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Private Wealth 2021

Hong Kong
Jeffrey Lee, Jessica Leung and Jessica Chow
Charles Russell Speechlys

practiceguides.chambers.com

HONG KONG

Law and Practice

Contributed by:
Jeffrey Lee, Jessica Leung and Jessica Chow
Charles Russell Speechlys** **see p.18

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1. TAX

1.1 Tax Regimes

Territorial Source Principle of Taxation

Hong Kong adopts a territorial source principle of taxation, whereby generally only profits or income arising in or derived from Hong Kong are chargeable to tax in Hong Kong. As taxes are not levied based on a person's domicile, residence or nationality, a Hong Kong resident may derive profits from abroad without being subject to tax in Hong Kong, and a non-resident of Hong Kong may be chargeable to tax on profits arising in Hong Kong.

The question of where the profits or income arise or are derived from is a practical matter of fact. Whether profits or income arise in or are derived from Hong Kong depends on the nature of the profits or income and the nature of the transactions or activities that give rise to such profits or income. To determine the locality of profits or income, the broad guiding principle is that one looks to see what the taxpayer has done to earn the profits in question and where he or she has done it. The place where the day-to-day decisions are made in relation to the taxpayer's business or activities is only one of the factors to be considered and is usually not the deciding factor.

Salaries Tax

Salaries Tax is imposed on all income arising in or derived from Hong Kong from an office, employment or pension. It is necessary to identify where the employment is located in order to decide whether income arises in or is derived from Hong Kong. Such income includes all forms of income and benefits from employment, such as awards of shares or options and the rental value of a place of residence provided rent-free to the employee.

Salaries Tax is calculated at progressive rates from 2% to 17% on the net chargeable income, or at the standard rate of 15% of the net income (ie, without allowances), whichever is lower.

A taxpayer assessed to Salaries Tax is entitled to a basic allowance. For the 2021/2022 year of assessment, the amount of basic allowance is HKD132,000. There are other allowances that may be claimed, provided that the prescribed conditions as specified in the Inland Revenue Ordinance are satisfied. These include a married person's allowance, child allowance, dependent brother or dependent sister allowance, dependent parent and dependent grandparent allowance, single parent allowance, disabled dependant allowance and personal disability allowance.

Certain deductions are allowed, such as donations paid to recognised charities, expenses of self-education paid on fees in connection with certain courses of education and/or examinations, and mandatory contributions paid to a mandatory provident fund scheme.

Profits Tax

Persons carrying on any trade, profession or business in Hong Kong, including corporations, partnerships, trustees and bodies of persons, are chargeable to tax on all profits (excluding profits arising from the sale of capital assets) arising in or derived from Hong Kong from such trade, profession or business. To determine whether the profits arise in or are derived from Hong Kong, one would need to identify the operations that produced the relevant profits and ascertain where those operations took place. The source of profits must be attributed to the operations of the taxpayer that produced them and not to the operations of other members of the taxpayer's group. A person who carries on a business in Hong Kong but derives profits from another place is not required to pay tax in Hong Kong on those profits.

For corporations, the Profits Tax rates are 8.25% on the first HKD2 million of assessable profits and 16.5% on any part of assessable profits exceeding HKD2 million. For unincorporated businesses, the Profits Tax rates are 7.5% on the first HKD2 million of assessable profits and 15% on any part of assessable profits exceeding HKD2 million.

All expenses are allowed as deductions to the extent to which they have been incurred by the taxpayer in generating chargeable profits. These include, for example, interest on funds borrowed, rent from buildings or land occupied for the purpose of producing the profits, bad and doubtful debts, repairs of premises, plant, machinery or articles, etc, used in producing the profits, annual contribution to a fund under a recognised occupational retirement scheme, and donations made to recognised charities.

There are tax incentives in specific areas, such as tax concessions for gains derived from qualified debt instruments and exemption from tax for offshore funds (non-resident individuals, partnerships, trustees of trust estates or corporations) in respect of profits derived from transactions in securities, futures contracts, foreign exchange contracts, etc, in Hong Kong, which are carried out by corporations and authorised financial institutions that are licensed or registered under the Securities and Futures Ordinance.

Dividends received from a corporation are excluded from the assessable profits of the recipient.

