

Shenzhen, China

Rooms 1203-06, 12/F.
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
T: +86 755 8268 4480

Shanghai, China

Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
T: +86 21 6439 4114

Beijing, China

Room 303, 3/F.
Interchina Commercial Bldg.
33 Dengshikou Street
Dongcheng District, Beijing
T: +86 10 6210 1890

Taipei, Taiwan

Room 303, 3/F.
142 Section 4
Chung Hsiao East Road
Daan District, Taipei
T: +886 2 2711 1324

Singapore

138 Cecil Street
#13-02 Cecil Court
Singapore 069538
T: +65 6438 0116

New York, USA

202 Canal Street
Suite 303, 3/F.
New York
NY 10013, USA
T: +1 646 850 5888

Hong Kong Company Incorporation Guide (5) Qualification, Rights and Obligation of Directors

1. Number of Directors

In accordance with the Hong Kong Companies Ordinance, a private company limited by shares must have at least one natural person act as director. 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 require 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 company's articles require a director to hold a specified share qualification, it is his duty to be qualified within 2 months or shorter after his appointment pursuant to the article, if he is not yet qualified during the appointment.

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 that information by paying a fee.

5. Rights (or Powers) of Directors

In accordance with the Hong Kong 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. 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 Hong Kong 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 (including anyone who 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:

- (1) Alteration of the company's articles of association;
- (2) Alteration of the company's capital, e.g. increase or reduce the company's capital;
- (3) Appointment and removal of the auditors;
- (4) Removal of directors;
- (5) Payment to directors for loss of office and retirement;
- (6) Winding up.

There are three kinds of resolution:

- (1) 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.

- (2) 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 Articles of Association.

- (3) 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.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

Email: info@kaizencpa.com, enquiries@kaizencpa.com

Tel: +852 2341 1444

Mobile: +852 5616 4140, +86 152 1943 4614

WhatsApp/ Line/ Wechat: +852 5616 4140

Skype: kaizencpa

SERVICES SCOPE



CONTACT US



KAIZEN CPA LIMITED

Rooms 2101-05, 21/F, Futura Plaza
111 How Ming Street, Kwun Tong, Hong Kong
T: +852 2341 1444
E: info@kaizencpa.com

SHENZHEN, CHINA

Rooms 1203-06, 12/F
Di Wang Commercial Centre
5002 Shennan Road East
Luohu District, Shenzhen
T: +86 755 8268 4480

SHANGHAI, CHINA

Room 603, 6/F., Tower B
Guangqi Culture Plaza
2899A Xietu Road
Xuhui District, Shanghai
T: +86 21 6439 4114

BEIJING, CHINA

Room 303, 3/F, Interchina
Commercial Building
33 Dengshikou Street,
Dongcheng District, Beijing
T: +86 10 6210 1890

TAIPEI, TAIWAN

Room 303, 3/F
142 Section 4, Chung Hsiao
East Road, Daan District
Taipei, Taiwan 10688
T: +886 2 2711 1324

SINGAPORE

138 Cecil Street, #13-02 Cecil
Court, Singapore 069538
T: +65 6438 0116

NEW YORK, USA

202 Canal Street Suite 303, 3/F
New York
NY 10013, USA
T: +1 646 850 5888

LONDON, UK

Unit 2, 2/F, 39-41 High Street,
New Malden, Surrey
KT3 4BY, UK
T: +44 20 8144 6466