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Partnership Law HANDBOOK

Fourth Edition

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Partnership Law Handbook
(Fourth Edition)

Limited Partnership Ordinance
(Cap 37)

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Partnership Law Handbook

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PARTNERSHIP ORDINANCE

(CAP 38)

Introduction

Background

The Partnership Ordinance (Cap 38) (originally 2 of 1897) (the 'Ordinance'), originally enacted on 15 May 1897, was designated as Chapter 38 in 1950. The latest edition of the Partnership Ordinance is dated 1964, and since that date two sections (ss 3(2) and 38(2)) have been amended. The Adaptation of Laws Ordinance (Courts and Tribunals) 1998 (25 of 1998), commencing 1 July 1997 replaced the phrase 'any Act of Parliament, or letters patent, or Royal Charter' in s 3(2) with the words 'any enactment or instrument' and replaced 'Colony' in s 38(2) with 'Hong Kong'. The authentic Chinese version of the Partnership Ordinance was enacted in 1995: see the Official Languages (Authentic Chinese Text) (Partnership Ordinance) Order 1995 (LN(C) 34 of 1995 (Chinese authentic version)).

Although this Ordinance is based on the Partnership Act 1890 (UK) (hereinafter the '1890 Act'), it does not purport to 'declare and amend the law of partnership' as stated in the preamble to the 1890 Act. Instead, the Partnership Ordinance aims to 'codify the law relating to partnership'. This difference in terminology is curious, since most of the provisions in the Partnership Ordinance are replicas of those in the 1890 Act, some of which are not consistent with previous case law. Legislation concerning partnerships had been introduced in s 5 of the Mercantile Law Amendment Ordinance 1864 (13 of 1864) and the Partnership Amendment Ordinance 1867 (7 of 1867). These provisions were replicated in the Partnership Ordinance (the former in s 20 and the latter in ss 4 and 5) and this was presumably the rationale for expressing the aims of the Partnership Ordinance as codifying the law. It is however clear that the Hong Kong legislature did not intend to codify every aspect of the law concerning partnership—the Partnership Ordinance, like the 1890 Act, provides that the rules of common law and equity applicable to partnership continue in force, so far as they are not inconsistent with the express provisions of the legislation: see s 46 of the Partnership Act 1890; and s 47 below.

It is also curious that the practices and customs followed by Chinese partnerships in Hong Kong were not incorporated into the Partnership Ordinance (Cap 38). Many Chinese merchants in Hong Kong conducted their business in the form of a partnership, and, as explained in G Jamieson, *Chinese Family Law and Commercial Law* (Kelly and Walsh Limited 1921), certain 'principles' were followed. In particular, '[in] the event of bankruptcy, when all the partners who have been taking a share in the conduct of the business are known to the public, each will be liable for a share of the debts proportionate to his share in the total capital': see Jamieson (above) at 121. Jamieson adds that many Chinese merchants regarded the

Partnership Ordinance (Cap 38) as unduly harsh in making every
responsible for the whole of the debts of the firm, however small his
the concern might be, and this had given rise to concealing the true
responsible parties by means of fictitious partnership deeds to evade
'whereby, in the event of bankruptcy, creditors were defrauded of their
see Jamieson (above) at 128–129.

Chinese customary law was sought to be applied in *Li Po Kam & Li Po Yu*
Ling Shi & Lo Tsung Pak and in the matter of the Cheong Shing Bank &
Tong v Li Po Kam and Li Po Yung [1908] 3 HKLR 170, [1908] HKCU 13
A partner had died and, according to s 35 of the Partnership Ordinance (Ca
subject to any agreement between the partners, the partnership was dissolved
was no such agreement in express form, but it was argued that, accordi
Chinese customary law, an implied agreement existed, and that the partne
continued despite the death of one partner, with his legal representatives com
in his place.

In his judgment, Piggott CJ explained that, if the Partnership Ordinance (Ca
had been an English statute introduced into Hong Kong at the date of the O
(ie, in 1843), and was to be applied so far as local circumstances permitted
Chinese customary law would be considered. However, the Partnership Ord
was passed by the Hong Kong legislature and made no reference to Chi
customs. It was held that the Partnership Ordinance must override Chinese cu
relating to partnership. Nevertheless, Piggott CJ was critical of the situation
added (at 174–175): 'I must point out to the Government the extreme dange
reproducing English legislation bodily in the colonial statute book, without a
considering the question how it may affect the customs of the large body of C
who are legislated for'.

The above case was followed in *Ng Tek Tong v Wong Cheung Che* [1911] 6 HK
70, [1909] HKCU 13 (FC), where Piggott CJ was asked to apply ss 44–45 of
Partnership Ordinance (Cap 38) (which concern the rights of an outgoing pa
to a firm 'composed of Chinamen'. In deciding whether the Partnership Ord
applied to such a firm, he likened the situation in Hong Kong to the 1890 A
which provided that in Scotland, partners were jointly and severally liable, whe
in England they were jointly liable. However, the 1890 Act did not provide crite
for determining whether a particular firm was a 'Scotch firm' or an 'English firm
Piggott CJ explained that, by the common law, foreigners might have been partn
in what 'for want of a better name, we must call an "English firm", and that
English firm may carry on business abroad'. The 1890 Act was therefore n
limited to firms carrying on business in England (or Scotland, as the case m
be). He held that the Partnership Ordinance applied to Chinese firms constitu
in Hong Kong, irrespective of where they carried on business, or of the nationa
of the parties.