Property Tax

The assessable value of any land or buildings situated in Hong Kong (with limited exceptions) is calculated by reference to the actual consideration payable to the owner in respect of the right of use of the property, such as gross rent received or receivable and payment for the right of use of premises under licence. The net assessable value is the assessable value (after the deduction of rates paid by the owner and certain other payments) minus a 20% statutory allowance for repairs and outgoings. Property Tax is charged to the owner at the standard rate of 15% on the net assessable value of such land or buildings.

A corporation letting property in Hong Kong is regarded as carrying on business in Hong Kong and should be subject to Profits Tax in respect of its property income. However, if certain conditions apply, the amount of Property Tax chargeable can be set off against the amount of Profits Tax payable, and any excess Property Tax paid will be refunded. Alternatively, corporations can apply for exemption from paying Property Tax, which would otherwise be set off against their Profits Tax liabilities.

Stamp Duty

Stamp duty is chargeable on certain documents specified in the First Schedule to the Stamp Duty Ordinance. These documents largely relate to transactions regarding Hong Kong stock and immovable properties.

For the contract notes for the sale and purchase of Hong Kong stock, ad valorem stamp duty is chargeable at the rate of 0.1% of the consideration (or the market value if it is higher) for each of the buyer and the seller.

For transfers of immovable property in Hong Kong, ad valorem stamp duty at either Scale 1 rates (maximum of 15%) or Scale 2 rates (maximum of 4.25%) is chargeable based on either the sale price or the market value of the property, whichever is higher. For residential property disposed of within 36 months (if the property was acquired on or after 27 October 2012), Special Stamp Duty will be imposed in addition to the ad valorem stamp duty at regressive rates from

10% to 20% for different holding periods. Where the transferee is not a Hong Kong permanent resident acquiring the property on his or her own behalf, Buyer's Stamp Duty at the rate of 15% is payable on an agreement for sale or a conveyance on sale for the acquisition of any residential property executed on or after 27 October 2012 in addition to the existing ad valorem stamp duty and the Special Stamp Duty (if applicable).

Certain exemptions and reliefs are available. For example, upon application, a transfer of Hong Kong immovable property or stock between associated companies can be exempted from stamp duty, provided they remain associated for at least two years after the transfer. Transfers of shares under stock borrowing and lending transactions may be exempted from stamp duty. Property inherited from a deceased person's estate under a will or the law of intestacy or right of survivorship by a beneficiary is exempted from stamp duty.

Others

There is no capital gains tax, gift tax, sales tax or VAT in Hong Kong. No estate duty is payable in respect of the estates of persons who passed away on or after 11 February 2006.

1.2 Stability of the Estate and Transfer Tax Laws

Tax laws in Hong Kong are generally relatively stable. The most notable change affecting transfers of property in the past decade was the introduction of the Special Stamp Duty and the Buyer's Stamp Duty. These measures were aimed at curbing speculative activities relating to residential property and at reducing the risks of a property bubble, as the private residential property market has been volatile.

To ease the financial burden and cash flow of businesses and individuals arising from the COVID-19 pandemic, the deadline for the payment of Salaries Tax, tax under Personal Assessment and Profits Tax for the year of assessment 2018/19 has been extended. Furthermore, the Financial Secretary has proposed a number of concessionary measures to reduce Profits Tax and Salaries Tax.

1.3 Transparency and Increased Global Reporting

General Anti-avoidance Rules

There are general anti-avoidance provisions in the Inland Revenue Ordinance to tackle abuse of the tax laws.

Where the Inland Revenue Department is of the opinion that any transaction that reduces or would reduce the amount of tax payable by any person is artificial or fictitious, or that any disposition is not in fact given effect to, he may disregard any such transaction or disposition and the person concerned shall be assessable accordingly.

The term "transaction" includes the whole of any particular transaction, and not merely part of it. Although a part of the transaction may be real, the transaction as a whole may be held as both artificial and fictitious. The Inland Revenue Department would take into consideration all the surrounding circumstances in forming an opinion as to whether a transaction as a whole is artificial or fictitious.

Where a person enters into or carries out a transaction for the sole or dominant purpose of obtaining a tax benefit, the Inland Revenue Department may disregard or reconstruct said transaction and assess the tax liability accordingly. The term "tax benefit" means the avoidance or postponement of the liability to pay tax or the reduction in the amount thereof.

Where a tax avoidance arrangement has been made to take advantage of a specific relief or exemption in such a way that is not intended by the legislature, the above general anti-avoidance rules can be applied to deny the favourable tax consequences even if the taxpayer has complied with the requirements of the relevant relief or exemption.

