



**Handy hints to help you on your way.....**

**Q. What types of business structures are permitted in Hong Kong?**

**A.** There are three business structures in Hong Kong The Sole Proprietorship, The Partnership and the company

**The Sole Proprietorship**

**Q. What is a sole proprietorship?**

**A.** A sole proprietorship is a business organisation where an individual carries on business. A sole proprietor is responsible for all activities of the business and debts incurred.

**Q. What are the advantages of a sole proprietorship?**

**A.** There are not as many legal formalities in a sole proprietorship as in partnerships or companies. A sole proprietor has full control over the business. There are no legal restrictions on the sole proprietor's sale of the business.

**Q. What are the disadvantages of a sole proprietorship?**

**A.** Illness or death of the sole proprietor ends the business. The sole proprietor is personally liable for the business.

**Q. What are the annual filing and reporting requirements of a sole proprietorship?**

**A.** Pay business registration fee. Report changes in respect of the Sole Proprietorship to the Business Registration Office, e.g. change of Sole Proprietor's particulars. File employers return and profits tax return.



## **The Partnership**

### **Q. What is a partnership?**

**A.** A partnership involves two or more persons carrying on a business in common. A partnership generally has the following characteristics:

- Partners engage in activity with the intention to make a profit.
- Partners of the business are entitled to share in the profits.

There is a presumption that partners share the profits equally. If the partners do not wish to share the profits equally, this should be stated clearly in the partnership agreement.

- A partnership is not a separate legal entity. The partners are synonymous with the firm. The partners are personally liable for the activities of the business.
- A partnership dissolves by ending the partnership agreement, death, illness, bankruptcy; illegal acts of one or more partners, or by court order. A partnership cannot have more than 20 partners at a time.
- Professional partnerships that are disciplined by internal regulatory bodies, such as the Law Society, are exempt from this restriction.

Particular characteristics of the partnership can be stated in the partnership agreement, such as the method of dividing profit between partners and the termination of the partnership. If the terms of the partnership are not expressly stated in an agreement, the Partnership Ordinance will provide the terms of the partnership.

### **Q. Can partners limit their liability?**

**A.** Yes. Partners can limit their personal liability for business debts to the amount of their capital contribution. However, limited liability partners cannot manage the day-to-day running of the partnership.



### Q. How do you establish a partnership?

#### A.

1. **Partnership Name:** The name of the partnership should be registered with the Business Registration Office under the Business Registration Ordinance.
2. **Partnership Agreement:** There must be a partnership agreement that is valid under contract law in writing, orally, or under seal. A partnership can be implied by the conduct of the parties involved. All partners carry on the business.
3. **Observe the law:** Follow the Employment Ordinance, the Employees' Compensation Ordinance, and the Inland Revenue Ordinance.
4. **Disclosure:** The name of your business, and the names of each partner must be disclosed on the firm's letterhead and other business documents.

### Q. What are the advantages of a partnership?

A. There are fewer legal formalities than a company. Risk can be shared between partners.

### Q. What are the disadvantages of a partnership?

A. Partners assume rigorous duties and liability. The partnership ends with the death or bankruptcy of a partner. The relationship between partners can be problematic with respect to balancing risk and profits between partners.

### Q. What are the annual filing and reporting requirements of a partnership?

A. Pay business registration fee. Report changes in respect of the Partnership to the Business Registration Office, e.g. change of partners and relevant particulars. File employers return and profits tax return.



## **The Company**

### **Q. What is a company?**

**A.** A company is a form of business organisation where the business is a separate legal entity from the people who own it, the members or shareholders of the company. A company has full legal capacity to enter into contracts, own property, and to sue and be sued. A company generally has the following characteristics:

**Limited Liability:** Shareholders or members are only liable for the capital contributed. They are not liable for any other debt or obligations of the company.

**Litigation:** Only the company can bring an action to court for a wrong committed against the company. A shareholder cannot generally sue, on behalf of the company; however, there are exceptions to this rule.

**Memorandum and Articles of Association:** These are the constitutional documents of the company. They constitute a contract between the members and the company, and between the members. The Memorandum of Association states the following:

- The name of the company the registry, in which the company is registered,
- The objects of the company (the activities the company will carry on)
- The company's initial share capital the limited nature of the shareholder's liability
- The Articles of Association establish the rules that govern the administration of the company.

**Directors:** Directors manage the affairs and the business of the company. A company must have at least 2 directors. Their powers to supervise the company's activities are very broad. In general, directors are only limited by the shareholders' vote at general meetings and the memorandum and articles of association.

### **Directors' Duties are as follows:**

1. Directors owe a duty of care to the company.



2. The requisite standard of care is a subjective test that varies with the skills and experience of a director.
3. Directors may be personally liable for personal wrongs they have committed.
4. Directors owe a fiduciary duty to the company (they must act in good faith and avoid conflicts of interest).

**Shareholders/ Members' Rights are as follows:**

1. Shareholders can sue the company for breaching the memorandum and articles of association.
2. Shareholders can bring a representative action on behalf of the company for a wrong done to the company.
3. Shareholders can petition the court to wind up the company if the directors have breached their fiduciary duties.
4. Shareholders can petition the court with respect to conduct of the directors that are oppressive or unfairly prejudicial.

**Q. How do you establish a company?**

**A.** Choose a name for your company Select shareholders and officers - a Hong Kong company must have at least 2 registered shareholders, 2 directors, and a resident Hong Kong secretary. Choose a registered office for the company in Hong Kong to which all correspondence will be addressed. **City E Corporate Services** can provide nominee shareholders and directors, if required, and can act as company secretary and provide the registered office address.

**Determine your share capital:** the authorised share capital and the issued share capital. The authorised share capital is the total amount of capital of the company. The issued share capital is the total value of the shares that are allotted to shareholders. Create a constitution- the Memorandum and Articles of Association. Register your company with the Registrar of Companies.



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**Q. What are the advantages of a company?**

**A.** The most significant advantage of a company is the limited liability of shareholders.

**Q. What are the disadvantages of a company?**

**A.** There are many legal formalities and reporting requirements that companies must follow. The company is required to prepare annual audited accounts.

**Q. What are the annual filing and reporting requirements of a company?**

**A.**

1. Hold an annual general meeting.
2. Present audited accounts to the members in the annual general meeting.
3. File an Annual Return with the Registrar of Companies.
4. Report changes in respect of the Company to the Registrar of Companies e.g. change of registered office, change of directors/secretary and respective particulars, increase in authorised and paid up share capital etc.
5. Pay business registration fee. File employers return and profits tax return.