

sheet as at the date to which the profit and loss account is made up. A copy of the audited accounts must be sent at least 21 days before the date of the annual general meeting to the company's members, debenture holders and all relevant persons entitled to receiving the same.

For overseas companies, the annual return and audited financial statements (unless exempted) must be lodged with the Companies Registry once in each calendar year and within intervals of not more than 15 months.

'DORMANT' COMPANIES

If a company does not or has ceased to carry on business, it can apply to the Registrar of Companies for dormant status. A dormant company is exempted from filing annual returns and the preparation of annual accounts which are usually required.

*The law is as stated as January 2003.
The law relating to companies is complex. This pamphlet is written simply as a guide and a brief introduction to the issues involved. This pamphlet is not meant to be exhaustive and does not constitute legal advice. If you require legal advice on any of the topics raised in this pamphlet you should consult a solicitor*

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LAW GUIDE SERIES No. 7

Registering and Maintaining a Company in Hong Kong

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INTRODUCTION

A company incorporated under the Hong Kong Companies Ordinance is a separate legal entity distinct from its shareholders. A company can own its property like a natural person. It can enter into contracts and it can sue or be sued in legal proceedings. A company comes into existence on the date of its incorporation and continues to exist until it is dissolved.

TYPES OF COMPANIES

There are a number of different types of companies. They can be classified according to the liabilities of the shareholders:

- A company limited by shares is one whose shareholders' liabilities are limited to the amount of their share capital (i.e. the amount they have paid or are committed to pay for their shares in the company). This could be as little as two dollars. This is the **most common type** of company in Hong Kong.
- A company limited by guarantee (with or without a share capital) is one whose members guarantee to contribute a fixed amount to the assets of the company in the event of its being wound up. This type of company is usually charitable in nature.

Companies can also be classified according to the restrictions on the right of transfer of their shares:

- Private companies are those containing the following restrictions in the articles of association:
 - (1) restriction of rights to transfer shares;
 - (2) maximum number of shareholders is limited to 50;
 - (3) offering shares or debentures of the company to the public is prohibited
- Public companies are those which can offer shares to the public. They can apply to the Hong Kong Stock Exchange for listing and become listed companies.

INCORPORATING A COMPANY

Any two or more persons associated for a lawful purpose may incorporate a company. There are four stages:

- The intended name of the company should first be checked against the index of names in the Companies Registry and the

Trade Marks Registry (if necessary) to avoid using a name which is the same or similar to an existing name or trade mark (if necessary). There are also certain names restricted or prohibited to be used under the Companies Ordinance. All companies must use the word "Limited" at the end of their names to distinguish them from unincorporated business which do not enjoy limited liability. However, some companies (e.g. charitable organizations) may apply to the Registrar of Companies for a licence to dispense with the use of the word "Limited" in their name.

- The memorandum and articles of association are then prepared. This is the company's mini-constitution. The memorandum contains details about the company's name, domicile and its share capital. The articles of association set out the internal regulation and management of the company.
- A declaration of compliance must be made either by a solicitor who is engaged in the formation of the company or the director or secretary named in the articles of association of the company. This confirms that all the requirements for registration of the company have been complied with.
- The registration documents, including a signed copy of the memorandum and articles of association, are then submitted to the Companies Registry together with the registration fee and capital duty at the rate of HK\$1 per HK\$1000 or part thereof of the authorised share capital.

A certificate of incorporation will be issued by the Registrar of Companies when the company is approved for registration.

SHELF COMPANIES

As incorporating a company can take between two to three weeks, there are ready-made companies (**shelf companies**) available for sale in solicitors' firms, accountants' firms and corporate services companies. The buyer must ensure that the shelf company has never traded or carried on any other commercial activities and has incurred no legal obligations and liabilities.

OVERSEA COMPANIES

Every company incorporated outside Hong Kong which establishes a place of business in Hong Kong must register as an overseas company within one month of establishing the place of business.

Unless an exemption is granted, a number of documents must be filed with the Companies Registry, including the address and particulars of a person in Hong Kong authorized to accept service of court documents and notice on behalf of the company and the company's latest accounts.

ANNUAL REQUIREMENTS

• Annual General Meeting ("AGM")

Every company must hold its first AGM within 18 months after its incorporation and thereafter at least once in every calendar year. The intervals between two AGMs must not exceed 15 months.

• Annual Return

Every company must within 42 days after its anniversary date of incorporation in each year submit an annual return to the Companies Registry in the prescribed form reporting on the current status of a company in respect of its share capital, shareholding, particulars of members, directors, secretary, mortgages and charges etc

• Company Accounts

The directors must arrange for proper books of account to be kept at its registered office including all sums of money received and expended, all sales and purchases of goods and the assets and liabilities of the company. The books of account must be preserved for 7 years from the end of the financial year.

A directors' report and an auditor's report must be attached to the company's annual accounts before they are presented at the company's AGM. The annual accounts must show the directors' emoluments, compensation for loss of office, pensions and loans to directors. The directors' report must include the principal activities of the company, profit and loss for the year, amount of dividends recommended, significant changes in the assets of the company, directors' interests etc.

The directors are required to lay before the AGM the profit and loss account for the period since the preceding account and a balance