Companies that have sustained a loss in any trade, profession or business are permitted to carry forward the amount of that loss for set-off against profits in subsequent years of assessment. An unintended effect is that profitable companies are tempted to buy companies with accumulated tax losses and transfer their profitable businesses into the loss company once their ownership has been acquired so that the losses brought forward can be set off against the profits. To tackle this avoidance practice, the Commissioner may refuse to set off losses brought forward where he or she is satisfied that the sole or dominant purpose of a change in shareholding was the utilisation of those losses to obtain a tax benefit.

Tax Reporting

Hong Kong has implemented 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 by passive non-financial entities whose controlling persons are tax residents of reportable jurisdictions in accordance with due diligence procedures, and to provide the required information of such accounts to the Inland Revenue Department. To assist financial institutions to identify such accounts, account holders may be required to provide self-certifications on their personal information, including tax residence.

Hong Kong signed an intergovernmental agreement with the United States in 2014 to implement the Foreign Account Tax Compliance Act in Hong Kong. It requires participating financial institutions to identify and report the account information of specified US persons to the Inland Revenue Service of the United States. Accordingly, banks may need to obtain additional information or documentation from their customers to achieve this.

Hong Kong has entered into Tax Information Exchanges Agreements with seven jurisdictions: Denmark, the Faroe Islands, Greenland, Iceland, Norway, Sweden and the United States.

Transfer Pricing

The transfer pricing rules in Hong Kong came into operation in 2018 and are designed to comply with the guidelines put forth by the Organisation of Economic Cooperation and Development (OECD) in relation to the initiatives of base erosion and profit shifting.

Where a related-party transaction bears a different result to a transaction between parties at “arm’s length”, the Inland Revenue Department can adjust income or losses to remove any potential advantage in relation to Hong Kong tax. Domestic transactions between domestic parties not giving rise to actual tax differences and not being made for tax avoidance purposes are not subject to the transfer pricing rules.

Companies are required to prepare transfer pricing documentation in the form of a “master file” providing an overview of the Hong Kong entity’s group of enterprises, and a “local file” providing transactional transfer pricing information specific to the enterprise in each jurisdiction. They should be prepared within nine months after the end of the relevant accounting period and retained for not less than seven years. Companies can be exempt from preparing these files if they meet the tests for size of business and amount of controlled transactions.

Where the consolidated group revenue of a multinational enterprise group that has constituent entities or operations in two or more jurisdictions exceeds HKD6.8 billion, that group will be required to file a "Country-by-Country Report".

Non-residents who have permanent establishments carrying on a trade, profession or business in Hong Kong will also be subject to the transfer pricing rules. The income or loss of a non-Hong Kong resident person attributable to the person's permanent establishment in Hong Kong will be determined as if the permanent establishment were a distinct and separate enterprise.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

Succession planning for large families is usually more complex. Typically, the primary goal for such families is to preserve the capital of the family wealth for as long as possible, and they would therefore tend to let family members enjoy the income, unless there is an emergency that calls for the need of capital. In many cases, older generations would encourage younger generations to participate in the family business, but they are usually reluctant to turn over full control of the family business to younger generations until they start to become less robust due to old age or sickness.

It is not common for spouses of family members to take any active role in the family business or to be able to benefit from the family wealth directly, although some large families are willing to set aside a small portion of the family wealth for spouses who have married into the family for many years in the event that they become widowed.

Small families are more inclined to distribute the capital and income of their wealth to their children and/or grandchildren directly after they pass away, and therefore require relatively simpler succession planning strategies.

2.2 International Planning

Nowadays, many family members in the younger generations are tax residents of high-tax jurisdictions. As Hong Kong is a relatively low-tax jurisdiction with no foreign exchange control and no forced heirship laws, there is a driving force for families to place ownership and/or control of the family wealth into the hands of a family member in Hong Kong who has no or little exposure to taxes in high-tax jurisdictions, with the expectation that such family member will exercise their rights and powers over the family wealth for the benefit of all family members.

2.3 Forced Heirship Laws

Hong Kong does not have forced heirship laws.

However, under the Inheritance (Provision for Family and Dependants) Ordinance, certain categories of persons (such as spouse, children, or parents of the deceased who were being maintained by the deceased immediately before the death of the deceased) may apply to the court for an order, for example, to make periodic payments out of the net estate of the deceased to the applicant, on the ground that the disposition of the deceased's estate effected by their will or the law relating to intestacy, or the combination of such will and that law, is not such as to make reasonable financial provision for the applicant.

