



HONG KONG VISA

HANDBOOK



Visa Information

Business Investment



Rationale

Somewhat surprisingly, for an entrepreneurial driven economy such as Hong Kong's, there are only relatively few business investment visas granted each year. The 300-400 approvals recorded are extremely modest compared to the 25,000 other employment visas issued annually. As the HKID do not provide statistics on the number of applications received, it does appear safe to assume that the low number of business investment visa approvals is less an indication of the interest of foreign nationals who wish to establish or join in a business in Hong Kong but more a reflection of the reality that getting a business investment visa approved is one of the most challenging of all the Hong Kong visa processes. That notwithstanding, foreign nationals arrive in droves to participate in the amazing business possibilities which Hong Kong has to offer and naturally enough, the Director of Immigration does not discourage applications from people to start up new, or join in existing, businesses in the HKSAR. In 2015, Start-Ups have been granted a leg-up if they can gain a place on a government accredited Incubator programme such as InvestHK's or that offered by Cyberport.

Employment Visa vs. Business Investment Visa

The difference between the two types of visa lies in the nature of the approvability tests and the fundamental issue of whether the applicant has value at risk in the enterprise seeking to justify his employment in their business operations. Consequently the HKID look carefully at the ownership structure of the business vehicle in which the applicant will be engaged and, as a general guide, anything more than a 30-40% ownership in the hands of the applicant will steer the HKID towards the application of the more onerous business investment visa approvability test instead of the employment visa approvability test. Masking the shareholding in an effort to get around this general rule of thumb is fraught with difficulty as the Immigration Department will peer under every nook and cranny in an effort to fully understand the underlying ownership arrangements. Consequently, the use of nominees purely for immigration purposes is not recommended.

Business Plan

If the enterprise is a completely new start up, a fully fledged plan for the business is mission-critical to visa approval. Business investment visas typically take between 4 and 6 months for formal approval to eventuate (compared to the maximum 4-6 weeks for out and out employment visas) and the reason for this is to allow the new business to grow a pair of legs and avail the opportunity for the HKID to assess if the business plan is a realistic one as measured by new 'facts on the ground' resulting directly from the actual implementation of business activities. Very few business investment visas are granted purely on the basis of a paper plan; indeed such approvals are usually related directly to very well resourced organisations extending their operations into Hong Kong from overseas. But where the business investor visa-applicant is in Hong Kong, typically as a visitor, though sometimes seeking to change visa status from sponsored employment, the HKID expect to see the business moving forward before they will grant the business investment visa. This creates a Catch 22 situation which is discussed below.

Catch 22

You cannot join in a business until the consent of the HKID is secured. You can't secure the consent of the HKID without showing contribution to Hong Kong. You can't show contribution to Hong Kong without joining in a business! The Immigration Department is very well aware of this conundrum and are pragmatic in their work around. In essence, if you have made an application for a business investment visa they will close their eyes to the technical breach of conditions of stay inherent in running a new business prior to having your business investor visa approved. The risk lies in not having an application in the system. So in order to protect yourself from the risk of prosecution, you need to empower the HKID to take an early view of your activities and apply for your business investment visa right at the very outset, of your commercial endeavours, not later on after 'its all moving forward'.



Preparing Your Case

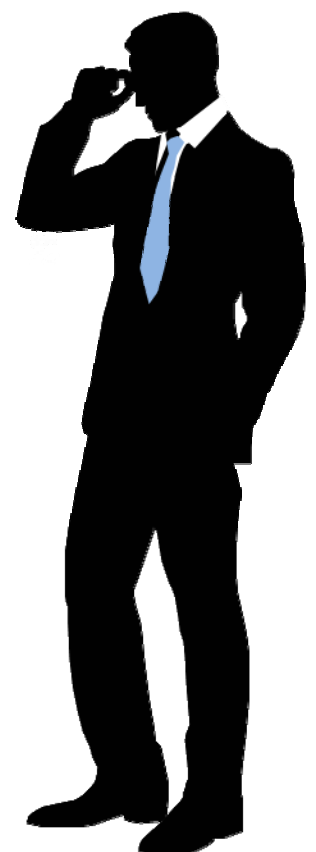
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Highlights