However, in the same year, the Chinese Partnerships Ordinance 1911 (53 of 191
was enacted. That Ordinance provided for the registration of Chinese partnersh
and enabled partners to register and to limit their liability. At the same time,
2(2) of the Limited Partnerships Ordinance (Cap 37) was amended, so that it on

applied to 'non-Chinese partnerships'. There was no definition of 'Chinese' or 'non-Chinese' in either Ordinance, but clearly the intention was that Chinese partnerships would register under the Chinese Partnerships Ordinance 1911 (53 of 1911), while non-Chinese partnerships would register under the Limited Partnerships Ordinance.

A committee appointed by the Governor in 1948 to consider Chinese law and custom in Hong Kong reported that the Chinese Partnerships Ordinance 1911 (53 of 1911) gave 'partial effect' to certain Chinese customs in relation to partnerships, but added that 's 7 of the Ordinance makes it clear that the Partnership Ordinance 1897, and the rules of equity and common law apply save in so far as they are inconsistent with the express provisions made': see Committee on the Chinese Law and Custom in Hong Kong, Sir Man Kam Lo, 'Chinese Law and Custom in Hong Kong: Report of a Committee appointed to the Governor in October, 1948'.

Registration under the Chinese Partnerships Ordinance 1911 (53 of 1911) fell into decline. The Company Law Revision Committee, in their 'Second Report, Company Law' (April 1973) at para 2.59, in the course of discussing the exemption from filing accounts granted to private companies, explained the marked increase in the number of registered companies, from 3,322 companies (both public and private) in 1959, to 22,514 companies (of which 21,101 were private) in 1972. This phenomenon, the Committee explained, was due in part to Hong Kong's rapidly accelerating economy, and also to the fact that large numbers of Chinese partnerships were converted into private limited companies, mainly in order to obtain the benefits of limited liability, but in some cases also because Chinese businessmen had become 'company-minded' and wanted to do things the modern way. The Chinese Partnerships Ordinance was repealed in 1971 and s 2(2) of the Limited Partnerships Ordinance was replaced in 1999 (Adaptation of Laws (No 9) Ordinance 1999 (23 of 1999), commencing 1 July 1997, s 3) and now makes no reference to 'non-Chinese partnerships'. See also *Chan Kong (陳剛) v Chan Li Chai Medical Factory (Hong Kong) Ltd (香港陳李濟藥廠有限公司) & Ors* [2012] 5 HKLRD 765, [2012] HKCU 2224 (CA).

Essential provisions of this Ordinance

The sections of the Partnership Ordinance (Cap 38) fall under four headings: the nature of partnership (ss 2–6); the relations of partners to persons dealing with them (ss 7–20); the relations of partners to one another (ss 21–33); and the dissolution of partnership and its consequences (ss 34–47). While most of the provisions are obligatory and do not allow partners to make contrary arrangements, the provisions concerning the relations between partners apply 'subject to any agreement between the partners' or 'unless a contrary intention appears'. A partnership agreement may therefore differ considerably from these provisions.

The essential provisions of the Partnership Ordinance (Cap 38) are summarised as follows:

(1) The nature of partnership

Partnership is the relation which subsists between persons carrying on business in common with a view to profit (s 3(1)); although [illegible] corporations and associations are excluded pursuant to s 3(1); although [illegible] determining whether a partnership exists, the rules set out in s 4 [illegible] For example: (a) joint tenancy, tenancy in common, joint property, common property or part ownership, do not of themselves [illegible] partnership, nor does the sharing of gross returns; and (b) the receipt of share of the profits of a business is prima facie evidence of partnership although it does not of itself make the person sharing a partnership particular, a creditor receiving payment of his debt out of profits, a widow or child of a deceased partner remunerated by the share thereof, a widow or child of a deceased partner receiving a portion of the profits by way of an annuity, a lender receiving interest at a rate varying with profits, or the vendor of a goodwill receiving payment therefor in the form of a share of the profits, is not thereby a partner liable as such (s 4(c)). As to the capacity of certain persons to enter into partnerships, see the notes to s 3 below.

The legality or otherwise of partnerships is not dealt with by the Partnership Ordinance (Cap 38), but must be determined by reference to statutes, or to the common law, or even in some cases to principles of international comity: see *Foster v Driscoll, Lindsay v Attfield, Lindsay v Driscol* [1929] 1 KB 470, [1928] All ER Rep 130 (CA). Even where a partnership may be expressly forbidden by statute, because it exists for an illegal purpose, or because the business for which it exists cannot in the particular circumstances be carried on without a breach of the law. There was a general prohibition against partnerships consisting of more than 20 persons unless registered as a company (see the former Companies Ordinance (Cap 32) (repealed), s 345(1)), but partnerships of solicitors, accountants and members of the Stock Exchange were excepted (see the former Companies Ordinance (repealed), s 345(2)). However, following a recommendation by the Standing Committee on Company Law Reform, the Companies (Amendment) Ordinance 2004 (30 of 2004) (repealed) repealed s 345.

Partnerships are also required to register under the Societies Ordinance (Cap 151), otherwise they are unlawful. However, partnerships for the sole purpose of carrying on any lawful business and which are registered under some other ordinance are exempt from registration (see the Societies Ordinance, Sch para (6)). Thus, a partnership registered under the Business Registration Ordinance (Cap 310) is exempt from registration under the Societies Ordinance. As to limited partnerships, see the Limited Partnerships Ordinance (Cap 37). For limited partnerships established as a vehicle for private investment funds (private equity and venture capital funds), see the Limited Partnership Fund Ordinance (Cap 637).