Furthermore, if a person makes a gift or disposition for which the full valuable consideration was not given (eg, a contribution to a trust) within the six years before their death and such gift or disposition was made with the intention of defeating an application for financial provision against their estate, the court may on application order the recipient (eg, the trustees of a trust) to provide such sum of money or other property for the purpose of the making of that financial provision.

2.4 Marital Property

There is no matrimonial property regime in Hong Kong. Each spouse owns and administers the property they acquired both before and during the marriage, and they can freely transfer their respective property without the consent of the other spouse during the marriage.

In the unfortunate event of a divorce, the division of matrimonial property will be made by the equitable distribution method by reference to common law. "Equitable" means a division of assets according to what the court deems fair under the unique situation of the parties.

Division of Assets

In deciding how matrimonial assets are to be divided, Hong Kong courts will consider all the circumstances of a case, including the factors in Section 7(1) of the Matrimonial Proceedings and Property Ordinance, as follows:

- the income, earning capacity, property and other financial resources that each of the parties to the marriage has or is likely to have in the foreseeable future;
- the financial needs, obligations and responsibilities that each of the parties to the marriage has or is likely to have in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each party to the marriage and the duration of the marriage;
- any physical or mental disability of either of the parties to the marriage;
- the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family; and
- in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

The Court of Final Appeal decision in LKW v DD [2010] HKCFA 70 established a five-step process to guide all Family Judges on how to approach the above factors in 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 Court of Final Appeal further identified the following four principles to be followed when deciding on each case:

- objective of fairness;
- rejection of any gender or role discrimination;
- yardstick of equal division; and
- rejection of minute retrospective investigation.

Nuptial Agreements

Prenuptial and postnuptial agreements are not binding on the courts of Hong Kong. However, in the case of SA v SPH [2014] 3 HKLRD 497, the Court of Final Appeal held that the principles laid down in the UK Supreme Court decision of Radmacher v Granatino [2011] AC 534 represent the position of the law on nuptial agreements in Hong Kong. In summary, marital agreements entered into by the parties with full appreciation of the implications thereof should be given effect, unless it would be unfair to hold the parties to their agreement in the prevailing circumstances.

In deciding whether the division of matrimonial assets should depart from equal division, Hong Kong courts will treat the nuptial agreement as part of all the circumstances of the case under Section 7(1) of the Matrimonial Proceedings and Property Ordinance, but the weight to be attached to it in each case is subject to the courts' discretion.

In applying Radmacher, the court in LCYP v JEK [2019] HKCFI 1588 agreed that where there exists an unvitiated nuptial agreement, the overriding consideration of the court is fairness. An unvitiated nuptial agreement is one of the circumstances to be considered in arriving at a fair distribution of assets. The court will have to assess its weight. In that assessment, needs and compensation would be important, with sharing being less so. The court further proposed to approach the issue of needs with reasonableness as the guide.

2.5 Transfer of Property

As there is no capital gains tax in Hong Kong, there is no cost base adjustment on a transfer of property. However, gains on the disposal of assets may be subject to Profits Tax if such transaction amounts to trade, which is a question of fact.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

As there is no capital gains tax or inheritance tax in Hong Kong, there is no incentive to establish vehicles or planning mechanisms solely for the purpose of transferring assets to younger generations tax-free. However, discretionary trusts are commonly used for the purpose of family and succession planning.

2.7 Transfer of Assets: Digital Assets

Although there have been initiatives to regulate the investment and trading of virtual assets, such as legislative proposals by the Hong Kong government to introduce a licensing regime for virtual asset services providers, Hong Kong has yet to put in place a framework to govern the passing of digital assets upon death for the purposes of succession.

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Discretionary trusts are commonly used for succession and estate planning purposes. There is no private foundation under Hong Kong law.

Major changes were made to the Trustee Ordinance in 2013. Examples include imposing a statutory duty of care on trustees in relation to certain powers and functions, introducing a regime of control over professional trustees' exemption clauses, providing a default charging provision for professional trustees, and statutory protection of Hong Kong trusts against foreign forced heirship rules.

The Perpetuities and Accumulations Ordinance was amended at the same time. Under the new rules, the rule against perpetuities is abolished and a trust may continue in existence for an unlimited period, unless the terms of the trust provide to the contrary.