- The most difficult application type in the Hong Kong visa system
- Need to show substantial contribution to the economy of Hong Kong
- 4-6 months process
- Businesses on a shoe-string struggle to get approved
- Only 3-400 approvals annually
- Start-Ups can now get a leg up to approval



Discussion





Approvability Test

The business investment visa approvability test: ***“Is the applicant in a position to make substantial contribution to the economy of the HKSAR?”*** This is in many ways like asking how long is a piece of string as the test has to be applied in the context of the business in hand and no two cases are ever alike. Moreover, the state of the economy impacts (poor economic conditions = easier path to approval: robust economic outlook = the HKID can cherry pick the businesses they like.) However, years of experience has demonstrated that there are certain themes which run writ large through those applications which do get approved. In general, the applicant must be able to show that good local jobs will be created; local vendors and suppliers will play an important part of the business activity chain; overall, the business will contribute to its sector of the economy in some direct or indirect fashion and that over the long haul, the business investment activities of the applicant will result in a soundly established enterprise operation, which provides substantial benefit to Hong Kong.

A Suitable Business Vehicle

Whilst experience has demonstrated that it is possible to have a partnership at will or a sole proprietorship serve as the business vehicle which underpins a successful business investment visa approval, these entities are not recommended. The HKID are seemingly geared towards the limited liability company incorporated in Hong Kong as the default business vehicle for the purposes of business investment visa consents.

Four Cornerstones

Successful business investment visas applications tend to have four key elements present by the time the HKID approve the case. These are:

Local Jobs

No minimum number is expected but the potential for jobs must be manifest.

Suitable Business Premises

Running the business from your spare bedroom or kitchen table will simply not suffice!

Proof of Capital & Other Resources

These must be available, suitable in the context of the business and the capital invested beneficially owned by the applicant for at least 2 years immediately prior to funding the business.

Adequate Administration Arrangements

In a nutshell, one man businesses typically fail to pass the ‘substantiality’ test.

Articulating Your Argument

Investment visas which get approved tend to have one thing in common; the applicants have fully committed themselves to their ventures and such commitment is manifestly evident in their business activities. Remember, the HKID do not insist that the ‘substantial contribution’ requirement of the approvability test be immediately observable or satisfied at the point of granting the visa approval. It is sufficient that the contribution be ‘potential’. In taking your argument to the HKID, it is vital that you do not hide your light under a bushel. Be confident in your assertions of business performance, but provide for the possibility that the exact outcomes may not materialise in fact. The HKID are more than realistic and appreciate that no battle plan survives first contact with the enemy, so to speak. If you do not have confidence in your business plan, it is hard to envisage that the HKID will impute their own confidence in it on your behalf. Ensure that your plan is realistic but not producing marginal business outcomes. In crafting your supporting representations, seek to impress on the Immigration Department that your business has the potential to go a long way, that you are all geared up to travel on that journey, and that you have all the resources required to get you to your destination. Do not lie (which is a criminal offence) but do not be afraid to be robust in your assertions which, so long as you can back them up with resources and facts on the ground subsequently, will carry you a long way to getting your visa approved.

Examples



Discussion





Are You A 'Start-Up'?

An applicant who wishes to establish or join in a **start-up** business may also submit an application for a Business Investment visa. The Immigration Department may consider the application favourably, if the start-up business concerned is supported by a government-backed programme with a rigorous vetting and selection process, and the applicant is the proprietor or partner of the start-up company or a key researcher of the relevant project. Examples of government-backed programmes include:

(1) **StartmeupHK Venture Programme** administered by InvestHK; (2) **Incu-App, Incu-Bio and Incu-Tech Programmes** administered by the Hong Kong Science and Technology Parks Corporation; (3) **Cyberport Incubation Programme**; (4) **Small Entrepreneur Research Assistance Programme and Enterprise Support Scheme** administered by the Innovation and Technology Commission; and (5) **Design Incubation Programme** administered by the Hong Kong Design Centre.

