



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

Shares

Only public companies may offer their shares to the public and become listed on the Stock Exchange of Hong Kong. Further, only public companies may issue 'bearer' share certificates, ie share certificates under which the holder for the time being of the certificate is the member, without any need for a formal transfer or registration of the name of the member in the records of the company.

Prospectus

Before issuing any shares or debentures, a public company must issue a prospectus, or statement in lieu of a prospectus, containing detailed information about the company. The preparation of a prospectus or statement in lieu of a prospectus is often a costly and time-consuming task. There is no similar requirement which a private company must fulfil before allotting shares.

Disclosure

Public companies must file audited accounts with the Registrar of Companies annually and these accounts are open to inspection by the public. Most private companies, however, do not have to submit audited accounts when filing their annual return (see Chapter 12). Thus, a private company may keep its accounts and financial affairs confidential from the public at large and the company's competitors (although they must be filed with the Inland Revenue Department when the company submits its tax return — see Chapter 10).

A private company will become a public company automatically and cease to be entitled to the privileges associated with private status if it changes its Articles of Association so that they do not contain the three restrictions required for private company status. Articles of Association of private companies usually include standard wording incorporating the necessary restrictions.

Types of private company

There are three types of private company in Hong Kong:

- companies limited by shares
- companies limited by guarantee
- unlimited companies.

Companies limited by shares

This is by far the most common type of company. The liability of each member of a company limited by shares is limited to the amount (if any) unpaid on the shares held by that particular member. Thus, where shares are issued at nominal value (ie they are sold to members at face value), once a member has paid to the company the whole of the nominal value of the shares, he cannot be made to pay more towards the debts and liabilities of the company. Where shares have been issued at a premium (ie more than their face value), then each member's liability is limited to the nominal value of the shares held by him together with the amount of premium which he has agreed to pay. In other words, a member must contribute to the company the amount which he has promised to invest, but no more. If the company becomes insolvent and is wound up, the members stand to lose their agreed investment in the company but need not make any further contribution to meet the company's liabilities.

A member's potential liability to make a contribution to the company in respect of any unpaid capital on his shares is usually extinguished when he transfers his shares to another person. However, in certain circumstances, a former member who has transferred his shares partly paid (ie before the full amount payable for the shares has been paid to the company) may be liable to make a contribution to the company if the company commences winding up within one year of him ceasing to be a member and the existing members are not able to satisfy the contributions which they are required to make.

It is possible for the Memorandum of Association of a

company to provide that the liability of the company's directors is unlimited, but such a provision is rare.

Companies limited by guarantee

Although much less common than companies limited by shares, companies limited by guarantee are often used for charities and clubs in Hong Kong and for other non-profit-making operations. The members of a company limited by guarantee are not required to make any initial capital payment when the company is set up, but on the winding up of the company are liable to make a contribution up to the amount of the guarantee, as stated in the company's Memorandum of Association. Most companies limited by guarantee do not have a share capital. If a company limited by guarantee also has a share capital, then the members have a dual liability, i.e. they are liable to pay the full amount payable on their shares (like members of a company limited by shares) and the amount of the guarantee.

Unlimited companies

Such companies are fairly unusual in Hong Kong as they offer no advantages (in Hong Kong) over limited companies and carry the obvious disadvantage that the liability of the members to meet the debts and obligations of the company on winding up is unlimited. Such companies are sometimes formed for the tax advantages which unlimited companies may (in limited circumstances) enjoy in other countries. Unlimited companies may be formed with or without share capital — in either case, there is no limit on the potential liability of the members.

By the passing of an appropriate special resolution (see Chapter 8) and the filing of the necessary documents with the Registrar of Companies, it is possible for an unlimited company to be re-registered as a limited company. With effect from the date of re-registration, the company will be treated as a limited company except that, if the company is wound up,

special provisions govern the liability of members and former members in respect of debts and liabilities of the company incurred before re-registration.

The *Companies Ordinance* makes no provision for the re-registration of a limited company as unlimited.

Foreign companies

Companies incorporated outside Hong Kong may carry on business in Hong Kong without the need to form a new company actually incorporated in Hong Kong. However, all foreign companies which establish a place of business in Hong Kong must register with the Registrar of Companies and comply with certain other requirements, which are discussed in more detail in Chapter 11.