

THE SETTING UP OF A LEGAL ENTITY IN HONG KONG

<p>Which legal entities may a foreign investor establish in Hong Kong ?</p>	<p>The legal entities most commonly used by foreign investors wishing to set up in Hong Kong are:</p> <ul style="list-style-type: none"> - A company incorporated as a "Limited Liability Company" ("LLC"); - A Branch ; and - A Representative office. <p>This Topic describes the characteristics of the LLC to the extent that it is the legal structure most commonly used by foreign investors.</p>
<p>What characterizes the establishment of a legal entity in Hong Kong ?</p>	<p>Even though the territory of Hong Kong is under Chinese sovereignty, it has complete autonomy in economic and legal matters, according to the principle of "one country, two systems."</p> <p>Thus, Hong Kong is regularly cited by various studies as one of the most liberal jurisdictions in the world. This is particularly evident in the ease and speed with which it is possible to establish a legal entity. This is in stark contrast to Mainland China, where the creation of a legal structure is subject to a long and tedious administrative procedure for its approval and registration.</p>
<p><i>Setting up an LLC</i></p>	
<p>What is an LLC ?</p>	<p>An LLC is a limited liability company established under the laws of Hong Kong.</p> <p>Being a legal entity, the LLC has its own rights, obligations and assets. The liability of its shareholders is thus limited to the amount of their contribution to its capital.</p>

<p>How can one acquire an LLC ?</p>	<p>Any investor wishing to acquire an LLC has the following options:</p> <ul style="list-style-type: none"> - Proceed with the incorporation of a new LLC ; or - Buy a dormant LLC, namely an LLC already constituted but one which has never carried out any activity of any kind. These dormant LLCs are commonly called "Shelf Companies". <p>The second option is often used in the case of time constraints because it possible for one to become a shareholder of an LLC in 3 to 4 days.</p> <p>In both cases, the practice is to use the services of companies specialized in assisting investors. These service providers offer a range of services according to the needs expressed by the investor, including that of assuming the role of <i>Company Secretary</i> of the LLC (see hereunder).</p>
<p>What is the procedure for the incorporation of a new LLC ?</p>	<p>The procedure for the creation of a new LLC is as follows:</p> <ul style="list-style-type: none"> - Choose a corporate name and check its availability with the Companies Registry ; then - Submit the incorporation documents to the Companies Registry. <p>The procedure leads to the registration of the LLC. This registration is evidenced by the issuance, by the Companies Registry, of the <i>Certificate of Incorporation</i> and the <i>Business Registration Certificate</i>¹. The issue date shown on the <i>Certificate of Incorporation</i> marks the creation date of the LLC.</p> <p>Companies operating in industries subject to specific regulations, such as banking or insurance must also seek and obtain licenses / special authorizations from the relevant regulatory authorities overseeing the industries in question.</p>
<p>What are the rules for choosing the corporate name of an LLC ?</p>	<p>The corporate name of an LLC must be:</p> <ul style="list-style-type: none"> - A name in Latin letters ; - A name in Chinese characters ; or

¹ Even if it is delivered by the *Companies Registry*, the *Business Registration Certificate* is actually issued by the *Inland Revenue Department*.

	<ul style="list-style-type: none"> - Two names, respectively, in Latin letters and Chinese characters. <p>In any event, the word "Limited" must appear at the end of the name to indicate that the company is incorporated as an LLC.</p> <p>The Companies Registry has the power to refuse any name chosen by an investor for an LLC if that name is identical or similar to a name used by a company already registered in Hong Kong.</p>
<p>What are the documents to be submitted to the Companies Registry for the registration of a new LLC ?</p>	<p>Documents to be submitted to the <i>Companies Registry</i> for the incorporation of a new LLC are:</p> <ul style="list-style-type: none"> - <u>The application form for Registration</u>: this form must indicate the specific information about the LLC to be created, namely its object, its corporate name, the address of its registered office, the names, nationality and addresses of its shareholders, the directors and the Company Secretary and details of its share capital (amount, number of shares and nominal value). - <u>Memorandum and Articles of Association</u>: in general, standard documents are used which merely state the main rules for the organization of LLC (general meetings of shareholders, board of directors, transfer of shares, etc.). However, shareholders are free to enact statutes that depart from standard documents in order to reflect the specific nature of their agreements (particularly when several classes of shares are created).
<p>What are the applicable rules for the share capital ?</p>	<p>Hong Kong laws do not stipulate any minimum amount for the share capital of an LLC.</p> <p>However, the constitutive documents of the LLC must indicate (i) the amount of authorized capital, (ii) the number of shares already issued and subscribed by the shareholders, and (iii) the nominal value of each share. In practice, the initial capital is usually HK \$ 1,000 or HK \$ 10,000 divided into shares with a nominal value of HK \$ 1 and HK \$ 10.</p> <p>The capital of an LLC can be expressed in local or foreign currency.</p> <p>Finally - unlike the rules in Mainland China - the share capital of an LLC can be divided into various types or classes of shares, including preference shares. An LLC can then issue shares whose nominal value is not the same or do not confer the same rights to their owners.</p>