'Favourable Consideration' for Start-Ups

Every application for a Business Investment visa should be prepared on the basis that it is an application which will require the applicants to pass the Approvability Test on the strength of its own business merits. However, if an applicant is accepted on to a government-backed programme as detailed above, any shortcomings inherent in the substantive application will be overlooked and HKID will 'favourably consider' the application as a result of being accepted on to such programme.

Contents of Your Business Plan

An applicant who wishes to establish or join in business in Hong Kong should submit a two-year business plan stating the nature of the business, market analysis, market positioning, business direction, sales targets, product marketing strategy, etc. in order to demonstrate that the business is suitable for and capable of developing in Hong Kong. The applicant should also submit a two-year forecast of the profit-and-loss account statement, cash flow statement and balance sheet to demonstrate the feasibility of the business in terms of operation, finances and development. The Immigration Department may consider whether the applicant's business belongs to or is able to complement industries that Hong Kong enjoys clear advantages, such as the four traditional pillar industries (i.e. trading and logistics, tourism, financial services, and professional and producer services) or the four clusters of sectors being explored for support measures by the Economic Development Commission (i.e. transportation, convention and exhibition industries and tourism, manufacturing industries, innovative technology and cultural and creative industries, and professional services).

If the applicant is running relevant business overseas or has joined in a business in Hong Kong, he/she should submit the profit-and-loss account statement and balance sheet showing the business turnover and profit in the previous year. Those who intend to establish business in Hong Kong should submit a two-year forecast of profit-and-loss account statement and balance sheet as mentioned above, including the anticipated business turnover in order to demonstrate the feasibility of the business operation and development. In assessing an application for entry for investment to establish business in Hong Kong, the Immigration Department will also consider whether the applicant has relevant investment or working experience in the business concerned. If needed, the Immigration Department will seek advice from relevant government departments or professional bodies in order to assess whether the business is suitable for and able to sustain a steady growth in Hong Kong, and can give impetus to the industry concerned.

The applicant should submit statements of his/her personal and company bank accounts in the previous year and proof of other sources of funding, as well as the company's latest audited financial report (if any) to demonstrate that he/she has sufficient financial resources to run the relevant business in Hong Kong and also support the smooth operation and sustainable growth of the business.

The applicant should submit documentary proof showing the amount of capital investment in Hong Kong. The Immigration Department will consider whether the investment amount is able to support the operation of the business.

The applicant should set out the organisational structure of his/her business and the required number of staff and posts, based on the nature and scale of the business. He/She should indicate the number and level of actual jobs created locally (e.g. managers, administrators, professionals, clerical support staff, etc.)

The applicant should explain how the new technology or skills to be introduced can inspire creativity in the high-value-added industries in Hong Kong, and whether he/she has taken out patent, contributing to the long-term development of Hong Kong as a knowledge-based economy.



Documents Required

- Application form ID999A (applicant) and ID999B (sponsor).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong.
- Copy up-to-date CV.
- Photocopy of all graduation certificates/proof of academic qualifications.
- Copies of prior employment references and testimonials.
- Copy Letter of Engagement or Contract of Employment detailing information about the post, emolument and term.
- Copy Business Registration Certificate.
- Copy of latest audited financial report and/or management accounts (if available).
- Copy latest profits tax return to the Commissioner for Inland Revenue (if available).
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1) or if a new company FORM NNC1.
- Company brochure (and/or "Company Profile"), sales publications, press articles and any similar promotional type materials, which verify the business type of the company.
- General proofs of business - for example, trading documentation, shipping documents, invoices, contracts, agency and distribution agreements etc.
- Office tenancy agreement copy (if any)
- If there is a substantial overseas parent company the following documents could also be submitted to assist in the credibility establishment process: Certificate of Incorporation of the parent company, its audited financial statement and the parent company profile or brochure (which will often suffice instead of Hong Kong corporate background information.)
- A color print out of company's website (if available).
- Copies of Company's bank statements for the last six month period (if available).
- Company's confirmed client list (both in suppliers/buyers in Hong Kong and Overseas).
- A chart/graph showing company's projected turnover for the next 24 months, based on the current business.
- Proof of monetary injections by the applicant into the business.
- Three colour photographs of the company's office premises.
- Copy of current staff list with name, position, nationality, salary and HK Identity card **and** a chart showing the number of staff to be employed in the coming year together with their positions.
- Copy of Mandatory Provident Fund Certificate, debit note and bank deposit receipt of contributing funds to current staff.
- Copy of Employees' Compensation Insurance Policy, debit note and receipt of current staff.
- A complete business plan if one has already been written.
- If a 'Start-Up' accepted on to a government-backed accredited programme, the letter of acceptance.



