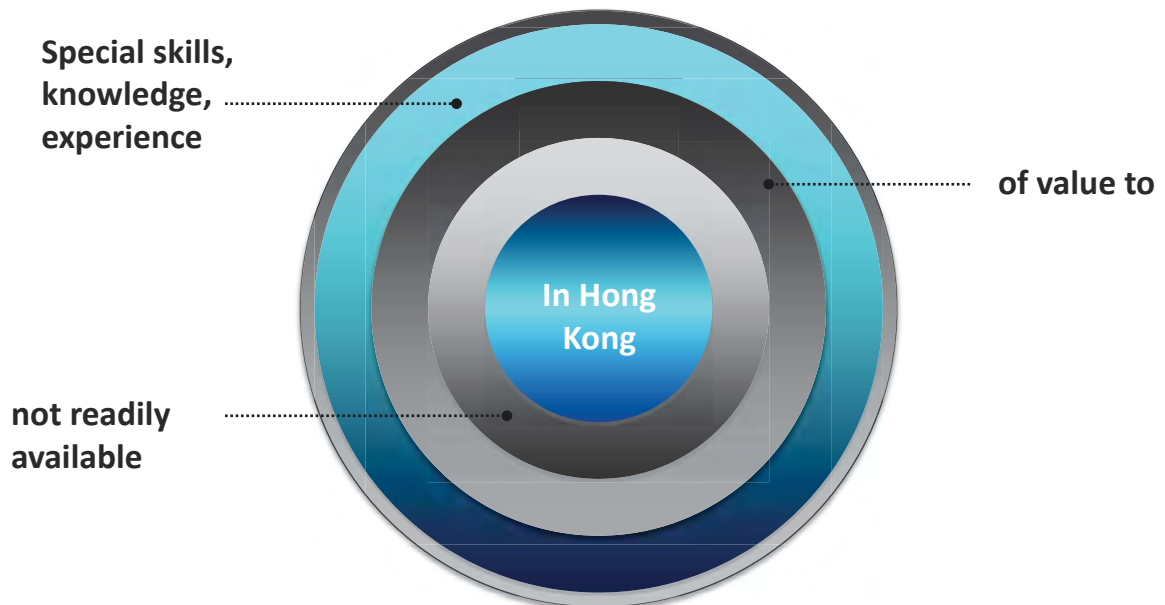


# Visa to Take Up Employment in the HKSAR

**HONG KONG VISA**  
CENTRE

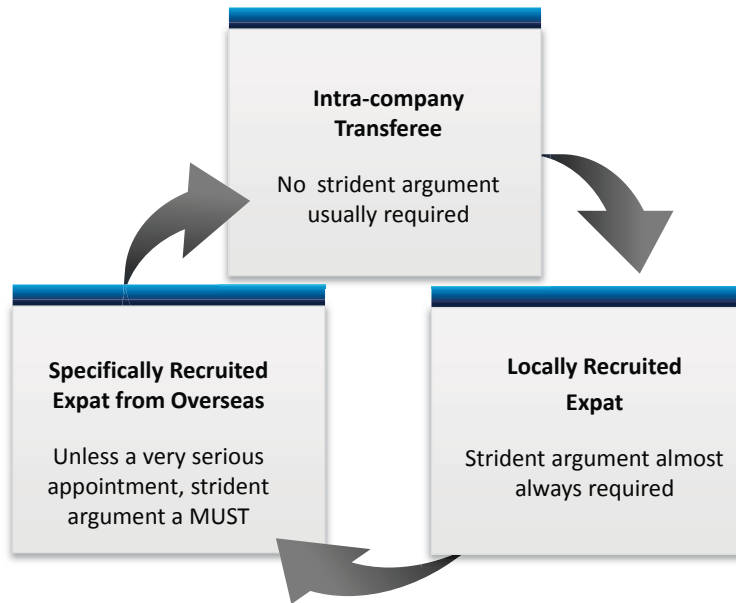
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## ANALYSING THE APPROVABILITY TEST