In the case of professional partnerships, lack of professional qualification or loss of it by removal from the relevant professional register will usually render it legally impossible for the unqualified person to continue as a partner. However, it should be noted that, whereas some relevant ordinances expressly prohibit against practice by unregistered persons (see

for example the Medical Registration Ordinance (Cap 161), s 20A; the Chiropractors Registration Ordinance (Cap 428), s 12, and the Legal Practitioners Ordinance (Cap 159), s 45), others are more permissive: see, for example, the Architects Registration Ordinance (Cap 408), s 30.

(2) Partners and third parties

Every partner is an agent of the firm and of the other partners for the purposes of the partnership business (s 7). Consequently, subject to certain limitations, the firm is bound by the acts of a partner (ss 7–10). Every partner is jointly liable for the debts of the firm incurred while he is a partner (s 11); and every partner is jointly and severally liable for loss or injury caused by the wrongful act or omission of a partner acting in the ordinary course of business or with the authority of his partners (ss 12 and 14); and for misapplication of money or property received for the firm or in the firm's custody (ss 13–14). A partner is not liable for debts or obligations incurred at a time when he is not a partner (ss 11 and 19(1)) unless he held himself out to be a partner (s 16); or for breaches of trust of which he has no notice (s 15); or where his partner has without authority pledged the firm's credit for his private purposes (s 9). An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of its business, is evidence against the firm (s 17); and notice to a partner shall operate as notice to the firm, except in the case of fraud on the firm (s 18).

(3) Relations of partners to one another

Partnership is the result of contract, and the relations between partners are for the most part regulated by the contract they have made, which may be varied by agreement (s 21). All property originally brought into the partnership or acquired on account of the firm for the purposes and in the course of partnership business, constitutes partnership property, and must be held and applied as such, in accordance with the partnership agreement (s 22). Certain terms are imposed by the Partnership Ordinance (Cap 38), and they apply unless a contrary intention appears:

(a) property bought with the firm's money is deemed to have been bought on account of the firm (s 23);

(b) partnership property of whatever nature is treated, as between the partners, as personal and not real property (s 24);

(c) partners are entitled to take part in the management of the business, but are not entitled to remuneration for so doing (s 26);

(d) partners are entitled to an indemnity from the firm in respect of liabilities incurred in the proper conduct of the business or in its preservation (s 26);

(e) partners are entitled to equal shares in the capital and profits, and are liable to contribute equally towards losses (s 26); and

(f) partners are entitled to interest on advances, but not on capital until the profits have been ascertained (s 26).

Every partner is bound to render accounts and information to any other partner (s 30); to account to the firm for any profit derived privately from

any partnership transaction (s 31); and to account for any profits ... from any competing business (s 32).

In respect of the taxation of partnership profits, under the Inland ... Ordinance (Cap 112), s 22, a trade, profession or business carried ... two or more persons, is assessed to profits tax by a joint assessment ... the partnership name. The ratio in which the partners divide profits ... losses), forms the basis for ascertaining the share of an individual ... of the assessable profits (or losses) for the relevant year: see the ... Revenue Ordinance, s 22A. Other provisions of that Ordinance ... apply specifically to partnerships include: s 22B (limited partner ... relief); s 39E (allowances in respect of capital expenditure); ... (keeping business records); and s 56 (precedent partner to act on ... of partnership).

(4) Termination of partnership and its consequences

The partnership may be for a single adventure, for a fixed term, or ... undefined term as agreed among the partners. Where the term is unfixed ... any partner may, in the absence of contrary agreement, dissolve ... partnership by giving notice to the others (s 34); but no partner can ... expelled by the majority unless such power is conferred by ... agreement: s 27.

A partnership contract, like any other contract, may be rescinded ... ground of fraud or misrepresentation. The Partnership Ordinance (s ... gives the rescinding partner, without prejudice to his ordinary contract ... rights, a lien on the partnership assets, a right to indemnity, and a right ... subrogation to the firm's creditors: s 43.

A partnership may be dissolved:

(a) at the will of the partners, as for instance where a partner ... his share to be charged (s 35); or

(b) by operation of law, where a partner dies or becomes bankrupt ... (s 35); or

(c) where it becomes unlawful for the business of the firm to be ... carried on or for members of the firm to carry it on in partnership ... (s 36); or

(d) by the court, when a partner has become permanently incapable ... or has been guilty of misconduct, or has committed a breach of ... the partnership agreement (s 37); or

(e) when the business can only be carried on at a loss (s 37); or

(f) when it would be just and equitable that it be dissolved (s 37).

Section 10B(1)(g) of the Mental Health Ordinance (Cap 136) confers on ... the court a power to dissolve a partnership of which a mentally ... incapacitated person is a partner.

On dissolution, the property of the partnership is applied, first in the ... payment of the firm's debts and liabilities, then in the payment ratably ... of what is due to each partner, first for advances, then for capital. Any ... surplus is divided among the partners in the proportion in which profits ... are divisible (ss 40 and 46). Section 42 provides for the repayment of ...

premiums in whole or in part. Losses are paid out of profits if there are any, and if not out of capital; and if the capital is insufficient, they are paid out of the separate estates of the partners, in the proportion in which they were entitled to profits: s 46(a).

A partnership comprising eight or more members which is formed or established in Hong Kong and is not registered as a limited partnership, may be compulsorily wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), Pt X as an unregistered company if:

(1) it is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; or

(2) it is unable to pay its debts; or

(3) it is just and equitable: see the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), ss 326(1) and 327(3).

