

---

## Setting up a charity in Hong Kong

---

CHARLTONS  
易周律師行  
Solicitors

Hong Kong

Shanghai

Beijing

Yangon

[www.charltonslaw.com](http://www.charltonslaw.com)

## Setting Up a Charity in Hong Kong

### (I) What is a charity?

#### (A) Charity must be established exclusively for charitable purposes

For an institution or a trust to be a charity, it must be established for purposes which are exclusively charitable as defined in law.

The definition of “charity” was given in the judgment of Lord MacNaghten in the case of *Income Tax Special Purposes Commissioners v. Pemsel* [1891-1894] All ER Rep 28.

In the judgment, it was held that the following purposes may be accepted as “charitable”:-

- (a) relief of poverty;
- (b) advancement of education;
- (c) advancement of religion; and
- (d) other purposes of a charitable nature beneficial to the community not falling under any of the preceding heads.

For the purpose of obtaining profits tax exemption under Section 88 of the Inland Revenue Ordinance (Cap 112 of the Laws of Hong Kong) (the “IRO”), while the first three aforementioned purposes in relation to poverty, education and religion may apply to activities carried on in any part of the world, those under head (d) will only be regarded as charitable if they are of benefit to the Hong Kong community.

#### ➤ **Examples of purposes which the court had held to be charitable purposes include:-**

##### Relief of poverty

- (a) relief of poor people;
- (b) relief of victims of a particular disaster;

##### Advancement of education

- (a) establishment or maintenance of non-profit-making schools;
- (b) provision of scholarships;
- (c) diffusion of knowledge of particular academic subjects;

##### Advancement of religion

- (a) establishment or maintenance of a church;
- (b) establishment of religious institutions of a public character;

##### Other purposes of a charitable nature beneficial to the community

- (a) relief of sickness;
- (b) relief of physically and mentally disabled;
- (c) prevention of cruelty to animals;
- (d) protection and safeguarding of the environment or countryside; and
- (e) promotion of good health

➤ **Examples of purposes which the courts had held to be non-charitable purposes include:-**

- (a) attainment of a political object;
- (b) promotion of the benefits of the founders or subscribers;
- (c) provision of a playing field, recreation ground or scholarship fund for employees of a particular company or industry;
- (d) encouragement of a particular sport such as angling or cricket.

(B) Charity must be established for public benefit

A charitable institution or trust must also be established for public benefit and it will be regarded as so if:

- (a) the benefits of the charity are clear;
- (b) the benefits are related to the purpose(s) of the charity;
- (c) any harm caused in the attainment of the charitable purpose(s) must not outweigh the benefits of the charity;
- (d) the benefits of the charity are directed to the public or a sufficient section of the public;
- (e) if the benefits are only directed at certain sections of the public, the opportunity to benefit must not be unreasonably restricted by geographical limitations or other limitations;
- (f) the beneficiaries of the charity must be appropriate to the charitable purpose(s); and
- (g) any benefits that a person or institution receive other than as a beneficiary of the charity must be incidental.

**II. How to set up a charity?**

(A) The structure of a charity

The most common types of structures of charities are:-

- (a) a trust;
- (b) a society established under the Societies Ordinance (Cap 151 of the Laws of Hong Kong) (the “SO”) which excludes the type of bodies set out in the Schedule of the SO and in the Schedule of this note;
- (c) a company limited by guarantee incorporated under the Companies Ordinance (Cap 622 of the Laws of Hong Kong) (the “CO”); and
- (d) a statutory body established by the Hong Kong legislature.

(B) The governing instrument of a charity

The governing instrument of a charity should contain the following:-

- (a) state precisely and clearly the objects i.e. the purpose(s) for which the charity is formed (this also applies to companies incorporated under the former Companies Ordinance on and after 10 February 1997 and are not required to state their objects in their Memorandum of Association);
- (b) limiting the application of its funds towards the attainment of its stated objects;

- (c) prohibiting the distribution of its incomes and properties amongst its members;
- (d) prohibiting members of its governing body (e.g. directors, trustees, executive committee member) from receiving remuneration;
- (e) specifying how the assets should be dealt with upon its dissolution (such as the donation of the remaining assets to other charities); and
- (f) requiring the keeping of sufficient records of income and expenditure (including donation receipts), proper accounting books and compilation of annual financial statements.

