



## LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.



# How to Use This Brief

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As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

**Internal Staff:** Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

**Government Leaders:** In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

**In-country Business Partners:** In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

## Talking Points

"We applaud Hong Kong's judiciary for deciding to grant dependent visas to same-sex spouses of foreign professionals in the QT Case. It's welcome progress – but it's also just one small step towards equality for LGBT+ people in Hong Kong. LGBT+ talent is paying close attention to the debates over relationship recognition, marriage equality, and anti-discrimination laws in employment and other sectors."

"As soon as the verdict in the QT Case was handed down, business boosters for Hong Kong began discussing how the new spousal visa policy would be a competitive advantage for the city, relative to its competitors in the region. Additional progress on LGBT+ equality in Hong Kong would likewise enhance the city's international reputation as a place to live and work."

"The Court of Appeal's June 2018 decision (*Angus Leung v Director of Immigration*) to deprive same-sex spouses of spousal employment and tax benefits makes it clear that LGBT+ couples remain second-class citizens. They are also denied equal rights in relation to many areas of relationship rights or benefits in Hong Kong such as public housing, inheritance rights, parental rights, adoption and IVF treatment. This environment makes it more challenging to motivate top talent to relocate talent to Hong Kong."

"The government's delay in enacting acting on gender identity rules leaves trans people in limbo, which complicates my ability to recommend that trans talent relocate or invest in Hong Kong. The city should enact as soon as possible such gender recognition legislation, and not have as a requirement that persons undertake speed up the process of recognizing the stated gender of trans people, regardless of whether they've had gender affirmation surgery."



# Current Legal Status of LGBT+ People

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## *Legal Status of the Lesbian, Gay, and Bisexual Community*

There is no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status in Hong Kong that would cover the public and private sectors in all key areas of life such as employment, goods and services, education and housing. Over the years, LGBT+ rights groups and the Equal Opportunities Commission has called on the Government and Legislative Council to enact such anti-discrimination laws without success.

Consensual same-sex relations were decriminalized in 1991.

Same-sex marriage or same sex civil partnerships cannot be performed in Hong Kong. There is however limited recognition of same sex marriages, civil partnerships or civil unions for the purposes of immigration to Hong Kong, where those same sex legal relationships were entered into in countries which permit them.

In June 2018, a woman filed a lawsuit against the Hong Kong government alleging that Hong Kong's refusal to offer same-sex civil unions violates her right to privacy and equality. The case has yet to be heard.

In June 2018, in the case of *Angus Leung v Director of Immigration*, the Court of Appeal overturned a High Court decision in favor of granting the same-sex spouse of a Hong Kong civil servant the same employment benefits as those given to heterosexual couples and upheld a decision by the same judge rejecting the couple's claim for a joint tax assessment.

In June 2018, in the case of *QT v Director of Immigration*, the Court of Final Appeal upheld the Court of Appeal 2017 decision finding that the same-sex partner of a Hong Kong resident had a right to a dependency visa. The Court of Final Appeal ruled that the Immigration Department's disparate treatment of same-sex and opposite-sex couples for purposes of its dependent visa policy constituted unlawful discrimination on grounds of sexual orientation. However, the Court of Final Appeal also made clear that the case did not affect the system or definition of marriage under Hong Kong law.

In September 2018 the government announced its new policies to implement the QT decision. The new dependent visa policy will allow people who are coming to Hong Kong on a work visa as well as Hong Kong permanent residents who marry or enter into a civil partnership overseas to bring their spouses into the country. In addition, the Government has said that the dependent policy will also apply to heterosexual couples in a civil partnership or civil union.

There are no laws in place for adoption by same-sex couples. IVF treatment is only legally available to heterosexual married couples.

Same-sex cohabitants are protected under the Domestic Violence and Cohabiting Relationships Violence Ordinance.

## *Legal Status of the Transgender and Gender-Diverse Communities*

The government allows issuance of new identity cards to transgender people on a case-by-case basis, but only if applicants have had full sexual reassignment surgery. There is currently no legal right for a transgender person to change their gender.

In 2013, the Court of Final Appeal ruled that a transgender woman who has undergone gender affirmation surgery had the right to marry her boyfriend, declaring that the meaning of "woman" and "female" includes a trans woman who has undergone sexual reassignment surgery certified by an accepted medical authority.

In August 2018, the High Court dismissed a judicial review by Luigi Recasa Navarro, a transgender woman, who complained that police and prison officers had wrongly treated her as a man by assigning her to an all-male facility in 2014. Navarro had yet to have gender affirmation surgery at the time, and she was forced to serve her sentence in all-male facilities, subjected to strip-searches and cavity searches by male guards, and was denied access to hormones she had been taking since she was 12 years old. Though her discrimination claim was denied, the judges did rule that police and correctional services should consider setting up objective guidelines to decide on how to conduct searches on transgender suspects or prisoners in the future, and that depriving Navarro of hormonal treatment was unreasonable.

# Current Legal Status of LGBT+ People

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## *Legal Status of the Intersex Community*

Hong Kong does not prohibit involuntary surgery on intersex children.