<p>Who can be appointed director of an LLC ?</p>	<p>Hong Kong laws provide that an LLC may have one or more directors.</p> <p>These can include either individuals or legal entities, of Chinese or other nationality, whether they reside in Hong Kong or not.</p> <p>The same person may normally assume the roles of shareholder, director and Company Secretary of an LLC. However, in case there is a unique director, he cannot assume the role of Company Secretary.</p> <p>Hong Kong is known for the provision of confidentiality guarantees to corporate officers: it is therefore possible for a director to act through a nominee who will appear in his place in the LLC's corporate documents which are accessible to the public. The same convenience is available to shareholders.</p>
<p>What is the role of the Company Secretary ?</p>	<p>The laws provide that any LLC must have a "Company Secretary". His role includes maintaining the register of shareholders, directors, liaising with the Companies Registry, ensuring the domiciliation of the LLC, etc.</p> <p>The Company Secretary may be an individual or legal entity, and must be resident in Hong Kong.</p> <p>In practice, this function is usually performed by a professional. Hong Kong has many companies offering their services as Company Secretary. The range of their services is more or less broad, depending on the needs of the investor.</p>
<p>What is the procedure for buying a dormant LLC ?</p>	<p>The purchase of a dormant LLC involves the signing, by the buyer and the seller, of a standard share transfer documents.</p> <p>A number of forms are required as part of the reorganization of the LLC following the change of ownership (form for the change of directors, Company Secretary, registered office, minutes of the first board of directors following the change of shareholder, etc.).</p>
<p>To which annual obligations are LLCs submitted ?</p>	<p>During their business life LLCs must annually meet the following obligations:</p> <ul style="list-style-type: none"> - <u>Keep and approve financial statements</u>: The financial statements shall be kept annually and must be audited by a chartered accountant. They are then presented at the Shareholders' General Assembly for approval ; - <u>General Assembly</u>: Any LLC shall hold at least one general assembly of its shareholders every year, with a maximum interval of 15 months between meetings ;

<p>To which annual obligations are LLCs submitted ? <i>(Continued)</i></p>	<ul style="list-style-type: none"> - <u>Annual Return</u>: an annual return must be submitted to the Companies Registry to allow the organization to update information stored about the LLC (authorized capital, issued share capital, the names and addresses of the directors and shareholders, etc.) ; and - <u>Tax Return</u>: a return must be submitted annually to the tax authorities to determine the amount of corporate tax payable by the LLC.
<p><i>The establishment of a branch</i></p>	
<p>What is a branch ?</p>	<p>Unlike an LLC, a branch does not have a legal personality. It is a simple extension of its parent company and does not have its own rights, obligations and assets.</p> <p>With regard to business activities a branch may, however, engage in the same activities as an LLC.</p>
<p>Why do foreign investors prefer to establish an LLC instead of a branch?</p>	<p>The reasons that prompt foreign investors to prefer an LLC to a branch in Hong Kong are:</p> <ul style="list-style-type: none"> - A branch cannot hold shares in a company. Therefore, a branch does not allow one to invest in Mainland China ; - The parent company of a branch has unlimited liability for the debts of the branch. This is not the case for an LLC ; - Holding a branch increases the risk that its parent company may be sued in Hong Kong in the event of a litigation involving the branch ; and - The establishment of a branch requires the translation in English or Chinese of all the constituent documents of the investor. These documents must then be certified. It is therefore easier to file an application for the incorporation of an LLC than for a branch.
<p>What is the administrative procedure for the establishment of a branch ?</p>	<p>The administrative procedure for the establishment of a branch is relatively simple and fast. It is almost identical to that applicable for the creation of an LLC, and does not call for any particular formalities.</p>

The establishment of a representative office

What is a representative office ?	<p>The representative office is a legal entity sometimes used to explore the local market in anticipation of greater investment in the future.</p> <p>The functions of a representative office are limited to promotional and liaison activities to the exclusion of any commercial or industrial activity. Accordingly, it is prohibited to produce, sell or buy products in order to generate income.</p>
What is the administrative procedure for the establishment of a representative office ?	<p>The administrative procedure for the establishment of a representative office is relatively simple and fast. Almost identical to that applicable for the creation of an LLC, it does not call for any particular formalities.</p>

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