There is an exemption to requirement (d) above where the charity can demonstrate that the payment or remuneration to its member(s) is necessary and reasonable in the exceptional circumstances, provided the following conditions are set out in the charity's governing instrument and are fulfilled:

- (a) the remunerated member of the governing body of the charity:
  - (i) has a qualification which is otherwise not available to the charity; and
  - (ii) was absent from any discussions and meetings concerning their appointment, remuneration and conditions of services and must also abstain from voting on such matters;
- (b) the number of such remunerated members must be less than the majority of quorum of meetings of the charity's governing body.

### **(III) Profit Tax Exemption**

A charity, subject to the approval of the Inland Revenue Department, is exempted from profits tax under Section 88 of the IRO. A search of tax exempted charities can be conducted here: [https://www.ird.gov.hk/eng/tax/ach\\_search.htm](https://www.ird.gov.hk/eng/tax/ach_search.htm)

A charity that carries on a trade or business is chargeable to profits tax unless the charity can fulfil the conditions of section 88 of the IRO.

Where a charity derives a profit from carrying on a trade or business, the charity must demonstrate that the following conditions are fulfilled to be eligible for the section 88 tax exemption:

- (a) such profits are applied solely for charitable purpose(s); and
- (b) are not expended substantially outside Hong Kong and either:
  - (i) the trade or business is exercised in the course of the actual carrying out of the expressed objects of such institution or trust; or
  - (ii) the work in connection with the trade or business is mainly carried on by persons for whose benefit such institution or trust is established.

The following transactions are generally not regarded as trading. The profits derived from such transactions are not trading profits and fall outside the ambit of section 88 of the IRO:

- (a) the sale of capital investments;
- (b) the sale of capital assets which the charity used to further its charitable purpose(s); and
- (c) the sale of goods which were donated to the charity for sale. However, where the goods donated are substantially altered or improved which brings them into a different condition for sale purposes, the profits arising from such sales may be treated as trading profits.

**(IV) Stamp Duty Exemption**

Where the beneficial interest in immovable property or Hong Kong stock transfers by way of a gift from the person entitled to that interest, the registered owner or the transferor to a charity, such conveyance or transfer is exempted from stamp duty under section 44 of the Stamp Duty Ordinance (Cap 117 of the Laws of Hong Kong)

**(V) Business Registration Certificate Exemption**

A charity will be exempt from obtaining a Business Registration Certificate under section 16(1) of the Business Registration Ordinance (Cap. 310 of the Laws of Hong Kong ) if it meets the conditions in III Profit Tax Exemption above.

**(VI) Types of organization (society vs company limited by guarantee)**

(1) A society formed under the Societies Ordinance

(a) Nature of organisation

According to Section 2 of the SO, a society means:-

*“any club, company, partnership or association of persons, whatever the nature or objects, to which the provisions of the Ordinance apply”*

(b) Application for registration as a society under the Societies Ordinance

The procedures for registration as a society under the SO are relatively simple.

A society is required to apply to the Societies Officer for registration within 1 month of its establishment under section 5(1) of the SO. The application must be signed by 3 office-bearers and include details of:

- (i) the name of the society;
- (ii) the objects of the society;
- (iii) the particulars of the office-bearers of the society; and
- (iv) the address of the principal place of business of the society and of every place or premises owned or occupied by the society.

A copy of the application form can be found at [https://www.police.gov.hk/info/doc/licensing/societies/en/so\\_form-reg.pdf](https://www.police.gov.hk/info/doc/licensing/societies/en/so_form-reg.pdf)

(c) Choosing a name of the society

There are certain restrictions on the name of the societies. According to Section 9(1) of the SO, no local society shall use a name for itself or its branch which:

- (i) is identical with that by which a society already in existence is known or so closely resembles that name;
- (ii) is likely to mislead the public as to the true character or purpose of the society;
- (iii) suggests that the society belongs to a class of persons specified in the Schedule when in fact it does not so belong; or
- (iv) contains the words “rural committee” or any other words which, in the opinion of the Societies Officer, suggest or are calculated to suggest that the society is a rural committee or a federation or other association of rural committees unless such society is a rural committee or a federation or other association of rural committees acknowledged as such by the Secretary for Home Affairs.

