

ZEGAL GUIDES TO EVERYTHING LEGAL

# HONG KONG COMPANY INCORPORATION HANDBOOK

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Everything you need to know



ZEGAL

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# Introduction

Hong Kong continues to maintain its edge in international rankings for ease of doing business. Government support for startups also remains strong. In 2019, the government injected HKD5 billion into the Innovation and Technology Fund (ITF) and announced a HKD2 billion Innovation and Technology Venture Fund to encourage private venture funds to invest in startups through a matching process, coupled with a 20% growth in the number of startups into 2020. So, if you've decided to set up shop in the Fragrant Harbour, you'll need to know how to go about it.

You often hear people talking about setting up a company, and the word "limited" after a business name comes as no surprise, but what is a company, why do people create companies, and how do you do it?

This is an introduction to limited liability companies in Hong Kong, what it means, how you create one, and some of the advantages of a limited liability company over other business structures.

# The first step of starting a business: Form a company

The first step in starting a business is to decide on a business structure. Your choice of a particular type of business vehicle will depend on your particular situation and plans.

Factors such as whether you intend to carry on business activities for profit or wanting to raise capital through external investment influence your decision regarding your choice of a business entity.

**Your choice of a certain business structure will depend on the following factors:**

- What is the nature and purpose of your business?
- What is the size and scope of your business?
- What is the extent of your personal liability in choosing a particular business vehicle?
- How much money is required for starting your business?  
Can you raise capital on your own or do you need outside investors?
- Can your business attract outside investors?

- What are the start-up procedures, costs, timeline, and other requirements?
  - What are the tax implications in choosing a particular business structure?
  - What are your current and future business needs?
- 
- What is the extent of control you wish to have over your business?
  - Does your business involve risks?

# Most common business types



**Limited Liability  
Company**



**Sole  
Proprietorship**



**Partnership**

## **Limited Liability Company**

The most common business vehicle in Hong Kong is a limited liability company. A limited liability company offers protection of personal assets from business risks and liabilities and is a separate legal entity. Compliance requirements and increased formalities are slightly more complex than other business structures.

## **Sole Proprietorship**

Suitable for small scale and low risk businesses with a sole owner and this structure is easy to set up. However, this is not a recommended business structure for entrepreneurs as it does not constitute a separate legal entity.

## **Partnership**

This business structure allows two or more people to share ownership of a single business. Partnerships enable a sharing of responsibility with partners jointly and individually liable for the actions of the other partners. The most common form of partnership is a limited partnership, as it offers limited liability to limited partners. However, this is not commonly used.

# Why a limited liability company

A limited liability company is the most popular choice of business structure as, unlike sole proprietorship and partnership, the separate legal entity allows owners of the business to avoid personal liability and risk.

## Advantages

- **Separate legal entity**

A limited liability company has a legal identity of its own, distinct from its shareholders. This enables the company to acquire assets, go into debt, enter into contracts, or sue or be sued in its own name.

- **Limited liability**

The liability of the shareholders is limited to the amount of their respective shareholdings/investment.

- **Perpetual succession**

A change of membership does not affect the company's continued existence. Shares can be easily transferred and changes in shareholders have no bearing on the business operations of the company.

This means the company has perpetual succession notwithstanding the death, resignation, or insolvency of shareholders OR directors.

- **Ease of raising money**

Business expansion is facilitated by the ease of raising finances, by bringing in new shareholders or issuing more shares to existing shareholders. It is easier for limited liability companies to secure bank loans when compared to other business entity types.

- **Positive image**

Limited liability companies are taken more seriously when compared to sole proprietorships and partnerships, and investors are more willing to contribute their resources to limited liability companies.

- **Easier transfer of ownership**

Complete or partial transfer of ownership of companies can be done by selling all or part of its total shares or through the issue of new shares to additional investors. Business operations can continue

unaffected and legal documentation is not complicated.

- **Tax benefits and incentives**

There are several tax benefits that private limited liabilities companies enjoy.

## **Disadvantages**

- **Complex to set-up**

A limited liability company is generally considered more complex and expensive to establish when compared to sole proprietorships. However, you can enlist the help of a service, like Zegal.

