Property tenure/ownership
All land in Hong Kong is leasehold land, with the exception of St. John’s Cathedral being the only freehold property in Hong Kong.

Land rights are generally provided by way of government lease. A government lease conveys certain rights to occupy, develop and use parcels of land in the territory in return for payment of government rent. The terms of government leases vary (50, 75, 99 or 999 years), with or without the right of renewal.

It is common in Hong Kong to sell a strata-title interest in a multistorey building (effectively a long leasehold interest). A Deed of Mutual Covenant (DMC) notionally divides the building and the land granted under government lease into a number of equal undivided shares. Each individual unit in the building is allocated a number of undivided shares, which convey the right to the exclusive use and possession of the unit. The DMC is binding on all owners of the units in the building and their successors and governs responsibilities for the upkeep and management of the building.

There is an active market in leasing commercial and residential properties.

Major property legislation
- Buildings Ordinance
- Companies Ordinance
- Conveyancing and Property Ordinance
- Government Leases Ordinance
- Inland Revenue Ordinance
- Land Registration Ordinance
- Landlord and Tenant (Consolidation) Ordinance
- Building Management Ordinance
- Stamp Duty Ordinance
- Town Planning Ordinance

Operational requirements for foreign corporations
Limited company
A company incorporated in Hong Kong with limited liability is the most commonly used company type in Hong Kong.

Overseas company
If a company incorporated outside Hong Kong establishes a place of business in Hong Kong, it must register with the Companies Registry as a ‘Non-Hong Kong Company’ within one month of establishment.

Partnership
A business commenced in the form of one person or by a group of people.

Registration/licencing requirements
Business Registration Certificate
All companies (local or otherwise) are required to apply for a Business Registration Certificate from the Business Registration Office of the Inland Revenue Department to commence business in Hong Kong.

Foreign investment regulations
There are no specific incentives for foreign investment, no restrictions to foreigners owning or operating businesses, and no residency requirements for directors and shareholders.

The Hong Kong government has suspended the Capital Investment Entrant Scheme (a scheme to facilitate the entry for residence by capital investment entrants, i.e., persons who make capital investment in Hong Kong but would not be engaged in the running of any business in Hong Kong), with effect from January 15, 2015 until further notice.

Restrictions on foreign property ownership
None

Foreign exchange controls
None

Taxes on possession and operation of real estate
Government rent
Certain types of properties are liable to pay government rent at an annual rate of 3 percent of the rateable value of the property and are adjusted in step with any subsequent changes in the rateable value. These include properties:

- In the New Territories and New Kowloon north of Boundary Street
- With land leases granted on or after May 27, 1985
- With their nonrenewable land leases extended on or after May 27, 1985 at a government rent of 3 percent of the rateable value of the lot from time to time
Rates
Rates are payable at a percentage of the rateable value of the property. For financial year 2014–2015, the percentage is 5 percent. The rateable value of a property is reviewed annually and is an estimate of the annual rental value of the property at a designated valuation reference date, assuming that the property was then vacant and to let.

Property tax
Property tax is levied on owners of property situated in Hong Kong on rental income derived from letting the properties. However, any person that sublets premises is considered to be carrying on a business, and the corresponding rental income is subject to profits tax rather than property tax. For financial year 2008/2009 onward, the property tax rate is 15 percent. For property tax purposes, a flat rate of 20 percent of the assessable value is deductible from gross rental income as a notional allowance for outgoings (regardless of the actual outgoings incurred). In addition, rates are deductible, provided that they are paid by the owner of the property. Bad debts (i.e., irrevocable rent) are also deductible.

Taxes in acquisition and transfer of real estate

Stamp duty and legal costs
Property transactions are recorded with the land registry. Stamp duty is levied on the sale of property and is generally borne by the buyer.

To regulate the property price in Hong Kong, the government has introduced new ad valorem stamp duty, special stamp duty and buyer’s stamp duty.

On February 22, 2013, the Financial Secretary announced, among other things, the adjustment to the ad valorem stamp duty (AVD) rates. Any residential property (subject to certain exceptions) and nonresidential property acquired on or after February 23, 2013, either by an individual or a company (regardless of where it is incorporated), will be subject to the new rates of AVD. Transactions that took place before February 23, 2013 will be subject to the original stamp duty regime.

The New AVD does not apply to an agreement/conveyance for a residential property where the purchaser/transferee is a Hong Kong permanent resident (HKPR) acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition; only the old AVD rates will apply to such agreement/conveyance.

If an HKPR is acquiring a residential Property A while seeking to dispose of Property B (being his/her only other residential property), he/she will be subject to the New AVD in the first instance, but may seek a refund of the stamp duty paid in excess of that under the old AVD upon proof that Property B has been disposed of within six months from the date he or she executed the agreement to acquire Property A.