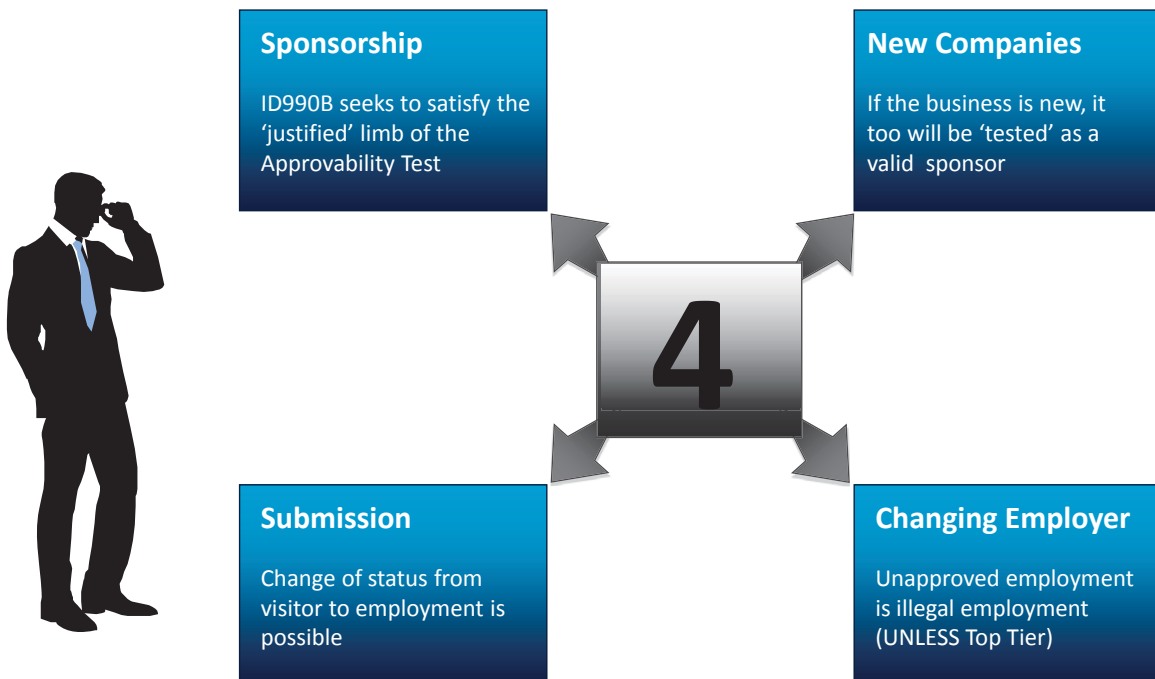
**+** your employer must be justified in engaging the services of an expatriate

THREE TYPES OF APPLICANT



Ensure you know the case type and where it sits on the admin/argue axis

FURTHER CONSIDERATIONS



## OWNER 'EMPLOYEE'

1

You cannot 'self sponsor'

2

If you have 'value at risk' in the employer, you are likely an 'investor'

3

Don't play games with the HKID—they always get to the bottom of business ownership

4

If the situation genuinely stacks up, you will receive an approval

**Do you own the business or merely going to work for it?**

## TOP TIER 'EMPLOYEE'

**Enhancement Measure May 6, 2015**New policy designed to attract and retain Entrepreneurs,  
Professionals and Talents**HKD2 million Assessable Income**Present your tax bill showing HKD2 million in income  
in the previous tax year, demonstrate you remain  
gainfully employed and you attain 'Top Tier' status**Ticket to Ride**Once assessed as Top Tier you get an immediate 6 year limit of stay with the  
only limit of stay in force being that of time and a requirement to notify ImmD  
of any change of employment in writing within 30 days

## Eligibility

Under the General Employment Policy, an application for a visa to take up employment will be successful if:

- There is no security objection and no known record of serious crime.
- You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.
- There is a genuine job vacancy.
- You have a confirmed offer of employment.
- You will be employed in a job relevant to your qualifications or working experience.
- That job cannot be readily taken up by the local work force.
- The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.

## Approvability Test

You must possess **special skills, knowledge or experience of value to and not readily available in Hong Kong**. Moreover, **your employer must be justified in engaging the services of an expatriate staff**.

## Assessing Your Case Type

How you go about structuring your argument will depend on which classification your application falls. You must first discern the type you generally fit in to and then approach your case accordingly. The three general classifications are:

1. Intra-company transferee.
2. Locally recruited expat.
3. Non-local expat specifically recruited from overseas.

### ***Intra-company Transferee***

Typically no need to engage in substantive argument as long as the applicant has 12 months prior employment with the company. These cases tend to be administrative in nature. However, it is always worthwhile setting out specifically how the applicant satisfies the separate limbs of the approvability test. It may be very obvious to you, but not necessarily so to the examining immigration officer so the more detail you can provide, the easier it will be for him to positively assess the application (suggesting a speedier approval process).