Discussion

"An application for a Hong Kong business investment visa is more akin to a Picasso than a Turner."





Changing from Visitor to Business Investment

It is no doubt possible to arrive in Hong Kong as a visitor and then approach the HKID to apply to adjust your immigration status through an application for a business investment visa whilst you are visiting Hong Kong. Indeed, as the discussion in the section on the Catch 22 suggests, the Immigration Department are very alert to the need for intending business investment visa holders to actively get on with business during the formal application consideration process. However, the HKID will not afford you any extension to your visitor visa just by virtue of you having a business investment visa under active consideration so you will need to manage your visitor status by leaving Hong Kong before your current limit of stay expires and then returning to Hong Kong to 'refresh' your visitor status. The risk is that, even after due consideration has been given to your application, it does not meet the approval of the HKID and you now have a Hong Kong based business which you are unable to carry on without breaching your conditions of stay. If you do get denied and then work your way through the various avenues of appeal, which themselves do not result in a positive outcome subsequently, the temptation will be to remain in Hong Kong as a visitor to-ing and fro-ing across the border on a visa-run. This is fraught with difficulty, however, because sooner or later you will amass more than 180 visitor days in any one year period and on one of your visa runs you will be stopped, vigorously questioned by the examining immigration officer and then granted a 3 day non-extendable "SCL" (short conditional landing). This will effectively bring your time and your business in Hong Kong to an end. So there is a visa end point and you need to have this in mind when considering if entering into a business in Hong Kong is the right thing for you to do.

Changing from Employment to Business Investment

This is entirely possible and will require a bit of fancy footwork if you have actually ceased working for your employer and started out in business for yourself prior to submitting your application to the HKD. The approvability test is just as onerous, however, but if you have 3 years current Hong Kong residence things are a little easier for you (but no guarantee of approval). You need to make an application to change your visa category.

Joining in a Side Business First

If you hold an employment visa and can get your current employer to agree in writing that they consent to you running a side business in addition to the work you do for them, then the HKID are happy to receive an application from you for immigration permissions to do this and, assuming that all the paperwork is in order and your arguments make commercial sense, they will likely agree to allow you to join in that side business. You should treat your application exactly as if it were a full business investment visa application. The neat thing about this route is that it sets the scene for a full investment visa approval (upon application, subsequently) later on.

Sponsorship

You will require a sponsor for your business investment visa. This can be any Hong Kong ID card holder but ideally it should be a HKID holder on behalf of a corporate or other business entity which has a commercial relationship with you and your business.

The Consideration Process

Be ready to undergo 'trial by ordeal' as it takes 4-6 months (4-6 weeks for an existing resident) for a business investment visa application to be finalised. The HKID will very likely to and fro with you by correspondence all throughout this time (and you may get an occasional telephone call too). Be aware of specific requests for further information as these will shed light on the areas of weakness which the HKID believe are present in your application and actually afford a great opportunity to address them forthrightly and bring to their attention other positive developments which have occurred in the time since your paperwork was first submitted. Once approved, you will be notified, typically by letter, and invited down to Immigration Tower to complete the business investment visa approval formalities.

Refusal & Appeal

If your case is denied, you can elect to start the appeal process with a formal request for Reconsideration. If you are a visitor seeking to change your status, the HKID will not afford you an extension to your current period of stay during the Reconsideration process. See the section on Appeals.