<table>
<thead>
<tr>
<th>CONSIDERATION</th>
<th>Does not exceed</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>HKD 2,000,001 (USD 257,980)</td>
<td>HKD 2,176,470 (USD 280,743)</td>
<td>HKD 30,000 (USD 3,870) + 20% of excess over HKD 2,000,000 (USD 257,980)</td>
</tr>
<tr>
<td>HKD 2,176,471 (USD 280,743)</td>
<td>HKD 3,000,000 (USD 386,970)</td>
<td>3%</td>
</tr>
<tr>
<td>HKD 3,000,001 (USD 386,970)</td>
<td>HKD 3,290,330 (USD 424,420)</td>
<td>HKD 90,000 (USD 11,609) + 20% of excess over HKD 3,000,000 (USD 386,970)</td>
</tr>
<tr>
<td>HKD 3,290,331 (USD 424,420)</td>
<td>HKD 4,000,000 (USD 515,960)</td>
<td>4.5%</td>
</tr>
<tr>
<td>HKD 4,000,001 (USD 515,960)</td>
<td>HKD 4,428,580 (USD 571,245)</td>
<td>HKD 180,000 (USD 23,218) + 20% of excess over HKD 4,000,000 (USD 515,960)</td>
</tr>
<tr>
<td>HKD 4,428,581 (USD 571,245)</td>
<td>HKD 6,000,000 (USD 773,944)</td>
<td>6%</td>
</tr>
<tr>
<td>HKD 6,000,001 (USD 773,944)</td>
<td>HKD 6,720,000 (USD 866,817)</td>
<td>HKD 360,000 (USD 46,437) + 20% of excess over HKD 6,000,000 (USD 773,944)</td>
</tr>
<tr>
<td>HKD 6,720,001 (USD 866,817)</td>
<td>HKD 20,000,000 (USD 2,579,815)</td>
<td>7.5%</td>
</tr>
<tr>
<td>HKD 20,000,001 (USD 2,579,815)</td>
<td>HKD 21,739,130 (USD 2,804,147)</td>
<td>HKD 1,500,000 (USD 193,486) + 20% of excess over HKD 20,000,000 (USD 2,579,815)</td>
</tr>
<tr>
<td>HKD 21,739,130 (USD 2,804,147)</td>
<td></td>
<td>8.5%</td>
</tr>
</tbody>
</table>
Old AVD rate

<table>
<thead>
<tr>
<th>CONSIDERATION</th>
<th>Does not exceed</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>–</td>
<td>HKD 2,000,000 (USD 257,980)</td>
<td>HKD 100 (USD 12.90)</td>
</tr>
<tr>
<td>HKD 2,000,000 (USD 257,980)</td>
<td>HKD 2,351,760 (USD 303,355)</td>
<td>HKD 100 (USD 12.90) + 10% of excess over HKD 2,000,000 (USD 257,980)</td>
</tr>
<tr>
<td>HKD 2,351,760 (USD 303,355)</td>
<td>HKD 3,000,000 (USD 386,970)</td>
<td>1.5%</td>
</tr>
<tr>
<td>HKD 3,000,000 (USD 386,970)</td>
<td>HKD 3,290,320 (USD 424,418)</td>
<td>HKD 45,000 (USD 5,804) + 10% of excess over HKD 3,000,000 (USD 386,970)</td>
</tr>
<tr>
<td>HKD 3,290,320 (USD 424,418)</td>
<td>HKD 4,000,000 (USD 515,960)</td>
<td>2.25%</td>
</tr>
<tr>
<td>HKD 4,000,000 (USD 515,960)</td>
<td>HKD 4,428,570 (USD 571,240)</td>
<td>HKD 90,000 (USD 11,609) + 10% of excess over HKD 4,000,000 (USD 515,960)</td>
</tr>
<tr>
<td>HKD 4,428,570 (USD 571,240)</td>
<td>HKD 6,000,000 (USD 773,944)</td>
<td>3%</td>
</tr>
<tr>
<td>HKD 6,000,000 (USD 773,944)</td>
<td>HKD 6,720,000 (USD 866,817)</td>
<td>HKD 180,000 (USD 23,218) + 10% of excess over HKD 6,000,000 (USD 773,944)</td>
</tr>
<tr>
<td>HKD 6,720,000 (USD 866,817)</td>
<td>HKD 20,000,000 (USD 2,579,815)</td>
<td>3.75%</td>
</tr>
<tr>
<td>HKD 20,000,000 (USD 2,579,815)</td>
<td>HKD 21,739,120 (USD 2,804,147)</td>
<td>HKD 750,000 (USD 96,742) + 10% of excess over HKD 20,000,000 (USD 2,579,815)</td>
</tr>
<tr>
<td>HKD 21,739,120 (USD 2,804,147)</td>
<td>–</td>
<td>4.25%</td>
</tr>
</tbody>
</table>

Stamp duty is also payable on leasing transactions, with the rate dependent on the rent payable and lease term. Stamp duty on a lease transaction is normally borne equally by the landlord and the tenant.