- **Ongoing compliance**

There are a number of statutory compliance requirements that private limited liability companies must adhere to.

- **Disclosure requirements**

A company has to make certain information available (capital structure, particulars of shareholders, directors

and secretary etc.) to the public by filing returns with the Companies Registry.

- **Complex winding up procedures**

Closing a company is more complex, time consuming, and expensive when compared to other business entities.

# How a limited liability company works

A limited company has a separate legal personality – it is a separate “person” in the eyes of law, and separate from its owners (the shareholders) and the people who run the business (the directors).

**The company’s legal status allows it to do any of the following:**

- Enter into contracts in its own name;
- Take legal action and be sued in its own name;
- Exist perpetually independent of its shareholders - the company continues to exist even on the death of its shareholders;
- Own its own property and assets; and
- Create security for loans for its creditors i.e. the creditor might receive a charge over the assets of the company.

The directors and shareholders are responsible for what the company does, as their actions constitute the company’s actions.

The extent of power that the directors and shareholders can exercise is defined by company law in general and the company's Articles of Association (its constitution).

The task of managing the company rests with the board of directors who make policy and management decisions. Certain directors' decisions are then agreed to by shareholders who are entitled to vote their agreement (or dissent) at a general meeting. The shareholders' voting rights are defined by the Articles of Association of the company.

### > Key takeaways of a limited liability company

 <p><b>Legal personality</b> A limited liability company is seen as a legal person in the eyes of the law.</p>	 <p><b>Ownership</b> A limited liability company can own its own property and assets.</p>
 <p><b>Sue or be sued</b> Legal action directly involves the company.</p>	 <p><b>Board of directors</b> Manages the company through policy and management decisions.</p>

## Directors

A limited liability company in Hong Kong must have at least one director. This can be a person or another company, and can be a local or non-local, and an individual must be above 18 years of age.

Directors have to perform a supervisory and managerial role in the company. The extent of the directors' involvement in the day-to-day business operations will vary, but all directors, irrespective of the company size, must retain effective control of the company and ensure that it is legally compliant at all times.



**A director  
must ensure  
the company  
is legally  
compliant at  
all times**

Directors must have a good working knowledge of all aspects of the company and must participate in corporate planning, financial decision making, and other strategic planning of the company.

Additionally, directors have statutory duties to perform as well as a duty of loyalty and good faith (a fiduciary duty) to the company and shareholders.

**Directors' duties include the following:**

1. Duty to act in good faith for the benefit of the company as a whole.
2. Duty to use powers for a proper purpose for the benefit of shareholders as a whole.
3. Duty not to delegate powers except with proper authorisation and duty to exercise independent judgement.
4. Duty to exercise care, skill, and diligence.
5. Duty to avoid conflicts between personal interests and interests of the company.
6. Duty not to enter into transactions in which the directors have an interest, except in compliance with the requirements of the law.
7. Duty not to gain advantage from the use of position as "director".
8. Duty not to make unauthorised use of company's property or information.
9. Duty not to accept personal benefit from third parties.

10. Duty to observe the company's Articles of Association.

11. Duty to keep proper books of account.

**Create a Director's Service Agreement: [Start a free trial.](#)**

## Shareholders

A limited liability company must have at least one shareholder which can be a person or company corporate; local or foreigner; above 18 years of age. The maximum number of shareholders is 50. Above 50 and it becomes known as a public company. Shareholders are also sometimes referred to as members.



**Shareholders  
own a part of  
the company  
in proportion  
to the shares  
they own**

Shareholders make a financial investment in the company by buying shares in the company. They own a part of the company in proportion to the shares they own. In the event of the company making a profit, shareholders are entitled to the profits by way of dividends.

Usually, shareholders are not directly involved in the management of the company. In a way, the board of directors runs the company on behalf of the shareholders, to whom it is accountable.

### **Shareholders are entitled to the following rights:**

- **Right to vote**

This includes voting for the appointment or removal of directors and auditors.

- **Right to dividends**

A company's profits can either be reinvested in the company to increase its value or paid out as dividends. If the profits are paid out as dividends, shareholders are entitled to receive a share.