(d) Fees

No fees are payable for the application for registration of a society.

(2) A company limited by guarantee formed under the Companies Ordinance

(a) Nature of a company limited by guarantee

For a company limited by guarantee, the liability of its members is limited by the company’s articles to the amount that the members undertake, by those articles, to contribute to the assets of the company in the event of its winding up.

This form of company is appropriate when initial share capital is not required and when there is no intention to distribute profits. It is typical of charities and non-profit organisations.

(b) Setting up of a company limited by guarantee under the Companies Ordinance

- (i) A name search needs to be carried out with the Companies Registry on the proposed company name to avoid using a name which is the same to that of another company which is already registered.
- (ii) An Articles of Association setting out the objects of the company and a Form NNC1G - Incorporation Form (Company Not Limited by Shares) have to be prepared and filed to the Companies Registry upon signing by the members and the directors of the company.
- (iii) Relevant activation documents, including the appointment of directors, company secretary and the application for a Business Registration Certificate have to be filed.
- (iv) Upon the filing of all the relevant documents, it normally takes 5 to 6 weeks for the Companies Registry to issue a Certificate of Incorporation and for the Inland Revenue Department to issue a Business Registration Certificate.

(c) Continuing obligations of a company limited by guarantee

The continuing obligations of a Hong Kong company under the CO include:-

- (i) maintaining a company secretary, registers of debenture holders, members, charges, directors and significant controllers;
- (ii) keeping proper books of account;
- (iii) holding annual general meetings;
- (iv) preparing and filing annual returns with the Companies Registry together with the certified true copies of the company's audited accounts (including the balance sheet laid before the company at its annual general meeting, the report of the auditors and the report of the directors) within 42 days after the company's return date. The return date for a company limited by guarantee is 9 months after the end of the company's accounting reference period. The accounting reference period is the period by reference to which the company's annual financial statements are to be prepared;
- (v) preparing and putting before an annual general meeting a profit and loss account and a balance sheet;
- (vi) preparing and putting before an annual general meeting an auditor's report and a directors' report (audit fee to be payable to an accountant for the preparation of the audit report); and
- (vii) renew the Business Registration Certificate upon its expiry - *Not applicable if the company is exempted from profits tax under Section 88 of the Inland Revenue Ordinance*

(d) Fees

- (i) An incorporation fee payable to the Companies Registry on applying for the incorporation of the company limited by guarantee;
- (ii) Business registration fee payable to the Inland Revenue Department - *Not applicable if the charity is exempted from profit tax under Section 88 of the Inland Revenue Ordinance*; and
- (iii) Audit fee payable for the audited account to be filed annually.

(3) Society or company limited by guarantee?

(a) Advantages of a society

The setting up of a society is simple, less formal and quicker.

A society is more flexible as there is no particular set of rules governing the internal operation of the society. Members of the society are free to set their own rules.

There are no specific continuing obligations of a society. It is not required to file any annual returns or any other documents to the Societies Officer. However, the Societies Officer may, under section 15 of the SO, require a

society to provide information to them such as income, its source of income and its expenditure.

It is also cheaper to set up a society than a company limited by guarantee. There is no registration fee. If the society is not carrying on a business, a Business Registration Certificate is not required and no Business Registration Certificate annual renewal fee will be payable. It is also not required to file any audited accounts annually and no accountant fee will be payable.

(b) *Advantages of a company limited by guarantee*

The internal operation of a company limited by guarantee is governed by its Articles of Association and the CO. The rules are clear and the members are well informed of how the company will operate.

As an audited account is required to be filed with the Companies Registry annually, the accounts of the company will be better managed. Audited accounts are required to be tendered at the annual general meeting and members of the company will be well informed of the financial position of the company.

