

LAWS AND REGULATIONS

GENERAL

Occupational Safety and Health Ordinance

The Occupational Safety and Health Ordinance (Chapter 509 of the Laws of Hong Kong) is purported to ensure the safety and health of employees and improve the safety and health standards applicable to certain hazardous processes, plant and substances used or kept in workplaces.

Employers shall as far as reasonably practicable ensure the safety and health of their employees in their workplaces by:-

- providing and maintaining plant and work systems that do not endanger safety or health;
- making arrangement for ensuring safety and health in connection with the use, handling, storage or transport of articles or substances;
- providing all necessary information, instruction, training and supervision for ensuring safety and health at work;
- providing and maintaining safe access to and egress from the workplaces; and
- providing and maintaining a safe and healthy work environment.

Failure to comply with the above provisions constitutes an offence and the employer is liable on conviction to a fine of HK\$200,000. An employer who fails to do so intentionally, knowingly or recklessly commits an offence and is liable on conviction to a fine of HK\$200,000 and to imprisonment for six months.

The Commissioner for Labour may also issue improvement notices against non-compliance of this Ordinance or the Factories and Industrial Undertakings Ordinance (Chapter 59 of the Laws of Hong Kong), or suspension notices against activity of workplace which may create imminent hazard to the employees. Failure to comply with such notices constitutes an offence punishable by a fine of HK\$200,000 and HK\$500,000 respectively and imprisonment of up to one year.

Employees’ Compensation Ordinance

The Employees’ Compensation Ordinance (Chapter 282 of the Laws of Hong Kong) establishes a no-fault and non-contributory employee compensation system for work injuries and lays down the rights and obligations of employers and employees in respect of injuries or death caused by accidents arising out of and in the course of employment, or by prescribed occupational diseases.

Under the Employees’ Compensation Ordinance, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is generally liable to pay compensation even if the employee might have contributed to the accident occurred.

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Pursuant to the Employees' Compensation Ordinance, all employers (including contractors and sub-contractors) are obliged to take out insurance policies to cover their liabilities arising from the Employees' Compensation Ordinance and the common law as a result of injuries sustained by their employees' committed acts of faults or negligence when the accident occurred. Similarly, under section 32 of the Employees' Compensation Ordinance, an employee who suffers incapacity or dies arising from an occupational disease is entitled to receive the same compensation as that payable to employees injured in occupational accidents. Further, section 40 of the Employees' Compensation Ordinance provides that an employer is not permitted to employ any employee in any employment unless there is in force in relation to such employee a policy of insurance issued by an insurer for an amount not less than that specified in the Employees' Compensation Ordinance.

Minimum Wage Ordinance

With effective from 1 May 2015, the Minimum Wage Ordinance (Chapter 608 of the Laws of Hong Kong) provides for a statutory minimum wage level at HK\$32.5 per hour for every employee employed under the Employment Ordinance (Chapter 57 of the Laws of Hong Kong). Any provision of the employment contract which purports to extinguish or reduce the right, benefit or protection conferred on the employee by the Minimum Wage Ordinance is void.

Mandatory Provident Fund Schemes Ordinance

The Mandatory Provident Fund Schemes (the “MPF”) are defined contribution retirement scheme managed by authorised independent trustees. The Mandatory Provident Fund Schemes Ordinance provides that an employer shall participate in a MPF scheme and make contributions for its employee who is aged between 18 to 65. Under the MPF scheme, an employer and its employee are both required to contribute 5% of the employee's monthly relevant income as mandatory contribution for and in respect of the employee, subject to the minimum and maximum relevant income levels for contribution purposes. The maximum level of relevant income for contribution purpose is currently HK\$30,000 per month or HK\$360,000 per year.

Occupiers Liability Ordinance

The Occupiers Liability Ordinance (Chapter 314 of the Laws of Hong Kong) regulates the obligations of a person occupying or having control of premises on injury resulting to persons or damage caused to goods or other property lawfully on the land.

The Occupiers Liability Ordinance imposes a common duty of care on an occupier of premises to take reasonable care of the premises in all circumstances so as to ensure that his visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

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INDUSTRY SPECIFIC

Overview

The laws and regulations in relation to the import, export and the sale of wines and liquors in Hong Kong are mainly governed by the Dutiable Commodities Ordinance, the Dutiable Commodities Regulations and the Dutiable Commodities (Liquor) Regulations. The Dutiable Commodities Ordinance defines liquor as any liquid which contains more than 1.2% of ethyl alcohol by volume except denatured spirits and any liquid that is an ingredient in any goods, if that liquid cannot be converted to pure ethyl alcohol or to an intoxicating liquor or if such a conversion would not be economical ("**Liquor**"). The Dutiable Commodities Ordinance also identifies the following three types of wines and liquors in broad:-

Type 1 - Liquors with an alcoholic strength of more than 30% by volume measured at temperature of 20 degrees Celsius

Type 2 - Liquors, other than wine, with an alcoholic strength of not more than 30% by volume measured at a temperature of 20 degrees Celsius

Type 3 - Wine, which is a liquor with an alcoholic strength of not more than 30% by volume measured at a temperature of 20 degrees Celsius, which is obtained from the fermentation of fresh grapes

The following sets out the laws and regulations in relation to and the licences required for the operation of our business:-

Licence to import and export

The Dutiable Commodities Ordinance provides that no licence is required for the import and export of Type 2 and Type 3 liquors and wines into and out of Hong Kong.