Business registration

The Business Registration Ordinance (Cap 310) applies to all persons carrying on business in Hong Kong. In the case of a business carried on by a partnership (other than a limited partnership fund), a person means 'all partners' (see s 3(1)(b) thereof). The partnership is required to apply for registration to the Commissioner of Inland Revenue within one month of commencing business. Registration may be for a period of either one year or three years, and the fee payable is prescribed by Sch 1 to that Ordinance. The amount is presently HK$ 2,000 for one year and HK$ 5,200 for three years. For the appropriate application form to be submitted by a partnership, see the Business Registration Regulations (Cap 310A), reg 9 and Form 1C. See further *The Annotated Ordinances of Hong Kong, Business Registration Ordinance (Cap 310)* (2025 Reissue).

CHAPTER 38

PARTNERSHIP ORDINANCE

ARRANGEMENT OF SECTIONS

LT. Long title

To codify the law relating to partnership.

[cf. 1890 c. 39 (U.K.)]

[15 May 1897]

(Format changes—E.R. 2 of 2012)

1. Short title

This Ordinance may be cited as the Partnership Ordinance.

(Amended 5 of 1924 s. 6)

[1.01] Enactment history

This section was amended pursuant to s 6 of the Law Revision Ordinance 1924 (5 of 1924), commencing 15 August 1924.

[1.02] England

cf the Partnership Act 1890 (c 39) (UK), s 50.

2. Interpretation

In this Ordinance, unless the context otherwise requires—

business (業務) includes every trade, occupation, or profession;

court (法院) includes every court and judge having jurisdiction in the case.

[2.01] England

cf the Partnership Act 1890 (c 39) (UK), s 45.

[2.02] Business

This term includes any separate commercial venture, as well as 'a life long or a universal business or a long undertaking': see *Re Abenheim, ex p Abenheim* (1913) 109 LT 219 (KB); *Winsor v Schroeder* (1979) 129 NLJ 1266 (QB); and *Federal Commissioner of Taxation v Whitfords Beach Pty Ltd* (1982) 150 CLR 355, 39 ALR 521, (1982) 56 ALJR 240 (HC, Aust). See also *Smith v Anderson* (1880) 15 Ch D 247, [1874–80] All ER Rep 1121 (CA, Eng); *National Insurance Co of New Zealand v Bray* [1934] NZLR 567 (HC, NZ); and *Wernher v IRC* [1942] 1 KB 399, [1942] 111 LJ KB 357 (KB).

The general meaning of the term 'business' is discussed in depth in *Lam Woo-shang v CIR* (1961) 1 HKTC 123 but the main issue in that case has been superseded by an amendment to the definition of business contained in the Inland Revenue Ordinance (Cap 112), s 2. The discussion also does not deal with the development of the meaning of 'business' within the context of partnership law. Section 3 does not prescribe or in any way confine the manner in which a partnership business is to be carried. An argument that a partnership cannot carry on business via corporate vehicles was rejected in *Lam Chi Kit Kelly (also known as Nick Lam) v Ho Man Ching Li Liang* [2011] HKCU 2148 (unreported, HCA 1402/2009, 18 August 2011) (CFI).

See, generally, *Halsbury's Laws of Hong Kong* (2nd edn, LexisNexis 2018) vol 42 on Partnerships and Joint Ventures at para 290.004.

[2.03] Occupation or Profession

A 'profession' in the present use of language, 'involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities': see *The Commissioner of Inland Revenue v Maxse* [1919] 1 KB 647, (1918) 12 TC 41 (CA, Eng) at 61–62, per Scrutton LJ.

[2.04] Court

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) (as amended pursuant to s 4 of the Adaptation of Laws (Interpretative Provisions) Ordinance 1998 (26 of 1998), commencing 1 July 1997), to mean any court of the Hong Kong Special Administrative Region of competent jurisdiction.

Schedule 8 to the Interpretation and General Clauses Ordinance (Cap 1), added pursuant to s 6 of the Hong Kong Reunification Ordinance 1997 (110 of 1997), commencing 1 July 1997, provides that:

(1) any reference to the Supreme Court of Hong Kong shall be construed as a reference to the High Court of the Hong Kong Special Administrative Region;

(2) any reference to the High Court of Justice of Hong Kong shall be construed as a reference to the Court of First Instance of the High Court of the Hong Kong Special Administrative Region.

As to the jurisdictions of the High Court and the Court of Appeal, see the High Court Ordinance (Cap 4), ss 12–13. See also *The Annotated Ordinances of Hong Kong, High Court Ordinance (Cap 4)* (2025 Reissue). As to the civil and criminal jurisdictions of the Court of Final Appeal, see the Hong Kong Court of Final Appeal Ordinance (Cap 484), Pts II and III, respectively. An action in contract and tort for a debt or damages not exceeding HK$ 1,000,000.00, falls within the jurisdiction of the District Court: see the District Court Ordinance (Cap 336), s 32.

See also generally, The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (the 'Basic Law'), arts 80–85.

[2.05] Judge

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) (as amended pursuant to s 4 of the Adaptation of Laws (Interpretative Provisions) Ordinance 1998 (26 of 1998), commencing 1 July 1997), to mean the Chief Judge, a judge of the Court of Final Appeal, a Justice of Appeal, a judge of the Court of First Instance, a recorder of the Court of First Instance, and a deputy judge of the Court of First Instance.

See also generally, the Basic Law, arts 88–93.

Nature of Partnership

3. Definition of *partnership*

(1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.