It is a usual practice for each party to bear its own legal costs in a property transaction.

Special Stamp Duty

In addition to the ad valorem stamp duty, ‘special stamp duty’ (SSD) is imposed on the disposal of any residential property acquired either by an individual or company (regardless of where it is incorporated) on or after November 20, 2010 and resold within 24 or 36 months (as the case may be) after acquisition.

SSD is calculated based on the stated consideration for the transaction or the market value of the property, whichever is higher, at the following rates:

If the property was acquired between November 20, 2010 and October 26, 2012:
- 15 percent if the vendor has held the property for six months or less
- 10 percent if the vendor has held the property for more than six months but for 12 months or less
- 5 percent if the vendor has held the property for more than 12 months but for 24 months or less

If the property was acquired on or after October 27, 2012:
- 20 percent if the vendor has held the property for six months or less
- 15 percent if the vendor has held the property for more than six months but for 12 months or less
- 10 percent if the vendor has held the property for more than 12 months but for 36 months or less

Buyer’s Stamp Duty

Buyer’s stamp duty of 15 percent of the market value or stated consideration of the property (whichever is higher) is imposed on top of the ad valorem stamp duty and SSD (where applicable for the acquisition of any residential property executed on or after October 27, 2012. This is unless the buyer is a Hong Kong permanent resident or the transaction is subject to an exemption.

Capital Gains Tax

None. However, where gains form part of normal trading activities, they are liable to profits tax.

Value Added Tax/Goods and Services Tax

None.
**Tax depreciation**

The following types of depreciation allowances are available:

<table>
<thead>
<tr>
<th>Industrial building allowances on industrial buildings and structures</th>
<th>Commercial building allowances on commercial buildings and structures</th>
<th>Plant and machinery</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial allowance</td>
<td>20% on the cost of construction of the premises</td>
<td>60% on the cost of the plant/ machinery</td>
</tr>
<tr>
<td>Annual allowance</td>
<td>4% on the cost of construction of the premises</td>
<td>10%, 20% or 30%, as prescribed by the Board of Inland Revenue in the Inland Revenue Rules on the reducing value of the asset</td>
</tr>
<tr>
<td>Balancing allowance or charge</td>
<td>Due upon disposal of the premises</td>
<td>Available only on cessation of a business to which there is no successor</td>
</tr>
</tbody>
</table>

Tax is levied on earnings arising in, or derived from, Hong Kong. It is calculated as the lesser of the following:

- A graduated scale of tax rates applied after taking into account a range of deductions and allowances
- A standard tax rate applied to total net income without allowances (15 percent for year 2008/2009 onward)

**Tax treaties**

Treaties in relation to avoidance of double taxation in existence:

- Austria
- Belgium
- Brunei
- Canada
- China
- Czech Republic
- France
- Guernsey
- Hungary
- Indonesia
- Ireland
- Italy
- Japan
- Jersey
- Korea
- Kuwait
- Liechtenstein
- Luxembourg
- Malaysia
- Malta
- Mexico
- The Netherlands
- New Zealand
- Portugal
- Qatar
- *South Africa
- Spain
- Switzerland
- Thailand
- *United Arab Emirates
- United Kingdom
- Vietnam

*Treaty that has not yet come into force

**Corporate taxation**

From financial year 2008/2009 onward, the rate of corporate taxation for:

- Incorporated entities is 16.5 percent
- Unincorporated entities is 15 percent

Net losses may be carried forward indefinitely.

**Personal taxation**

Individuals are subject to tax on income from properties, salaries and profits of sole proprietor businesses. Persons staying in Hong Kong for periods of less than 60 days within a year of assessment are not subject to salaries tax. Owner-occupiers are allowed to deduct interest payments from taxable income up to a maximum of HKD 100,000 (USD 12,896) per year per property for 15 years of assessment.

**Real estate investment trusts**

**Introduction**

Real estate investment trusts (REITs) are mainly governed by the Code on Real Estate Investment Trusts. The Code, however, does not have the force of law and shall not be interpreted in a way that will override the provision of any law.

A REIT is a collective investment scheme constituted as a trust that invests primarily in real estate, with the aim to provide unit holders with returns derived from the rental income of the real estate. Funds obtained by a REIT from the sale of units in the REIT are used in accordance with the constitutive documents to maintain, manage and acquire real estate within its portfolio.