3.2 Recognition of Trusts

Trusts are recognised and respected in Hong Kong. The Trustee Ordinance is an important piece of legislation on the law governing trustees in Hong Kong. English decisions, the rules of equity and common law rules are relevant to the interpretation and application of trust laws in Hong Kong.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

Hong Kong taxation adopts a territorial source principle and is not dependent on a person's domicile, residence or nationality. Therefore, there are no tax consequences arising by virtue of a Hong Kong citizen or resident serving as a fiduciary or being a beneficiary of a foreign trust.

3.4 Exercising Control over Irrevocable Planning Vehicles

The Trustee Ordinance provides that the reservation of powers of investment or asset management functions by the settlor does not invalidate a trust, and a trustee who acts in accordance with the exercise of that power or function is not in breach of the trust.

4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

Discretionary trusts are increasingly common as a tool for asset protection planning. Once assets have been contributed into a trust, they are no longer owned by the settlor and are instead held by the trustees on behalf of the beneficiaries. With an appropriate structure, such trusts can help assets to be distanced away from future claims that may be made against or through the settlor if this is done well in advance of any threatened or perceived claims arising.

In addition, through the use of a trust, families can consolidate or maintain control over the bulk of family assets or business so as to allow family members to enjoy the family wealth (for example, by receiving income distributions) without taking titles or voting rights to any capital assets in the trust fund.

4.2 Succession Planning

Discretionary trusts are useful for families to pass wealth and control of the family business from generation to generation. In many cases, they can also help mitigate the overall tax exposure of the family assets. Tax advice is therefore important in the setting up and administration of the trust. It is also possible to put detailed guidelines in place for the trustees regarding how they should position themselves in the event of a family conflict.

In a more complex structure, there may be additional bodies (such as a family office, a family council, an investment committee and a philanthropy committee) that assist the trustee in making major decisions. These bodies may consist of family members, non-family members of the senior management of the family business and/or professional advisers.

4.3 Transfer of Partial Interest

There is no transfer tax in Hong Kong. Stamp duty may be chargeable on the transfer of Hong Kong immovable property or stock, which will be calculated at the higher of the sale price and the market value, and there will be no discount for lack of marketability and control.

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

Private wealth disputes in Hong Kong mainly revolve around divorce, estates and trusts.

In divorce proceedings, parties make ancillary relief claims against each other in terms of maintenance pending suit, periodical payments, secured periodical payments, lump sum orders, property adjustment orders, transfer of property orders, settlement of property orders, variation of settlement and sale of property orders. Third parties' interests may be involved in some cases, such as arguments over the beneficial ownership of assets paid by parents and a party's entitlement in a dynastic trusts structure.

Disputes over estates largely concern either attacks to the validity of wills by claiming that the testator lacked mental capacity or was unduly influenced by third parties while making the will, or attempts to vary distribution of the estate through claims made under the Inheritance (Provision for Family and Dependants) Ordinance or common law.

Litigation involving contentious trusts, both offshore and onshore structures, mainly arise from actions for and against trustees over breach of trusts, asset disputes, and duties or conflicts issues.

5.2 Mechanism for Compensation

Spouses in divorce proceedings may be awarded with various forms of ancillary relief orders, as summarised in **5.1 Trends Driving Disputes**.

For disputes over estates or trusts, aggrieved parties are typically seeking to set aside a will, make claims under the Inheritance (Provision for Family and Dependants) Ordinance, vary a determination made by the trustee, or obtain the information (in particular financial information) of the estate or the trust. The remedies available to address these claims include orders for the making of periodical payments or lump sums or transfer of property out of the net estate of the deceased, for the recipient or holder of the assets (eg, trustee) to provide money or other property, for information to be provided, and for assets to be traced.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries

Corporate fiduciaries are prevalent in Hong Kong. Generally, a trustee must exercise the care and skill that is reasonable in the circumstances, having regard to any special knowledge or experience that the trustee has or holds out as having, and if the trustee is acting in a professional capacity, the standard would be by reference to any special knowledge or experience that is reasonably expected of a person acting in a professional capacity.

In March 2018, a licensing regime was introduced that requires trust and company service providers (TCSP) to apply for a licence from the Hong Kong Companies Registry. TCSPs need to satisfy a "fit-and-proper" test in order to be granted a licence.