- **Right to own a portion of the assets if the company is liquidated**

Retention for shareholders

- **Right to receive information about the company**

This helps to prevent the company's managers from acting to the detriment of the shareholders. In addition,

the ability to obtain information can be important for shareholders in deciding whether to take action against them.

- **Right to propose shareholder resolutions**

Ability to submit non-binding recommendations for voting by the board of directors at an annual meeting.

> **Shareholders-related documents on zegal.com**

 <p><b>Board Minutes to Issue Shares</b></p> <p>Minutes of a meeting of the board of directors that record the process of allotting and issuing shares.</p>	 <p><b>Power of Attorney for a Shareholder at an AGM</b></p> <p>A power of attorney for the exercise of a shareholder's rights at an annual general meeting.</p>	 <p><b>Shareholder's Agreement</b></p> <p>An arrangement between a company's shareholders that describes their rights and obligations and how the company should be operated.</p>
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Create a Shareholders' Agreement. [Start a free trial](#)

## Company Secretary

A limited liability company must have a company secretary. The company secretary can be an individual (local resident of Hong Kong) or a separate company, often one that provides company related services. A third party Company Secretary needs to be properly licensed.



A company secretary can be an individual or a separate company

The company secretary is a key officer in any company discharging their duties as per the law. The majority of documents that pass a board of directors will need to go through the company secretary.

The duty of company secretary cannot overlap with the position of sole shareholder or director.

### **The company secretary is responsible for:**

- Arranging meetings;
- Taking down minutes of the meetings;
- Maintaining the company's statutory books;

- Filing necessary documents, such as annual returns with the Companies Registry;
- Ensuring that the company's statutory compliance is met with; and registering share transfers

**The Zegal Professional Plan includes free company secretarial support for your company. [Start a free trial.](#)**

## Articles of Association

A company's Articles of Association are its lawful Constitution by regulating the internal relations between the shareholders themselves and between the company and its shareholders.

The Articles prescribe the rules for running of the company's internal affairs. **The Articles usually state:**

- Rules concerning the holding of meetings
- The process for appointment of directors
- The relationship, rights, duties, and responsibilities of shareholders

> **What makes up a limited liability company?**



**Directors**

A company must at least have one.



**Shareholders**

A company must at least have one.



**Company Secretary**

The principal administrator of a company.

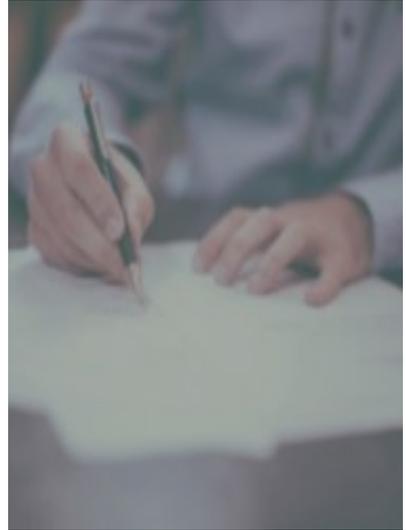


**Articles of Association**

The lawful constitution of a company.

# Why you should incorporate early

If you choose to incorporate a limited liability company, when should you do it? If you've already considered the factors above and made a decision to create a limited liability company, then there are certain advantages to incorporating as early as you possibly can. If you have co-founders, then you can agree and set out the structure of the company's ownership before too much work has been done.



A loose arrangement between friends with the idea of a company structure may not offer the stability and reassurance that shareholdings, a board of directors, and a nominated company secretary can offer.

As mentioned above, raising capital can be easier if you have a company in place. For example, it might be easier to secure a bank loan with a limited liability company.

The founders are protected from personal liability from “day one” – i.e. from the earliest possible stage of the business.

You can start being compliant and demonstrating an audit trail of “good practice” from an early stage. Very useful for impressing future investors!

By ensuring you have the right employment and consultancy agreements in place, you can make sure that the company (not you or any other individual) owns the intellectual property. The IP is a vital and a valuable business asset, and it should be protected by inclusion as a company asset.

Of course, deciding when to incorporate may depend on other strategic factors, such as when you can get the right people on board or when your market research is complete.

# How to incorporate in Hong Kong

You can incorporate your company for free when you subscribe to the Zegal Professional Plan.