### ***Locally Recruited Expat***

If the applicant is already a 4 years + resident of Hong Kong and is set to move jobs within the same industry but over to a different employer (a change of employers/sponsorship application) these cases tend to be administrative in nature. Any less than four years prior residence or where a previous employment visa was just recently approved or, most typically, where a visitor to Hong Kong is seeking to change status to take up an offer of employment in Hong Kong, the case must be forthrightly argued.

### ***Non-local Expat Specifically Recruited From Overseas***

The 'newly-hired-gun-for-Hong-Kong' scenario. Great care must be taken in preparing and how you present these applications. Consideration must be given to the size, scope and nature of the Hong Kong operation requiring these skills brought in from overseas specifically and the case made out that Hong Kong will very definitely benefit if the HKID approve the application. The application must be strenuously argued if the Hong Kong business is only recently established or if it is not a particularly sizeable operation. The HKID frown upon overseas recruitment so the case must be suitably presented and correctly argued.



Preparing Your Case

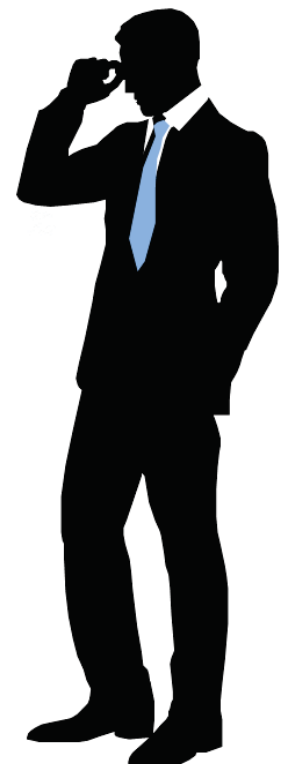
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### Highlights

- You must pass the employment visa Approvability Test
- Your employer has an important role to play in the process.
- You need to properly assess your application 'type' and prepare accordingly
- A strong case has a strong argument
- Top Tier status available



Discussion



## Considering Your Argument

To ensure the best possible chance of an approval, you need to promulgate a good case argument. Good arguments are derived from a careful application of your individual circumstances as applied in the context of the job offer in hand. Moreover, the particular circumstances of your proposed employer's business and their specific need for exact skills needs to be interwoven throughout. Please refer to the following narrative for guidance on what you should be articulating to the HKID when arguing your case for an employment visa approval:

### **Special Skills, Knowledge, Experience**

'Special' as compared to other foreign nationals and also locals. 'Skills, Knowledge and Experience' in the context of the actual work to be done.

### **Of Value**

Value here can be economic, social or educational. Not all activities are deemed of value, however. It depends on the nature of the work.

### **Not Readily Available**

The HKID have their own methods of determining whether such skills are in fact available from within the local workforce. They will often interact with other government agencies to seek official guidance. Running job advertisements and stating no one/no one suitable applied can be a double edged sword. On the one hand, by virtue of the fact that you advertise locally for a candidate you are admitting that there remains the possibility of the employer finding the skills they need locally (and so its just a matter of time before a suitable candidate emerges). On the other, if you do advertise and claim that no suitable candidate has emerged, the HKID will ask to see the CV's procured in response. On balance it is advisable to be able to prove that the local market has been tested. Either way, it's a struggle. The HKID place the burden of proving that the skills in question are not available locally on the shoulders of the applicant and their proposed employer. In making the argument, this element of the approvability test must be addressed, if not directly, then certainly by implication from all the other things you will be saying in support of the application.

## Articulating Your Argument

***You have a good educational background in the relevant field but in special circumstances good technical qualifications, proven professional abilities and/or relevant experience.***

Normally, a first degree is required. In the event that you do not have a degree, it is acceptable to cite your prior qualifications and experience. Your CV is a vital document in these instances as are any testimonial and references from previous employers.

***There is a genuine job vacancy.***

Here representations need to be made which detail how the vacancy came about and where it sits within the organisational chart of the employing company as a whole. The HKID are on the look out for 'contrived employments' with a view to residence in the absence of a bona fide employment opportunity.

***You have a confirmed offer of employment.***

This requires the HKID having sight of an offer of employment a condition of which is that the employment is "subject to the approval of the Director of Immigration".