6.2 Fiduciary Liabilities

Trustees are liable for the liabilities of the trust, but it is possible to limit their liabilities in the absence of a breach of trust arising from the trustees' fraud, wilful misconduct or gross negligence by including appropriate exemption clauses in the terms of the trust.

Anti-Bartlett clauses are commonly found in trust instruments, and seek to limit the trustees' duties and obligations of supervising the investment and management of the underlying investment companies of a trust. In 2019, the Court of Final Appeal of Hong Kong handed down a decision in Zhang Hong Li v DBS Bank [2019] HKCFA 45 upholding the use of anti-Bartlett clauses. It was determined that anti-Bartlett clauses are effective in excluding any high-level supervisory duty of the trustee in relation to investment decisions made by an investment adviser on behalf of the underlying investment company of the trust, and the trustee is not liable for any losses incurred as a result.

6.3 Fiduciary Regulation

Unless the trust instrument provides otherwise, trustees may only invest in the authorised investments specified in the Trustee Ordinance and, in exercising such power, trustees would not be responsible for any loss to the trust fund if they have discharged the statutory duty of care.

6.4 Fiduciary Investment

The list of authorised investments (stipulated in the Trustee Ordinance) that trustees may make in the absence of an express power of investment in the trust instrument is relatively conservative and limited, as the intention is to provide a default objective standard for less experienced trustees. Professional trustees may choose to opt out of the list and, generally, it is expected that professional trustees who have wide investment powers and are sophisticated in investment would adopt the modern portfolio theory, which advocates diversification of securities and asset classes.

Trusts may hold active businesses and (through an entity) participate in the running thereof. Depending on the nature of the business, there may be licensing requirements in order to conduct the business or relevant activities.

7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

Domicile

Generally, a person who does not have a domicile of origin in Hong Kong can acquire a domicile in Hong Kong if he or she is lawfully present in Hong Kong and intends to make a home in Hong Kong for an indefinite period.

Becoming a Permanent Resident

There are six categories of persons who are eligible to enjoy the right of abode in Hong Kong and to apply for permanent resident status. They include:

- category one - a Chinese citizen born in Hong Kong before or after the establishment of the HKSAR;
- category two – 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;
- category three – 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 one or two;
- category four – a person not of Chinese nationality who has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as their place of permanent residence before or after the establishment of the HKSAR;
- category five – a person under 21 years of age born in Hong Kong to a parent who is a permanent resident of the HKSAR in category four before or after the establishment of the HKSAR if, at the time of their birth or at any later time before he or she attains 21 years of age, one parent has the right of abode in Hong Kong; and
- category six – a person other than those in categories one to five above, who, before the establishment of the HKSAR, had the right of abode in Hong Kong only.

Becoming a Citizen

A person is eligible to apply for a Hong Kong passport if they are:

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

A person is regarded as being of Chinese nationality if they are a Hong Kong resident:

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

7.2 Expeditious Citizenship

There are no expeditious means for an individual to obtain citizenship in Hong Kong. All applicants will need to fulfil the criteria of citizenship specified in **7.1 Requirements for Domicile, Residency and Citizenship**.

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms

Parents and relatives can set up a special needs trust at an affordable fee by appointing the Director of Social Welfare Incorporated as the trustee to manage their assets in the form of a trust for their children or family members who have special needs or lack self-care capability.

After the passing of the parents or relatives, as settlor, the trustee will activate the trust account and disburse funds to the carer specified by the parents or relatives in accordance with the instructions laid down in the trust deed and letter of wishes. The carer will implement the long-term care plan formulated by the parents or relatives for the beneficiary. The executor of the settlor's Will will deposit the cash derived from the settlor's estate to the trust account. The trustee will pool together funds from different trust accounts for making investment, and allocate investment gains or losses to individual trust accounts on a pro rata basis.

8.2 Appointment of a Guardian

Guardian for Children

Parents can appoint a guardian for their children in case both of them pass away while their children are under the age of 18 years. Such an appointment may be made in writing by the parents and attested by two witnesses in accordance with the provisions of the Guardianship of Minors Ordinance without the need of a court proceeding.

Upon assuming guardianship, a person appointed as the guardian of a minor has parental rights and authority with respect to the minor.

A person appointed by a parent (or guardian) as the guardian will automatically assume guardianship over the minor on the death of the appointing parent (or appointing guardian) if said appointing parent (or appointing guardian) has a custody order over the minor immediately before he or she dies, or if said appointing parent (or appointing guardian) lived with the minor immediately before dying and the minor does not have any surviving parent or surviving guardian when the appointing parent (or appointing guardian) dies.