If you would like further information about establishing a charity in Hong Kong, please feel free to contact us on Tel: (852) 2905 7888 and Fax No. (852) 2854 9596, email us at [enquiries@charltonslaw.com](mailto:enquiries@charltonslaw.com) or write to us at 12th Floor, Dominion Centre, 43-59 Queen's Road East, Hong Kong

**JANUARY 2021**

*This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.*



## Schedule to Societies Ordinance (Cap. 151 of the Laws of Hong Kong)

### PERSONS TO WHICH THE SOCIETIES ORDINANCE DOES NOT APPLY

- (1) Any company registered under the Companies Ordinance (Cap 622). (Amended 28 of 2012 ss. 912 & 920)
- (1A) Any company registered under a former Companies Ordinance as defined by section 2(1) of the Companies Ordinance (Cap 622). (Added 28 of 2012 ss. 912 & 920)
- (2) Any co-operative society registered under the Co-operative Societies Ordinance (Cap 33).
- (3) Any trade union or any trade union federation registered under the Trade Unions Ordinance (Cap 332). (Replaced L.N. 59 of 1964)
- (4) (a) An association the affairs of which are conducted wholly or partly in any school premises and which consists wholly or mainly of persons under the age of 21 years who are undergoing primary education or secondary education in any school.  
  
(b) For the purposes of this item, *primary education* (小學教育), *school* (學校), *school premises* (校舍) and *secondary education* (中學教育) have the meanings assigned to them by section 3 of the Education Ordinance (Cap 279). (Replaced 8 of 2001 s. 30)
- (4A) Any incorporated management committee as defined in section 3(1) of the Education Ordinance (Cap 279). (Added 27 of 2004 s. 73)
- (5) Any company or association constituted pursuant to or under any Ordinance or other legislation applicable to Hong Kong. (Replaced 13 of 1999 s. 3)
- (5A) Any company or association which was, immediately before the commencement of the Adaptation of Laws (No. 3) Ordinance 1999 (13 of 1999), a company or association constituted under Royal Charter, Royal Letters Patent or any Imperial Act and was, immediately before that commencement, a local society. (Added 13 of 1999 s. 3)
- (6) Any company, association or partnership formed for the sole purpose of carrying on any lawful business and registered under any other Ordinance. (Amended 71 of 1988 s. 2)
- (7) (Repealed 75 of 1992 s. 32)
- (8) Any Chinese temple registered under the Chinese Temples Ordinance (Cap 153).
- (9) Any credit union registered under the Credit Unions Ordinance (Cap 119). (Added L.N. 41 of 1970)
- (10) Any corporation registered under the Building Management Ordinance (Cap 344). (Added L.N. 107 of 1973. Amended 27 of 1993 s. 48)
- (11) Any association of owners or occupiers of premises which is approved for the purposes of this Ordinance by the Secretary for Home Affairs by notice in writing. (Added L.N. 107 of 1973. Amended L.N. 94 of 1974; L.N. 17 of 1982; L.N. 14 of 1983; L.N. 18 of 1983; L.N. 262 of 1989)

- (12) Any association or group of persons which-
- (a) is formed for the sole purpose of recreation or training;
  - (b) conducts its activities wholly or largely in a Community or Youth Centre; and
  - (c) was formed with and continues to have the approval of the Director of Social Welfare. (Added L.N. 112 of 1974)
- (13) Any association of which-
- (a) one or more of the directors, trustees or other office holders; or
  - (b) the committee or board or other body having the management of the association,
- is or are incorporated by any Ordinance. (Added L.N. 93 of 1975)
- (14) The operator of, and participants in, any chit fund, as defined in section 2 of the Chit-Fund Businesses (Prohibition) Ordinance (Cap 262), which complies with section 5(2) of that Ordinance. (Added L.N. 225 of 1975)
- (15) (Repealed 75 of 1992 s. 32)
- (16) An unincorporated trust-
- (a) of a public character established solely for charitable purposes; or
  - (b) established solely for the purpose of engaging in a retirement scheme approved under section 87A of the Inland Revenue Ordinance (Cap 112). (Added 75 of 1992 s. 32)