***You will be employed in a job relevant to your qualifications or working experience.***

In other words, if you are an investment banker seeking to change careers to a PR expert, the likelihood of you satisfying this limb of the approvability processes is slight,

***That job cannot be readily taken up by the local work force.***

Please see the comments above in relation to "Not Readily Available".

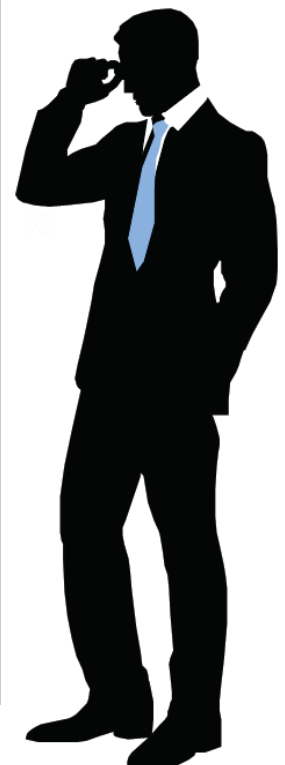
***The remuneration package. Including income, accommodation, medical and other fringe benefits is broadly commensurate with the prevailing market level for professionals in the HKSAR.***

In stark terms, any employment package valued at any less than HKD260,000 p.a. will likely struggle to approval.

In addition, the employer must be deemed a suitable and credible sponsor of the application.



Discussion



## Documents Required

- Application form ID990A (employee) and ID990B (employer).
- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong (white visa slip).
- 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.
- Copy latest profits tax return to the Commissioner for Inland Revenue.
- Copy of the most recent Annual Return filed with the Registrar of Companies (FORM NAR1), along with Companies FORM ND2A (Notification of Changes of Secretary and Directors) if applicable, and FORM NSC1 (Return of Allotments).
- Detailed letter introducing the company, its business and list of staff (with HKID numbers).
- 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 arrangements documentation.
- 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.)



Discussion

*NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are mostly not required.*



## Submitting Your Application

The application is submitted to the HKID either (a) via post from overseas or in person to the Receipt & Dispatch Unit of the Immigration Tower (2/F) or (b) via the 24/F Entry Employment Visa section of Immigration Tower or (c) via the 5/F Residents section of Immigration Tower if you are seeking to change Visa Category or Sponsorship (Employer) if you are presently in Hong Kong as a resident.

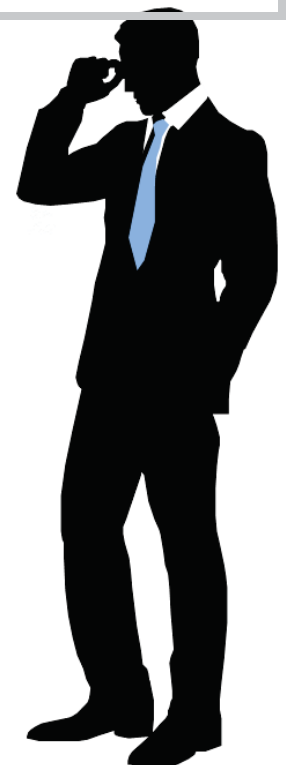


## The Consideration Process

Applications should be complete at point of submission. Once your application has been submitted, the process will play out via mail and/or fax. Occasionally the HKID will communicate with you via email. Processing time is usually 4-6 weeks but can be considerably longer in more complex cases. It is rare that a case, unless it is an Inter-company transferee type, will be approved without some element of a dialogue whereby the HKID will raise questions and requests for further information. These subsequent submissions are usually required within 14 days, although the HKID are quite flexible, proving you with sufficient time to respond. Careful consideration should be given to these requests; they can provide very real clues as to the attitude the HKID are adopting to the case. Remember, the challenge is to ensure that the Approvability Test is very properly addressed so the materials you submit in response to the request of the HKID should carry forward your substantive argument for approval. Once approved, the HKID will write to you with a notice as to the positive outcome and invite you to complete the approval formalities which will differ depending on how you submitted your application.

## 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.







## Employment Visa

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- Recent photograph affixed to the form.
- Copy passport details page and current visa/period of stay if presently in Hong Kong (white visa slip).
- 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.
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- Detailed letter introducing the company, its business and list of staff (including HKIDs)
- 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 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.)



**NB — if the employing company has had a prior employment visa approved in the previous 18 months the employer documents above are mostly not required (however the Form ID990B is required in all instances).**



Discussion

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## Employment Visa

### Notes



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