



## Establishing a charity in Hong Kong (Part I)

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**D**emand for philanthropy planning has surged in recent years, especially since the pandemic's harsh impact on society and livelihoods, with many enterprises, social organisations, religious groups and benevolent individuals seeking efficient, powerful, targeted ways to help socially vulnerable groups.

This series of articles provides practical information for those intending to engage in philanthropy and set up a charity in Hong Kong, presenting an overview of establishment requirements, organisational structures, compliance and governance, obligations and tax exemption.

Although there are no specific laws and regulations overseeing the registration and operation of charities, the Inland Revenue Department (IRD) provides essential guidelines in the Tax Guide for Charitable Institutions and Trusts of a Public Character, first issued in the 1980s.

This is revised from time to time to reflect changes in the tax environment and practical needs, providing updated guidelines on taxation and other related matters of charities or trusts. Its latest revision was updated in September 2021.

The first article in this series introduces basic requirements of establishing a charity in Hong Kong, and the different organisational structures that can be adopted.

### Establishment Requirements

According to the latest guidance, the following three requirements must be met to set up a legal charity:

- An institution or trust must be established solely for charitable purposes - charitable in the legal sense - and can be classified into four main purposes: (1) relief of poverty; (2) advancement of education; (3) advancement of religion; and (4) other charitable purposes that benefit society but do not fall into any of the preceding categories.
- A charity must be set up for identifiable public benefit, and the beneficiary must be the general public.
- A charity must abide by the law and bear the responsibility of safeguarding national security, and its resources must be used only for charitable work and not to engage in or support any acts and activities that are illegal or detrimental to national security. It is worth noting that this latest requirement is revised in response to

implementation of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

## Structures of Charities

Before setting up a charity, the founder must clearly define the organisation's purpose and clarify its organisational structure to be adopted, based on practical operation and purpose. Generally, charities can be divided into the following categories:

- Charitable trust;
- Society;
- Corporation (including company limited by guarantee) established under the Companies Ordinance; and
- Statutory body established in accordance with specific regulations.

A charitable trust is a trust established specifically for a charitable purpose, and its governing instrument is usually a trust deed that defines the purpose of the trust and the power of the trustee. A society is an unincorporated body formed by a group of voluntary members, bound by the rules in its articles of association.

On the other hand, the articles of association of a company limited by guarantee established under the Companies Ordinance limit liability of its members to the amount they undertake to pay as the assets of the company at its winding-up, and is therefore suitable for charities and non-profit-making organisations that do not require share capital and profit-sharing.

Judging from the actual operation of existing Hong Kong charities, most founders have

chosen to set them up in the form of companies limited by guarantee.

The guidelines also mention that most of the charities recognised by the IRD for tax exemption are companies limited by guarantee. The reason for this is that, compared with the other structures, companies limited by guarantee have a certain degree of transparency increasing public confidence in their operation.

Among these reassurances are:

1. Operations regulated by their articles of association, which clearly set out the rules related to the mode of operation and management, accessible to the public through the Hong Kong Companies Registry;
2. They are required to keep and file audited annual financial statements, in accordance with the Companies Ordinance, and as a result financial statements are also available for public review, motivating proper accounts management; and
3. With no need to share profits, the charity structure without share capital ensures they are not profit-oriented.

In addition, after choosing a name of the charity company, the founder only needs to submit an application form and Notice to the Business Registration Office to the Companies Registry, along with a copy of its articles of association, and pay the registration fee.

After the application is approved, the certificate of incorporation and business registration certificate can be obtained. Therefore, the process of setting up a company limited by guarantee is relatively simple, but it should follow another set of

procedures to apply for tax exemption from the IRD.

Prior to setting up a charity, apart from establishing its general purpose, the organisation should take into account different operational and compliance considerations, including whether these meet all requirements set out in the guidelines, and understand the various applicable structures.

After confirming these requirements are met, the charitable organisation may move on to deliberate its governance policies. These relevant compliance requirements will be introduced and summarised in the next part of this series.

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