

Shenzhen Office, China
Rooms 1210-11, Diwang Comm.
Centre, 5002 Shennan Road
East, Luohu District, Shenzhen
Tel: +86 755 8268 4480
Fax: +86 755 8268 4481

Shanghai Office, China
Room 603, Tower B, Guangqi
Culture Plaza, 2899A Xietu Road,
Xuhui District, Shanghai
Tel: +86 21 6439 4114
Fax: +86 21 6439 4414

Beijing Office, China
Room 408A, Interchina Commercial
Building, No.33 Dengshikou Street,
Dongcheng District, Beijing
Tel: +86 10 6210 1890
Fax: +86 10 6210 1882

Singapore Office
36B, Boat Quay
Singapore 049825
Tel: +65 6438 0116
Fax: +65 6438 0189

Hong Kong Company Incorporation Guide

Unless otherwise stated, the “Hong Kong Company” mentioned in this guideline note refers to private companies limited by shares registered in accordance with the Hong Kong Companies Ordinance.

This guideline has been prepared for the use of Clients of Our Firm.

It is intended to be a general guide to give an outlook in the major features the requirements for the registration of private companies in Hong Kong.

The content of the guideline note consolidated the new Hong Kong Companies Ordinance which took effect on 3 March 2014,

We are a certified public accountants firm, providing clients with comprehensive and personal services relating to auditing, taxation, accounting as well as giving general financial and management advice.

Up to date advice and general assistance can be readily obtained from Our Firm.

Kaizen Certified Public Accounts Limited

Certified Public Accountants

January 2015

Part 7 Board of Directors

1. Number of Directors

In accordance with the Hong Kong "Companies Ordinance" (Cap. 622 of Hong Kong laws), a private company limited by shares registered in Hong Kong must have at least one director and at least one of the directors must be a natural person. There is no restriction on the maximum number of directors.

2. Reserve Director

In accordance with the Hong Kong Companies Ordinance, where a company which has a single member who is also the sole director has the option of nominating a "reserve" director to act in place of the sole director in the event of his death. The nominee (reserve director) must have attained the age of 18 and his particulars must be registered with the Companies Registry.

3. Qualification of Directors

Both individual and corporation can act as director of a Hong Kong company. Also, the director can be of any nationality and be resident anywhere in the world and meetings can take place anywhere. A director must be over the age of 18.

The Hong Kong Companies Ordinance does not requires the director to hold any specific share qualification. In other words, an individual does not need to hold any shares before he could be appointed to be a director of a Hong Kong incorporated company. However, if the articles require a director to hold a specified share qualification, it is his duty if not already qualified to qualify within two months after his appointment or a shorter time if specified by the articles.

4. Disclosure

The name, passport number (or Hong Kong Identity Card Number if Hong Kong resident) and address of a director are filed on the public register maintained by the Companies Registry. Anyone could perform a company search and retrieve those information by paying a fee.

5. Rights (or Powers) of Directors

In accordance with the Companies Ordinance, the general power of managing a company is usually vested in the directors. They are the management personnel of a company. The law gives directors freedom to exercise the powers given to them in accordance with the Articles of Association of the company.

At common law, directors can only exercise their powers collectively by passing resolutions at a properly convened meeting of the board of directors and they do not have powers to act individually as agents of the company.

6. Obligations of Directors

- (1) They are responsible for the daily operation and management of the company.
- (2) The power to manage the company is granted to the directors as fiduciaries. The word "Fiduciary" refers to trust and honesty. They must act in the interests of the company and they must exercise their powers for the purpose for which they were given. For example, a director must not enter into a position which imposes conflicting duties to another person. Further, a director cannot make private profit from his position as director unless with the approval of the company.
- (3) If directors of a company are negligent in the conduct of the affairs of the company, then they will be liable to the company for the damage caused by their negligence.

- (4) There are provisions in the Companies Ordinance which place onerous duties on the directors. For example, if, when a company is wound up, it appears that its business has been carried on with intent to defraud creditors or others the court may decide that the persons (usually the directors) who were knowingly parties to the fraud shall be personally responsible for debts and other liabilities of the company.
- (5) If, when a company is wound up, it appears that any person has taken part in a company's formation or promotion, or any past or present officer (including directors), liquidator or receiver has misapplied, retained, become liable or accountable for any money or property of the company or he is guilty of any misfeasance or breach of duty in relation to the company the court may compel him to pay or restore the money or property to the company or to contribute to the assets by way of compensation.

7. Relationship between Shareholders and Directors

It is true that the general powers of managing a company are usually vested in the board of directors. The directors may exercise all powers of the company not required by the ordinance or the articles to be exercised by the company in general meeting. If the directors act within the powers given to them by the articles of association. They are not bound to follow resolutions passed by the shareholders in general meeting.

However the shareholders can control the exercise of the powers vested by the articles in the directors by alteration of articles, removal of directors, or refusing to re-elect the directors concerned. For certain events, the approval of the shareholders in general meeting is required:

- Alteration of the company's memorandum and articles of association
- Alteration of the company's capital, e.g. increase or reduce the company's capital
- Appointment and removal of the auditors
- Removal of directors
- Payment to directors for loss of office and retirement
- Winding up

The approval will be given in the form of a resolution at the shareholders general meeting. There are three kinds of resolution:

Ordinary resolution - the proposed resolution is accepted by a simple majority (i.e. more than 50%) of those members present and entitled to vote at the general meeting. A period of not less than 14 days' notice has to be given to each member before the meeting. For example, an ordinary resolution is required for the increase of capital of the company.

Special resolution - the proposed resolution is accepted by not less than 75% of those members present and entitled to vote at the general meeting. A period of not less than 21 days' notice has to be given to each member before the meeting. For example, a special resolution is required for alteration of the company's Memorandum and Articles of Association.

Written resolution - the proposed resolution is approved and signed by all the members of the company. Such a written resolution will be regarded as a resolution duly passed at a general meeting and, where appropriate, as a special resolution.