(2) But the relation between members of any company or association which is—

(a) registered as a company under any Ordinance relating to the registration of joint-stock companies or *(Amended 50 of 1911; 1 of 1912 Schedule)*

(b) formed or incorporated by or in pursuance of any other Ordinance, or any enactment or instrument *(Amended 25 of 1998 s. 2)*

is not a partnership within the meaning of this Ordinance.

[3.01] Enactment history

Subsection (2)(a) was amended pursuant to: (1) the Law Revision Ordinance 1911 (50 of 1911), commencing 29 November 1911; and (2) the Schedule to the Law Revision Ordinance 1912 (1 of 1912), commencing 8 March 1912. Subsection (2)(b) was amended pursuant to the Adaptation of Laws (Courts and Tribunals) Ordinance 1998 (25 of 1998), with deemed commencement on 1 July 1997, to replace the words 'other Ordinance, or any Act of Parliament, or letters patent, or Royal Charter' with 'any enactment or instrument'.

[3.02] England

cf the Partnership Act 1890 (c 39) (UK), s 1.

[3.03] Partnership

As to the distinction between a partnership and a company, see *Smith v Anderson* (1880) 15 Ch D 247, [1874–80] All ER Rep 1121 (CA, Eng); and *Re Birch v Cropper, Bridgewater Navigation Co Ltd* (1889) 14 App Cas 525, [1886–90] All ER Rep 628 (HL).

In Hong Kong, as in England, New Zealand and Australia, a partnership is not a legal entity distinct from the members forming the partnership. Partners carry on business both as principals and as agents for each other within the scope of the partnership business: see *Sadler v Whiteman* [1910] 1 KB 868, (1910) 79 LJKB 786 (CA, Eng). cf the position in bankruptcy, s 35(1) below and the Limited Liability Partnership Act 2000 (UK).

The following should be noted:

(1) Illegality—A partnership formed for an unlawful purpose is treated as void and conferring no enforceable rights: see *De Begnis v Armistead* (1833) 10 Bing 107, (1833) 3 Moo & S 511; *Armstong v Lewis and Ors* (1834) 2 Cr & M 274, (1834) 4 Moo & S 1; *Ewing v Osbaldiston* (1837) 2 My & Cr 53, (1837) 6 LJ MC 137; and *Jeffrey v Bamford* [1921] 2 KB 351, (1921) 90 LJ KB 664 (KB). See also *Halsbury's Laws of Hong Kong* (2nd edn, LexisNexis 2018) vol 42 on Partnerships and Joint Ventures at para 290.025.

(2) Number of partners—A general limitation on the number of persons that may constitute certain partnerships was previously imposed by the former Companies Ordinance (Cap 32), s 345, ie, 20 persons. The Chinese custom of using one or more 'tong' names, must prima facie be taken that each 'tong' represents a different person or a different fund for the purpose of determining the number of partners, although this may be rebutted: see *The Tung Sang Wing Firm v Chow Chun Kit* [1910] 5 HKLR 238, [1910] HKCU 19 (HC). The 20 person restriction has been described as outdated and unnecessary (see the 18th Report of the SCCLR, 2001/2002); the Companies (Amendment) Ordinance 2004 (30 of 2004) (repealed), s 345.

(3) Capacity—The capacity of certain persons to enter into partnerships may be summarised as follows:

(a) Aliens. An 'alien' is defined by the Interpretation and General Clauses Ordinance (Cap 1), s 3 means 'a person other than a Chinese citizen'. There is no legal objection to a partnership between two or more aliens, or between subjects of Hong Kong and aliens. Nor would a subsisting partnership be affected by a change of nationality of one or all of the partners (see Introduction above). Nor is there any obstacle to the subsistence of partnership, arising from the fact that a partner may possess diplomatic immunity under the International Organizations and Diplomatic Privileges Ordinance (Cap 190). For the effect of a declaration of war, see s 36 below and the notes thereto.

(b) Barristers. There is no statutory objection to barristers practising as barristers in partnership, but it is regarded as contrary to

professional usage to do so: see *Halsbury's Laws of Hong Kong* (2nd edn, LexisNexis 2018) vol 37 on Legal Practitioners, para 240.042; cf Wilkinson and Sandor, *The Professional Lawyers in Hong Kong* (LexisNexis 1996) vol 1, para 5–51.

(c) Convicted persons. Generally speaking, a person may, of conviction or sentence for crime rendered incapable of a partner, but he may become legally incapacitated from a particular trade, profession or vocation. The partnership then be automatically dissolved under s 36 below, or alternatively could be claimed under s 37(c) or (f) below.

(d) Corporations. A body corporate is capable of being a partner: *Stevenson (Hugh) & Sons Ltd v AG für Cartonnagen-Industrie* [1918] AC 239, [1918–19] All ER Rep 600 (HL); or a limited partner: see the Limited Partnerships Ordinance (Cap 37). Formerly, whether a company could enter into a partnership depended on the powers vested in it by its memorandum and articles of association. However, a company empowered to perform certain functions may perform those functions in partnership, with another person or company, notwithstanding the absence in its articles of an express power to enter into partnerships: see *Newstead (Inspector of Taxes) v Frost* [1980] 1 All ER 363, [1980] 1 WLR 135 (HL). Companies are now vested with the legal capacity of a natural person, and have the capacity to enter into any lawful transaction or undertake any business: see the Companies Ordinance (Cap 622), s 6(2). Even if a company retains or chooses to specify its objects, the directors of the company have the power to obtain an injunction to restrain the company from engaging in activities outside its objects: see s 226 of the Companies Ordinance. See further *The Laws of Hong Kong, Companies Ordinance (Cap 622)* vol 1 (2025 Reissue).