In other cases, after the appointing parent (or appointing guardian) dies, the person appointed as the guardian may apply to the court to assume guardianship over the minor and the court may order the person:

- to act jointly with the surviving parent or surviving guardian;
- to act as the guardian of the minor after the minor no longer has any parent or guardian;

- to act as the guardian of the minor at a time, or after the occurrence of an event, specified by the court;
- to be removed as a guardian; or
- to act as the guardian of the minor to the exclusion of the surviving parent or surviving guardian.

On being satisfied that it is in the best interests of the minor, the court may, in its discretion, remove any guardian and appoint another person to replace that guardian.

In making any order in relation to the guardianship of a minor, the court will regard the best interests of the minor as the first and paramount consideration, and in having such regard will give due consideration to the views of the minor if it is practical to do so, having regard to the age and understanding of the minor and to the circumstances of the case.

Guardian of a Mentally Incapacitated Person

The guardian is appointed by the Guardianship Board and has statutory power to make decisions on accommodation and care arrangements for the mentally incapacitated person (MIP).

The Guardianship Board is a quasi-judicial tribunal consisting of a chairman with legal experience, at least three members who are barristers or solicitors, at least three members who have experience in assessing or treating MIPs (this may include registered medical practitioners or social workers), and at least three members who have had personal experiences with MIPs.

A family member, a friend or the Public Guardian may be appointed as the guardian, who may have the following powers, subject to the Guardianship Order:

- to specify the MIP's residence;
- to bring the MIP to a specific place as necessary;
- to bring the MIP to attend medical and other treatments or training;
- to consent to medical or dental treatment on behalf of the MIP;
- to arrange access to the MIP by any doctor, approved social worker or other persons specified in the Guardianship Order; and
- to hold, receive or pay a specified monthly sum for the maintenance or benefit of the MIP.

An assigned social worker will visit the MIP each month and the guardian will need to provide reports every month, including monthly accounts and all relevant information, such as accommodation and medical treatment.

Committee of the Estate of a Mentally Incapacitated Person

The Committee of the estate of an MIP is appointed by the court and has statutory power to manage and administer the financial affairs and property of the MIP, such as bank accounts, stocks and investments, buying and selling properties, settling utility bills and making tax payments.

The Mental Health Court of the High Court of Hong Kong will hear applications made by family members, the Director of Social Welfare, the Official Solicitor or the guardian for a Committee to be appointed.

Generally, the Committee will need to open a Committee bank account, prepare accounts every year or, as may be ordered by the court, inform the court about any changes in the MIP's financial situation and general condition.

8.3 Elder Law

The Hong Kong government launched the Mandatory Provident Fund (MPF) scheme in December 2000, with all employees and self-employed persons who are 18 to 65 years old, except for exempted persons, being mandated to join the MPF scheme. Each employee and employer is required to make regular mandatory contributions, which amount to 5% of the employee's relevant income. Employees have the right to choose among the constituent funds offered under the MPF scheme selected by their employer. Generally speaking, MPF scheme members can only withdraw their accrued benefits when they reach the age of 65, but some would be allowed to do so if specified conditions are met (eg, permanent departure from Hong Kong).

In July 2018, the HKMC Annuity Plan came into place, which allows retirees of 65 years or older to receive guaranteed monthly annuity payments for life with the contribution of a single premium, as long as their policy remains in force.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children

Children Born out of Wedlock

The mother of an illegitimate child will enjoy custody rights of the child, which the father can only enjoy with the order of the court. In other words, the illegitimate child will be automatically recognised as the child of their birth mother, but will only be treated as the child of their birth father after a court order is in place. Nonetheless, the illegitimate children of parents who have died after 19 June 1993 now enjoy the same succession rights as legitimate children.

Adopted Children

Generally speaking, and for the purpose of succession, adopted children are treated the same as the children of their adoptive parents once an adoption order is made.

Surrogate Children

Hong Kong only permits surrogacy arrangements that are non-commercial in nature. The surrogate mother is naturally regarded as the mother of the child under Section 9 of the Parent and Child Ordinance (PCO). Under Section 10(2), if the surrogate mother is married at the time of her insemination or when the embryo or the sperm and egg are placed in her, and the embryo is not brought about with the sperm of her husband, then her husband will be regarded as the father of the surrogate child, unless it is shown that he did not consent to the placing of the embryo or the sperm and egg or her insemination. Similarly, under Section 10(3), if the surrogate mother is not married but received the treatment with her male partner and the embryo carried by her was not brought about with his sperm, then her male partner will be regarded as the father of the surrogate child.