There is a general lack of awareness of intersex people and the protection of their rights in Hong Kong. The Immigration Department and the Hospital Authority in Hong Kong do not maintain statistics on intersex people. The legal status of intersex people is still unclear in Hong Kong, and there is not right for a person to legally identify as intersex.

## *Government Statements and Actions*

In June 2018, Hong Kong public libraries removed children's book *And Tango Makes Three* and nine other titles with LGBT+ themes to the closed stacks of the children's section, meaning readers would need to file a request to borrow them. Democratic Party lawmaker Roy Kwong Chun-yu, who sat on the government-appointed Public Library Advisory Committee, said it was alarming for a public library to limit certain books, and that doing so was against the norms of an open society.

In June 2017, the government released an "Interdepartmental Working Group on Gender Recognition," public consultation on introducing gender recognition legislation or policies to recognize the gender identity of transgender people, and provide for the process and rights associated with gender recognition. There were 15,000 submissions. The Equal Opportunities Commission urged Hong Kong to recognize gender identity without surgery in January 2018, but the government has yet to produce and report on the consultation or make any decision about whether it will introduce such legislation.

# Socio-cultural Environment of LGBT+ People

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## *Status of LGBT + Organizing and Community*

The momentum supporting LGBT+ causes is growing. Pink Dot, an outdoor pride festival modeled on the one in Singapore, attracted over 10,000 attendees in 2016 and will be celebrating its fifth anniversary in October 2018.

In 2022, Hong Kong will also be the first Asian city to host the Gay Games.

## *Cultural Views of the LGBT + Community*

In 2017, the University of Hong Kong Centre for Comparative and Public Law released a study that found 50% of the respondents supported same-sex marriage. This is a 12% increase over 2013. The study also found that 78% of Hong Kong residents felt that same-sex couples should have at least some of the rights enjoyed by opposite-sex couples, a 5% increase over 2013 numbers. This all runs counter to recent government laws and policies which deny same sex couples most relationship rights.

The same study showed a growing support for legislation prohibiting discrimination on the grounds of sexual orientation, and for the rights of same-sex couples in matters of health and finances.

A recent study showed that 78% of LGBT+ women in Hong Kong have experienced domestic violence—and only 22% of them felt comfortable reporting the incident to authorities.

# Impact of LGBT Discrimination on Business & Talent

1 • NO RISK

2 • LOW RISK

3 • MODERATE RISK

4 • NOTABLE RISK

5 • HIGH RISK

## BRAND RISK **LOW**

Hong Kong is a liberal city where a majority of residents support banning discrimination based on sexual orientation and large global brands sponsor Pink Dot, Pink Season and other LGBT+ events. There's little brand risk to doing business there.

## CLIENT RISK **NONE**

There is little to no client risk associated with doing business in Hong Kong.

## TALENT RISK **LOW**

Since summer 2018, partners of LGBT+ people in same-sex partnerships are now permitted into Hong Kong on dependent visas if they married or entered into a civil partnership in a place that permits those relationships. However, same-sex spouses still don't get other key relationship rights, such as concerning employment, adoption, public housing.

## MARKETING RISK **LOW**

Companies that have marketed to the LGBT+ community in Hong Kong have faced some level of backlash from religious conservatives, but many companies continue to do so prominently.

## Local Leaders Advocating for LGBT Equality

There are many openly LGBT+ activists and experts in Hong Kong. Out Leadership recommends that you contact:

**Peter Charles Reading**  
Legal Counsel,  
Equal Opportunities Commission

**Joanne Leung**  
Chairperson,  
Transgender Resource Center

**Fern Ngai**  
Community Business

## Purpose

Multinational companies face operational and reputational risk when they do business in countries where the legal and/or social atmosphere makes it difficult for LGBT+ people to live openly. Discrimination against LGBT+ people creates serious challenges for talent mobility, retention, and development.

Out Leadership's LGBT+ CEO Business Briefs seek to help C-Suite leaders understand and respond to these risks. Secondly, these Briefs seek to inform and empower corporate executives to engage in conversations with trade officials and other local stakeholders about why discrimination against LGBT+ people negatively impacts their ability to do business.



## Additional Resources

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### **2016 International Gay and Lesbian Association State Sponsored Homophobia Report**

This report contains a country-by-country analysis of anti-LGBT laws and policies around the world.

### **2016 Human Rights Watch World Report**

This report contains a country-by-country analysis of human rights concerns for 2014, and includes specific information pertinent to LGBT issues.

## Special Thanks

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Our partners and colleagues at the Global Equality Fund, 11.e Council/or Global Equality, The Palette Fund, The United States Department of State, Stonewall, Gay, Lesbian & Straight Education Network, Oogachaga, OutRight Action International, Human Rights Watch, and the Williams Institute were instrumental in the creation of this brief.

We also want to thank Out Leadership's Global Advisory Board Members and our member companies' senior leaders, who have committed to using the brief.

### **Pro Bono Legal Partner**

We thank our partners at Ropes & Gray, who have vetted the legal facts in this brief.

**ROPES & GRAY**

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