As for the import of Type 1 liquors into Hong Kong, only licensed importers under the authority of an effective import licence issued by the Customs and Excise Department may import such liquors into Hong Kong. The export of Type 1 liquors out of Hong Kong is not regulated so long as such liquors are duty-paid within Hong Kong.

Duty

With effect from 27 February 2008, the Hong Kong government amended the Dutiable Commodities Ordinance to remove all customs duties on Type 2 and Type 3 liquors and wines. Type 1 liquors remains subject to an import duty rate at 100% unless such liquors are to be re-exported and not to be consumed in Hong Kong.

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Certificate of origin

Under the Dutiable Commodities Regulations, any imported liquors for which a specific feature or characteristic is prescribed to that particular type of liquor, such as aroma, chemical properties, place of origin, production method etc., a certificate of origin shall accompany such liquor to certify the type, nature and quality of that liquor. In particular, the certificates of origin of brandy, whisky and rum shall contain all such information to enable the liquor to be readily identified.

Removal permit

Under the Dutiable Commodities Ordinance, upon the arrival of Type 2 and Type 3 liquors and wines in Hong Kong, no removal permit is required for the removal or transportation of these liquors and wines from the importing conveyances to their destinations in Hong Kong under any circumstance; however, the Dutiable Commodities Ordinance provides that Type 1 liquors shall only be removed or transported from any importing conveyances by a holder of a valid removal permit issued by the Customs and Excise Department.

Import and export declaration

The Import and Export (Registration) Regulations (Chapter 60E of the Laws of Hong Kong) provides that when importing or exporting any articles, including liquors and wines into or out of Hong Kong, the importer or exporter must lodge an accurate and complete import or export declaration with the Customs and Excise Department.

Labelling

Under the Food and Drugs (Composition and Labelling) Regulations (Chapter 132W of the Laws of Hong Kong), all pre-packed foods must legibly state on their packaging the following information:-

- the food name or designation;
- the list of ingredients;
- the durability period;
- statement of special conditions for storage or instruction for use;
- name and address of manufacturer or packer; and
- count, weight or volume.

These regulations, however, exempted the above labelling requirements for wines and other drinks with an alcoholic strength by volume of 10% or above. As for drinks with an alcoholic strength by volume of more than 1.2% but less than 10%, the durability period must be stated on the packaging. Under the Dutiable Commodities Regulations, all liquors imported into Hong Kong for local consumption must bear a label indicating the alcoholic strength of the liquors.

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Storage

The Dangerous Goods Ordinance (Chapter 295 of the Laws of Hong Kong) and its subordinate regulations identify 11 categories of dangerous goods; they together control the usage, storage, manufacturing and conveyance of these 11 categories of dangerous goods and provide for the licensing requirements in relation to their activities.

Pursuant to the Dangerous Goods (General) Regulations (Chapter 295B of the Laws of Hong Kong), it is expressly provided that the storage of any beer, spirits, wines or liquors is not subject to any restriction or licence; however, potable spirits, being spirits containing more than 35% of ethyl alcohol by volume and having a flash point of or exceeding 23 degrees Celsius but not exceeding 66 degrees Celsius, are categorised as Category 5 dangerous goods and their activities are subject to the restriction under the Dangerous Goods Ordinance.

Licence to sell liquors and wines

There is at present no specific legislation governing the sale of alcoholic beverages for off-premises consumption in Hong Kong; however, under the Dutiable Commodities Ordinance and the Dutiable Commodities (Liquor) Regulations it is a criminal offence to sell liquors at any premises for on-premises consumption, or at a place of public entertainment or a public occasion for consumption at that place or occasion unless the seller is on authority of a liquor licence or a temporary liquor licence issued by the Liquor Licensing Board or the Commissioner of Police.

There is currently no restriction on the minimum age for off-premises sale of alcoholic beverages in Hong Kong; however, under the Dutiable Commodities (Liquor) Regulations, it is a criminal offence to permit any person under the age of 18 years to consume any intoxicating liquors on the premises of the sale alcoholic beverages.

As regards the licensing requirement for holding wine tasting events in Hong Kong, the Dutiable Commodities Ordinance and the Dutiable Commodities (Liquor) Regulations provide that a temporary liquor licence will be required for holding such event at a place where a permanent liquor licence does not cover, or if an admission fee is charged for the participation of the event, or if liquors and wines are sold for on-premises consumption.

Product liability

The Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) provides that the seller of goods shall have an implied right to sell the goods. If the goods are sold by description, they shall correspond with the description and shall be of merchantable quality.