However, the court may make a parental order under Section 12 to make the intended parents the legal parents of the surrogate child and permanently extinguish the parenthood of the surrogate mother and her spouse/male partner.

Posthumously Conceived Children

For the purpose of succession, under Section 10(6) of the Parent and Child Ordinance, where the sperm of a man is used after his death to conceive a child, or where an embryo is used after the death of the man with whose sperm it was created, that man is not regarded as the father of the child.

Parental Rights for Same-Sex Partners

In Hong Kong, same-sex couples do not enjoy the same parental rights as heterosexual couples. In 2021, the court in LS v KG [2021] HKCFI 1401 determined that the non-biological parent of natural children born by his/her prior same-sex partner should be granted guardianship rights, joint custody, and shared care and control over their children. Following this decision, same-sex parents may now apply to have equal parental rights over their children upon their births.

9.2 Same-Sex Marriage

Hong Kong does not recognise same-sex marriage, in the sense that a valid marriage in Hong Kong is heterosexual and monogamous.

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. As there is no definition of "parties to a marriage", same-sex couples appear to enjoy legal status in Hong Kong. Having said that, when it comes to divorce, nullity, judicial separation or presumption of death and dissolution of marriage, the Family Courts in Hong Kong have no authority or jurisdiction to make any order in respect of same-sex marriages.

Following the judgment of a case involving a same-sex couple in 2018, the Immigration Department revised its policy to allow 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 to apply for a dependent visa/entry permit for entry into Hong Kong, provided that all the other eligibility criteria are met, though this case did not involve any claim that same-sex couples have a right to marry under the Hong Kong law.

10. CHARITABLE PLANNING

10.1 Charitable Giving

Charities are exempt from tax under the Inland Revenue Ordinance, provided that certain requirements are met.

For the purpose of Profits Tax, the profits derived from any trade or business carried on by a charity are exempted if:

- the profits are applied solely for charitable purposes;
- the profits are not expended substantially outside Hong Kong; and
- either the trade or business is exercised in the course of the actual carrying out of the expressed objects of the charity, or the work in connection with the trade or business is mainly carried on by persons for whose benefit such charity is established.

A donor can be granted deductions for the purposes of Personal Assessment, Salaries Tax and Profits Tax for money donated to charities.

Generally, stamp duty will not be chargeable on any conveyance of immovable property or any transfer of Hong Kong stock where such assets are donated to charities.

Any organisation wishing to seek exemption from tax as a charity will need to apply to the Inland Revenue Department to obtain the tax exemption status.

10.2 Common Charitable Structures

The most common types of structures used by private individuals and organisations for charitable planning are companies limited by guarantee and societies; trusts are also increasingly common.

A company limited by guarantee is quick, simple and inexpensive to set up. It is a separate legal entity and the legal liability of members is limited to the amount of their contributions. The general compliance requirements include holding annual general meetings, filing annual returns to the Companies Registry, preparing audited financial statements, etc.

A society is also quick, simple and inexpensive to set up and run, but it has no separate legal status and members are personally liable if assets are not sufficient to meet the liabilities. It is not subject to the general compliance requirements for a company, as mentioned above.

A trust is generally more expensive and takes more time to set up and run if it is going to be managed by a professional trustee. It may be able to afford more privacy for the founder and the assets in the trust fund. Trustees can be personally liable, although it is possible to limit their liabilities subject to the restrictions in the Trustee Ordinance.

Charles Russell Speechlys is 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 advisers and financiers. The firm's 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. Charles Russell Speechlys deals with disputes arising out of trusts, wills, estate administration, family business arrangements and property. It has also expanded its offering with the addition of local and international real estate capabilities to the office. The team delivers a wealth of experience in relation to commercial property transactions.

AUTHORS

Jeffrey Lee is an international partner (England and 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.

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.

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 trust documentation for high net worth individuals with a range of wealth planning needs. She also advises on cross-border probate.

Charles Russell Speechlys Hong Kong

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

Tel: +852 2531 3400
Fax: +852 2713 5700
Email: jeffrey.lee@crsblaw.com
Web: www.charlesrussellspeechlys.com