[Zegal: FREE COMPANY INCORPORATION](#)

Once you have decided to incorporate a limited liability company and have chosen a company name, you can apply for incorporation with the Hong Kong Companies Registry (“CR”).

For a successful application, company names need to be approved prior to incorporation.

When incorporating with **Zegal**, chosen company names are checked for eligibility.

**Overview of minimum requirements to set up a Hong Kong private company:**

## **Shareholders**

Minimum of one and maximum 50

## **Director**

Minimum of one

### **Company Secretary**

Must be based in Hong Kong

### **Registered office address**

Must be a physical address in Hong Kong

### **Share Capital**

There is no share capital requirement for Hong Kong

To simplify the process of setting up a limited liability company, any application for company incorporation includes a simultaneous application for business registration.

You may submit applications for incorporation of local companies online at the 24-hour portal e-Registry or deliver the following documents in hard copy form to the Companies Registry with the correct fees.

The Hong Kong Companies Ordinance has undergone a recent amendment in 2018 and has since streamlined the process of incorporation in Hong Kong. The entire process to incorporate in

Hong Kong will take around 5 to 7 days (subjected to the completion of the required documents).

However, with Zegal, we streamline and work on the process for you, cutting down company incorporation time to just 24 hours, with the need to sign the required Directors' Consent and personally file to the Companies Registry within 15 days.

### **Application for incorporation must include:**

- Incorporation Form (Form NNC1 for company limited by shares)
- A copy of the company's Articles of Association
- A Notice to Business Registration Office (IRBR1)

### **The fees for incorporating a company limited by shares are:**

- **Company Registration fee (including levy):** HKD 1,770 - if unsuccessful, an application for a refund of HKD 1,425 may be made
- **Business registration fee:** HKD 250 for a one-year certificate (currently discounted from HKD 2,250); HKD 3,950 for a three-year certificate

Online applications at the [e-Registry](#) portal for company incorporation and business registration can normally be processed

within one hour. If you deliver your application in hard copy form at the Queensway Government Offices , the Certificate of Incorporation and Business Registration Certificate will normally be issued within four working days.

**All the following information is required to incorporate in Hong Kong:**

- about the company (registered office address, email address, phone number);
- about the shares (number of shares, value of each shares, classes of shares);
- about the company (name, registered address, currency, class of shares, and rights attached);
- about the shareholder(s) (name, address, share capital subscribed);
- about the director(s) (name, address, email address, HKID number or passport number, company number); and
- about the company secretary (name, address, email address, the HKID number or passport number, company number).

**Keep in mind** that due to Hong Kong company law information on company directors, company secretaries, and shareholders is public

information. Company details are filed with the Hong Kong Company Registrar.

**Physical presence** is not necessary when incorporating in Hong Kong, but may be needed when opening a bank account.

# Incorporating a non-Hong Kong company?

A non-Hong Kong company is a company that is incorporated outside of Hong Kong but it has an established place of business in Hong Kong. It is compulsory to apply for registration as a non-Hong Kong company within a month of its establishment as a place of business in Hong Kong.

Documents required for submission: (either electronically or in hardcopy)

- [Form NN1](#)
- A certified copy of the instrument defining the company's constitution (e.g. charter, statutes or memorandum & articles of association)
- A certified copy of the company's latest published accounts
- A Notice to Business Registration Office (Form IRBR2)

The approval upon submission of the correct and completed forms along with the registration fees will take approximately 10 working days.

Upon filing these documents and successful approval, you will be issued a Certificate of Incorporation (or the Certificate of

Registration of Non-Hong Kong Company) and Business Registration Certificate in electronic form for online applications and in hard copy for hard copy applications. Electronic Certificates will typically be issued within one hour after submission of documents while it may take several days for applications submitted in hard copy form.

## After incorporation

Once the company has been incorporated, within a month of commencing business, the business must be registered with the Business Registration Office of the Inland Revenue Department. It is compulsory to display the Business Registration Certificate at the place of business.

