Eric Roose | Partner | Tokyo**  
+81 3 6810 2561  
eric.roose@withersworldwide.com



**Kohei Kobayashi | Japan Tax Partner | Tokyo**  
+81 3 6810 2573  
kohei.kobayashi@withersworldwide.com



**Yee Hong Chua | Partner | Singapore**  
+65 6238 3016  
yeehoong.chua@withersworldwide.com



**Joyce He | Senior Legal And Tax Manager  
Hong Kong**  
+852 3711 1655  
joyce.he@withersworldwide.com



[withersworldwide.com](https://withersworldwide.com)



Asia, August 2024