(e) Ecclesiastical persons. As to the statutory limitations of clergymen, see, eg, the powers specified in the Anglican Church Body Incorporation Ordinance (Cap 1015) (repealed), s 4 and the Bishop of the Roman Catholic Church Hong Kong Incorporation Ordinance (Cap 1085), s 2B.

(f) Minors. A minor is not as such incapable of being a partner; liability as a partner will depend on the ordinary common law and statutory rules regarding minors' contracts. By virtue of the Age of Majority (Related Provisions) Ordinance (Cap 410), which came into force as from 1 October 1990, the age of majority is reduced from 21 to 18. The partnership agreement will be voidable at his option; but if, on attaining his majority, he does not exercise this option within a reasonable time, he is bound by it: see *Goode and Bennion v Harrison* (1821) 5 B & Ald 147 (KB).

(g) Persons of unsound mind. A partnership agreement entered into with a person of unsound mind, by a person in good faith and having no knowledge or means of knowledge of his insanity, would not be liable to be repudiated by or on behalf of the person

with unsound mind, at any rate as to transactions completed and executed: see *Molton v Camroux* (1849) 4 Exch 17, (1849) 18 LJ Ex 356. However, upon the application of a partner, the court may decree a dissolution of a partnership, where a partner is found to be of permanently unsound mind: see s 37(a) below. On the other hand, the lunacy of a limited partner is not a ground for claiming dissolution of the partnership, unless the lunatic's share cannot otherwise be ascertained and realised: see the Limited Partnerships Ordinance (Cap 37), s 5(3).

As to professional partnerships, see the **Introduction** above.

[3.04] Subsection (1): Persons

'Person' is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to include any public body and any body of persons, corporate or unincorporate, and applies notwithstanding that the word 'person' occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation. Whether an individual is a partner is a question of fact and is not dependent upon the label the parties chose to apply to the business: see *Willie Co v Lo Mun and Welfare Co* [1957] HKLR 512 at 529, [1957] HKCU 48 (HC).

[3.05] Carrying on a business

As to 'business', see [2.02] above.

The phrase 'carrying on a business' denotes something of a permanent character, and not merely an isolated transaction, and a business is carried on only where there is some degree of management or control: see *Re Brown v London and North Western Railway Co* (1863) 32 LJQB 318, [1861–73] All ER Rep 457 (QB); *Graham v Lewis* (1888) 22 QBD 1 (CA, Eng); and *Cain v Butler* [1916] 1 KB 754 (KB) at 762; cf *Cornelius v Phillips* [1918] AC 199, [1916–17] All ER Rep 645 (HL).

See also *Kirkwood v Gadd* [1910] AC 422 at 423, [1908–10] All ER Rep 768 (HL) at 771; *Newman v Oughton* [1911] 1 KB 792 (KB); *Transport and General Credit Corp Ltd v Morgan* [1939] Ch 531, [1939] 2 All ER 17; *Puthiyana v Puthiyana* [1967] 1 AC 233 at 239, [1966] 3 WLR 666 (PC) at 670–671; *Siebel v Elliot* [1973] 1 All ER 465, [1973] 1 WLR 191 (Ch); *Re Branch (a debtor), ex p Britannic Securities & Investments Ltd* [1978] Ch 316, [1978] 1 All ER 1004, [1977] 3 WLR 354 (CA, Eng); and *Re Surplace Ltd* [1979] Ch 592, [1979] 1 All ER 529, [1979] 2 WLR 202.

The Australian interpretation of 'carrying on business' may place less emphasis on continuity: see *Canny Gabriel Castle Jackson Advertising Pty Ltd v Volume Taxes (Finance) Pty Ltd* (1974) 131 CLR 321; and *United Dominions Corp Ltd v Brian Pty Ltd* (1985) 157 CLR 1 (HC, Aust) at 15, per Dawson J.

As to the difference between carrying on a business and acts preparatory to the launching of a business, see *Keith Spicer Ltd v Mansell* [1970] 1 All ER 462, [1970] 1 WLR 333 (CA, Eng) and *Khan and Anor v Miah and Ors* [2001] 1 All ER 20, [2000] 1 WLR 2123 (HL); *Hunt v Williams and Ors* [2013] EWCA Civ

645, [2013] All ER (D) 55 (Jun); *Dutta v Geldof and Ors* [illegible] [2016] 2 BCLC 252.

For the purpose of determining whether a partnership [illegible] who have agreed to carry on a business as a joint venture [illegible] they embark on the activity in question: *Khan and Anor v Miah* [illegible]

A partnership may be implied from the conduct of the parties [illegible] if they have addressed the subject expressly, including discussions [illegible] there should or should not be a partnership, but these have not [illegible] because one party has declined to agree to the proposal on the part of [illegible] that they should carry on business in partnership together, then the [illegible] inference would contradict the express dealings and discussions [illegible] parties: see *Greville v Venables* [2007] EWCA Civ 878.