Hong Kong allows for a simultaneous application for business registrations together with the application for company incorporations. The additional business registration fee of HKD\$2,000 (1-year certificate) or HKD\$2,500 (3-year certificate) must be made together with these documents:

- A Notice to Business Registration Office (IRBR1)
- Levy to the Protection of Wages on Insolvency Fund (1-year Certificate, HKD\$250 or 3-year Certificate, HKD\$750)

If the simultaneous business registration is done electronically, it would take **an hour** or **4 working days** for hard copies.

If it is a separate business registration, it can only be done in hard copy and it would take **30 minutes** in person or **2 working days** by post.

## Annual filing

All Hong Kong-based companies must meet annual filing requirements with the Inland Revenue Department (IRD) and Companies Registry, once every calendar year.

Your company will need to comply with annual filing requirements and deadlines administered by the Companies Registry and the [Inland Revenue Department](#) (IRD). This may include the following:

- An Annual Return filed with the Companies Registry once, every calendar year (except in the year of incorporation);
- Additional statutory documents in addition to the Annual Returns, as required under the Companies Ordinance (CO). The filing requirements vary depending on whether you are a [Local Limited Company](#) or a [Registered Non-Hong Kong Company](#).

## Corporate Tax

Hong Kong requires corporate tax filing depending on the end of a company's financial year.

<b>Financial year ended</b>	<b>Filing due date</b>
Between 1 January – 31 March	15 November of the calendar year in which the financial year ended
Between 1 April and 30 November	2 May of the calendar year in which the financial year ended
Between 1 December and 31 December	15 August of the calendar year in which the financial year ended

Check out the [Profits Tax](#) section on the GovHK website for more information.

[FURTHER READING: The Guide to Hong Kong Corporate Tax Rate](#)

## Open a corporate bank account

Before heading down to a bank to open a corporate bank account, make sure that you prepare the following:-

- [All the documents](#) required by the bank's application form, including certification by either a certified, public accountant, company secretary, lawyer or banker;
- Initial minimum deposits (required by most banks in Hong Kong in order to open a bank account);
- Any other requirements for foreign companies (check with the bank accordingly).

Due to strict due diligence procedures, almost all banks in Hong Kong will require the physical presence of the account signatories, principle directors and shareholders at the time of opening the bank account. However, this requirement may be exempted in some cases and the documents can be signed at one of the bank's overseas branches in the presence of a witness should a key party not be able to be present.

## Apply for the relevant licenses & permits

In order to commence business operations in Hong Kong, you may require particular government licenses, permits, certificates or approvals. To determine which licenses and permits apply to your business, check out the following useful resources:

- [Licensing & Permits section of GovHK](#) and [Business License Information Service](#). This is where to go for information on government licenses, permits, certificates and approvals relevant to business operations in Hong Kong.
- [Online License Services](#). If you have already submitted a license application, you can track the status of your application on this site.

## Accounting

The Hong Kong Institute of Certified Public Accountants (HKICPA) issues official standards relating to accounting and auditing practices. The Hong Kong law requires all Hong Kong-incorporated companies to prepare audited financial statements. All private companies must keep and maintain proper books of account. Companies must also file annual returns specifying directors, members and the location of a registered office.

## Annual General Meeting

All companies must convene its annual general meeting in respect of each financial year of the company, as opposed to every calendar year.

## Fulfil your obligations under the MPF system

As a business employing staff, whether full-time or part-time, you must enrol your employees aged 18 to below 65 in a Mandatory Provident Fund (MPF) scheme. You may select from one of the schemes under the MPF system and should consider factors such as the types of constituent funds available and the fees and charges payable under the scheme. For more information, check out the [Employers' Handbook on MPF Obligations](#) by the MPF Schemes Authority (MPFA).

## Access funds & resources for small businesses

Seek advice on startup issues as well as [grants available to your small business by the Hong Kong government](#). Some resources for picking up information relevant to small businesses include the following:

- [InvestHK](#) which works with foreign entrepreneurs, SMEs and multinationals looking to set up an office or expand their existing business in Hong Kong offers free advice and services to support companies.
- [HKTDC SME Start-up Programme](#) which provides supporting services for the stages in your startup roadmap, including operational management and sales promotion.

# About Zegal

Zegal is a contract automation platform that enables your business to create, collaborate and execute contracts at scale. Unlimited eSignatures, thousands of business agreements, all online.

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