The assets of a REIT shall be held in a trust and segregated from the assets of its trustee, management company, related entities, other collective investment schemes and any other entity.
With effect from June 2005, Securities and Futures Commission (SFC)-authorised REITs are allowed to invest in overseas properties in accordance with the provisions of the Code and Practice Note issued by the SFC.

**Restrictions on REITs**

- A REIT may acquire uncompleted units in a building, but the aggregate contract value of such real estate shall not exceed 10 percent of the REIT’s total net asset value at the time of acquisition.
- No investment in vacant land or property development activities is allowed.
- The REIT shall hold each property for a period of at least two years.
- If the name of the REIT indicates a particular type of real estate, at least 70 percent of the REIT’s noncash assets shall be invested in such type of real estate.
- A REIT may borrow for the purpose of financing investments or operations, but the aggregate gearing shall not exceed 45 percent of its total gross asset value.
- A REIT shall distribute to unit holders as dividends each year an amount not less than 90 percent of its audited annual net income after tax.

**Taxation for REITs**

A REIT is liable for tax as other ordinary companies are in Hong Kong.
### Common Terms of Lease for Tenancy Agreements

<table>
<thead>
<tr>
<th><strong>Unit of measurement</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Unit of measurement</strong></td>
<td><strong>Square Feet</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Rental payments</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rents</strong></td>
<td><strong>HKD/sq ft/month</strong></td>
</tr>
<tr>
<td><strong>Typical lease term</strong></td>
<td><strong>Typically 3–6 years with 6–12 years for larger occupiers</strong></td>
</tr>
<tr>
<td><strong>Frequency of rent payable (in advance)</strong></td>
<td><strong>Monthly</strong></td>
</tr>
<tr>
<td><strong>Typical rent deposit (expressed as x months rent)</strong></td>
<td><strong>3 months</strong></td>
</tr>
<tr>
<td><strong>Security of tenure</strong></td>
<td><strong>Not guaranteed beyond the original lease term. The period of prior notice is subject to the terms prescribed in the underlying contract</strong></td>
</tr>
<tr>
<td><strong>Does tenant have statutory rights to renewal</strong></td>
<td><strong>No, unless an option to renew is agreed at the outset and specified in the lease</strong></td>
</tr>
<tr>
<td><strong>Basis of rent increases or rent review</strong></td>
<td><strong>Open market rental value</strong></td>
</tr>
<tr>
<td><strong>Frequency of rent increases or rent review</strong></td>
<td><strong>At lease renewal or every three years in longer leases</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Service charges, operating costs, repairs and insurance</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Responsibility for service charge/ management fee</strong></td>
<td><strong>Monthly in advance. Tenant is responsible for respective pro-rata share.</strong></td>
</tr>
<tr>
<td><strong>Responsibility for utilities</strong></td>
<td><strong>Electricity and telecommunication consumption are separately metered and payable by each tenant; water consumption for industrial facilities is typically separately metered and payable by each tenant</strong></td>
</tr>
<tr>
<td><strong>Car parking</strong></td>
<td><strong>Where parking is available, it is typically held under a separate monthly lease for an additional rent</strong></td>
</tr>
<tr>
<td><strong>Responsibility for internal repairs</strong></td>
<td><strong>Tenant</strong></td>
</tr>
<tr>
<td><strong>Responsibility for repairs of common parts (reception, lifts, stairs, etc)</strong></td>
<td><strong>Landlord but costs charged back to tenant via service charge</strong></td>
</tr>
<tr>
<td><strong>Responsibility for external/structural repairs</strong></td>
<td><strong>Usually landlord responsible, but costs charged back to tenant via service charge</strong></td>
</tr>
<tr>
<td><strong>Responsibility for building insurance</strong></td>
<td><strong>Usually landlord responsible, but costs charged back to tenant via service charge. The tenancy agreement may also require the tenant to purchase insurance coverage on leased space.</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Disposal of leases</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tenant subleasing &amp; assignment rights</strong></td>
<td><strong>Subletting up to 25% of acquired space is generally possible for larger anchor occupiers</strong></td>
</tr>
<tr>
<td><strong>Tenant early termination rights</strong></td>
<td><strong>Only by break clause</strong></td>
</tr>
<tr>
<td><strong>Tenant’s building reinstatement responsibilities at lease end</strong></td>
<td><strong>Original condition</strong></td>
</tr>
</tbody>
</table>

Source: JLL
Ashurst Hong Kong
Robert Ogilvy Watson – Partner
tel +852 2846 8935
Lina Lee – Partner
tel +852 2846 8948
Jonathan Hsui – Partner
tel +852 2846 8924
11/F, Jardine House, 1 Connaught Place
Central, Hong Kong
tel +852 2846 8989
fax +852 2888 0898
www.ashurst.com