[3.06] With a view to profit

Whether an individual has a view of sharing profits with others is a [illegible] fact and is not dependent on the label the parties chose to apply [illegible] The correct approach is to look at the substance of the relationship [illegible] parties: see *All Link International Ltd v Ha Kai Cheung*, [illegible] 3 HKLRD 65, [2005] HKCU 750 (CFI). There will be no partnership [illegible] business is a "common endeavour" whereby only one of the partners [illegible] receive the income while the others are simply acquiring business [illegible] *Davies and Anor v Newman and Anor* [2000] All ER (D) 620 (Ch) [illegible] formed with the object of avoiding tax must also have been formed [illegible] of profit—if profits are not made, there will be no tax to be avoided [illegible] *(Inspector of Taxes) v Frost* [1980] 1 All ER 363, [1980] [illegible] also *Shah Ajay Kanaiyalal & Anor v Wong Tak Kwong* [illegible] 2008 (unreported, HCA 1431/2008, 15 December 20[illegible] CFI) [illegible] intending to resell and to divide profits). A division of profits [illegible] ingredient of partnership: see *M Young Legal Associates Ltd v Z*[illegible] *firm) and Ors* [2006] EWCA Civ 613, [2006] 1 WLR 2562; [illegible] [2009] EWCA Civ 1042, [2010] PNLR 8 and *Hamilton v Barr*[illegible] EWCA Civ 888 at para 43.

[3.07] Subsection (2): Company

This is defined in s 2(1) of the Companies Ordinance (Cap 622) to mean [illegible] formed and registered under that Ordinance and an existing company [illegible] company formed and registered under the Companies Ordinance 1865 [illegible] the Companies Ordinance 1911 (58 of 1911), or the former Companies [illegible] (Cap 32) (repealed)). See also the Companies Ordinance, Pt 17. See [illegible] *Annotated Ordinances of Hong Kong, Companies Ordinance* (Cap 622) [illegible] Reissue).

[3.08] Formality

The court will concern itself with the substance but not the form of the relationship [illegible] see *Chow Sau Kot and Anor v Gray & Iron Construction & Engineering Co* [illegible]

[illegible] HKLR 98, [1996] HKCU 205 (HC); *Shah Ajay Kanaiyalal & Anor v Wong Tak Kwong* [illegible] *& Anor* [2014] HKCU 2888 (unreported, HCA 1451/2008, 15 December 2014) (CFI). Referring to the relationship as a "joint venture" does not affect the true nature of the relationship if in reality it is a partnership: see *Weyoun Pty Ltd v Davison* [1997] 1 Qd R 225 (CA, Eng).

[3.09] Any Ordinance, any other Ordinance

Under the Interpretation and General Clauses Ordinance (Cap 1), s 17(1), any reference in any Ordinance to "any Ordinance" shall be construed as a reference to any Ordinance for the time being in force.

Furthermore, the Interpretation and General Clauses Ordinance, s 15 provides that:

(1) where in any Ordinance a reference is made to another Ordinance, such reference shall be deemed to include a reference to such last mentioned Ordinance as the same may from time to time be amended; and

(2) where any Ordinance repeals or re-enacts, with or without modification, any provision of a former Ordinance, references in any other Ordinance to the provision so repealed shall be construed as references to the provision so re-enacted.

[3.10] Definition

For "business", see s 2 above.

4. Rules for determining existence of partnership

In determining whether a partnership does or does not exist, regard shall be had to the following rules—

(a) joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;

(b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;

(c) the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—

BUSINESS REGISTRATION ORDINANCE

(CAP 310)

Introduction

In 1946, a Committee was appointed by the then Governor to review the system of taxation and to consider new sources of revenue. The Committee recommended the imposition of an annual licence fee on all businesses, both incorporated and unincorporated. This recommendation was primarily intended to supplement the contemplated Profits Tax which was imposed by the Inland Revenue Ordinance (Cap 112).

In 1952, the Business Regulation Ordinance 1952 (14 of 1952) was passed with a view to carrying out the recommendation of the Committee. Under that Ordinance, every person carrying on business in Hong Kong was required to pay an annual registration fee of HK$ 200. Opportunity had also been taken to enact provisions for the registration of all businesses covered by that Ordinance and their business names so that the public would know with whom they were dealing.

In 1959, the Business Regulation Ordinance 1952 (14 of 1952) was repealed and substituted by the present Business Registration Ordinance (Cap 310) (the 'Ordinance'). Although the old Ordinance was repealed, registration certificates issued under it remained valid until their expiry. The registration fee was reduced enormously to HK$ 25, and it was further proposed that the Commissioner of Inland Revenue might exempt a business from payment of the fee if its receipts from business did not exceed HK$ 300 per month. This was because the old payment constituted hardship in many cases and offered inducement of fraud. This device of relating hardship to gross receipts, or rather to the lack of gross receipts, has been employed since then and seems to be the only administratively practical way of giving relief.

Furthermore, this Ordinance empowered the Commissioner of Inland Revenue to exempt a business from payment of the fee for up to three years. This is still the position today. It was further stipulated that the applicant had a right of appeal to the District Court if the Commissioner decided that no exemption should be granted, although the appeal forum nowadays has been changed to the Administrative Appeals Board.

In 1976, the range of application of this Ordinance was widened so that all companies incorporated or registered under the former Companies Ordinance (Cap 32) (repealed) were required to register under the present Ordinance. This brought firstly, 'shelf' companies, incorporated for the most part by solicitors or accountants to be used or sold as necessary; and, secondly, companies incorporated in Hong Kong but carried on businesses outside Hong Kong, within the ambit of the present Ordinance.

There was another major change to the Business Registration Ordinance in 1984 with the establishment of the Protection of Wages on Insolvency Fund. The purpose of the Fund is to protect workers against the possible hardship they face when their employers are unable to pay their wages due to insolvency. There was much debate as to the means for financing the Fund, and finally, a provision was passed that all moneys received from the levy under this Ordinance, are payable to the Fund to refunds in accordance with this Ordinance.

Apart from the regular adjustments of registration fees, penalties and levies in the two Schedules below, there have been some minor amendments to the Ordinance, due largely to technological advancement and simplification of procedures of the Business Registration Office. For example, the Office can now provide records on microfilm image or on computer in printed form.

In February 2011, the Ordinance was amended in line with the amendments to the former Companies Ordinance (Cap 32) (repealed). In particular, it made provisions to the implementation of simultaneous application for company incorporation/registration and business registration upon the implementation of electronic incorporation of companies. Prior to the amendments, applications for company incorporation/registration and business registration had to be made separately. Any change to the business particulars would have to be notified to the Registrar of Companies and the Commissioner of Inland Revenue, respectively. With the implementation of the amendments, any person who submits an application for company incorporation/registration to the Companies Registry is deemed to have applied for business registration at the same time, and the Business Registration Certificate will be issued together with the Certificate of Incorporation (or Certificate of Registration of Non-Hong Kong Company, in the case of a non-Hong Kong company), making this more efficient to the business community. Where there are changes to the company name or registered office, one may only need to register the related notice or return of changes of these particulars under the Companies Ordinance (Cap 622) to the Companies Registry, and the Registrar of Companies will transmit these particulars to the Commissioner to streamline the procedures.

The one-stop registration regime under the February 2011 amendments is available to business registration by other types of businesses such as sole proprietorship, partnership businesses and branch registration, etc.

On 3 March 2014, the former Companies Ordinance (Cap 32) (repealed) was replaced by a new Companies Ordinance (Cap 622), and further amendments to the Business Registration Ordinance (Cap 310) were effected.

A new company re-domiciliation regime, which facilitates non-Hong Kong incorporated companies to re-domicile to Hong Kong, was introduced under the Companies (Amendment) (No 2) Ordinance 2025 (14 of 2025) with effect from 23 May 2025. Re-domiciled companies are now listed as entities that are registered under the Ordinance.

There are very few existing Hong Kong cases interpreting or commenting upon the provisions of the Business Registration Ordinance (Cap 310). Much of the case law concerns disputes over registration fees or registered names.

LT. Long title

To amend the law relating to the registration of businesses in Hong Kong.

(Amended 12 of 1985 s. 2)

[6 February 1981]

(Format changes—E.R. 2 of 2012)

1. Short title

This Ordinance may be cited as the Business Registration Ordinance.

2. Interpretation and application

(Amended 13 of 2010 s. 3)

(1) In this Ordinance, unless the context otherwise requires—

branch registration application (分行登記申請) means an application under section 5(3); *(Added 13 of 2010 s. 3)*

business (商業、業務) means any form of trade, commerce, craftsmanship, profession, calling or other activity carried on for the purpose of gain and also means a club; *(Amended L.N. 88 of 1975; 32 of 1975 s. 2)*

business registration application (商業登記申請) means an application under section 5(1); *(Added 13 of 2010 s. 3)*

certification (核證) means certification by the Commissioner under section 19; *(Added 56 of 1984 s. 2)*

club (會社) means any corporation or association of persons formed for the purpose of affording its members facilities for social intercourse or recreation and which—

(a) provides services for its members (whether or not for the purposes of gain); and

(b) has club premises of which its members have a right of exclusive use; *(Added L.N. 88 of 1975; 32 of 1975 s. 2)*

Commissioner (局長) means the Commissioner of Inland Revenue appointed under the Inland Revenue Ordinance (Cap. 112);

company registration application (公司註冊申請) means an application for registration under section 776 of the Companies Ordinance (Cap. 622); *(Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920)*

duplicate (複本) in relation to a branch registration certificate means a duplicate thereof issued under regulations made under section 14; *(Added 56 of 1984 s. 2)*

duplicate (複本) in relation to a business registration certificate means a duplicate thereof issued under regulations made under section 14; *(Added 56 of 1984 s. 2)*

electronic record (電子紀錄) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); *(Added 13 of 2010 s. 3)*

function (職能) includes a power and a duty; *(Added 13 of 2010 s. 3)*

incorporate (成立為法團), in relation to an open-ended fund company, includes to become such a company under Division 8A of Part IVA of the Securities and Futures Ordinance (Cap. 571); *(Added 33 of 2021 s. 35)*

incorporation form (法團成立表格) means the incorporation form referred to in section 67(1)(b)(i) of the Companies Ordinance (Cap. 622) or section 112C(1)(a) of the Securities and Futures Ordinance (Cap. 571); *(Added 13 of 2010 s. 3. Amended 28 of 2012 ss. 912 & 920; 16 of 2016 s. 36)*

incorporation submission (成立法團遞呈) means— *(Added 28 of 2012 ss. 912 & 920. Amended 16 of 2016 s. 36)*

(a) a submission made for the purpose of forming a company under section 67 of the Companies Ordinance (Cap. 622); or

(b) a submission made for the purpose of incorporating an open-ended fund company under Part IVA of the Securities and Futures Ordinance (Cap. 571); *(Amended 16 of 2016 s. 36; 33 of 2021 s. 35)*

levy (徵費) means an amount prescribed in item 3 of the Table in Schedule 2 and determined in accordance with sections 3 and 4 of that Schedule; *(Replaced 13 of 2010 s. 3)*

limited partnership fund (有限合夥基金) has the meaning given by section 2 of the Limited Partnership Fund Ordinance (Cap. 637); *(Added 14 of 2020 s. 113. Amended E.R. 5 of 2020)*