

HONG KONG¹

I. Overview of Country²

Hong Kong has a robust and well developed civil society. Under China's "one country, two systems" approach,³ Hong Kong residents enjoy freedom of assembly and association to a greater extent than their mainland counterparts. Nevertheless, the government of the People's Republic of China maintains ultimate control over the island, and has resisted pressure by Hong Kong residents for completely open elections.⁴ This led to the "Umbrella Revolution" or "Occupy Central Movement" of late 2014, where thousands of Hong Kong residents staged a mass demonstration in the city center.⁵ Although the Hong Kong government refused to accede to the demands on the protesters,⁶ the Umbrella Revolution demonstrates that public dissent is tolerated to a degree that is rarely seen on the mainland.

The legal environment for not-for-profit organizations has contributed to the strength of Hong Kong's civil society. There are very few rules or regulations that not-for-profit organizations must follow. Non-profits are typically organized as societies, trusts, or companies.⁷ Each of these organizational forms is described in greater detail below. If a not-for-profit chooses to organize itself as a company (as many of them do), they fall under a regulatory regime that is nearly identical to that of for-profit companies. Generally, these regulations are no more burdensome for not-for-profits than they are for for-profit organizations.

The exception to this general rule occurs when a not-for-profit organization applies to be recognized as a charity. Under Hong Kong's Inland Revenue Ordinance, charities are exempt from paying taxes.⁸ In order to qualify, however, the purposes of these organizations must be exclusively charitable.⁹ This can be challenging for some organizations, because the Inland Revenue Department treats political activity as non-charitable.¹⁰ And because the definition of political activity is somewhat malleable, this can lead to uncertainty for charitable organizations that depend on their tax-exempt status. Additionally, the Inland Revenue Department may, from time to time, review a charity's activities and records to ensure that it continues to act exclusively for charitable purposes. This additional level of review is unique to charitable organizations. Private, for-profit companies in Hong Kong do not have to worry about their tax burden

¹ The following memorandum was prepared by pro bono counsel for the ABA Center for Human Rights. It is intended as background information only and should not be relied upon as legal advice on a particular case. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and, accordingly, should not be construed as representing the policy of the American Bar Association.

² Disclaimer: The author of this section is a U.S.-trained associate, is not qualified to practice Hong Kong law, and relied on publicly available information, including Hong Kong legislation, government websites, and other online resources.

³ INFORMATION OFFICE OF THE STATE COUNCIL, THE PRACTICE OF THE "ONE COUNTRY, TWO SYSTEMS" POLICY IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION (2014), *available at* http://news.xinhuanet.com/english/china/2014-06/10/c_133396891.htm.

⁴ Emily Rauhala, *China Rules Out Open Election in Hong Kong, Setting Stage for 'Occupy' Protest*, TIME (Aug. 31, 2014), <http://time.com/3237227/china-hong-kong-occupy-central-beijing-communist-party/>.

⁵ Lauren Hilgers, *Hong Kong's Umbrella Revolution Isn't Over Yet*, N.Y. TIMES MAG. (Feb. 18, 2015), <http://www.nytimes.com/2015/02/22/magazine/hong-kongs-umbrella-revolution-isnt-over-yet.html>.

⁶ *Id.*

⁷ *Hong Kong Non-Profit Company Registration*, ASIA BUSINESS CENTRE, <http://asiabc.com.hk/guide-to-hk/business-registration/hong-kong-non-profit-company-registration/>.

⁸ *A Tax Guide for Charitable Institutions and Trusts of a Public Character*, HONG KONG INLAND REVENUE DEPARTMENT (Dec. 4, 2014), http://www.ird.gov.hk/eng/tax/ach_tgc.htm.

⁹ *Id.*

¹⁰ *Id.*

changing so dramatically due to an unexpected review by the government. Nonetheless, a not-for-profit can continue to operate in Hong Kong even if it does not qualify as a charity—indeed, many not-for-profits do just that.

II. Registration Procedures

A. For-Profit Organizations

a. Laws

Hong Kong law recognizes three types of companies: (1) companies limited by share, (2) unlimited companies, and (3) companies limited by guarantee.¹¹ The first two—companies limited by share and unlimited companies—may be either public or private.¹² Companies limited by guarantee are always private.¹³ Under the Companies Ordinance, private companies have less burdensome regulations than private ones.

A company limited by shares has its own legal status.¹⁴ The company may enter into contracts and acquire property in its own right. If the company goes bankrupt, a shareholder's liability is limited to the value of their shares.¹⁵ Unlimited companies, on the other hand, do not have a separate legal status.¹⁶ The owners are therefore personally liable for all of the company's debts.¹⁷ Because of the increased risk of liability, this corporate form is relatively rare in Hong Kong.¹⁸

A company limited by guarantee also provides limited liability.¹⁹ But rather than distributing shares to its owners, each member of the company undertakes that they will contribute a specified amount to the company's assets if it goes bankrupt.²⁰ This contribution would then be used to pay the company's remaining debts, costs, and other liabilities. In practice, this contribution is often quite small—it can be as low as HK\$100.²¹ For this reason, many non-profit organizations choose to register as companies limited by guarantee.²²

Any individual or group may form a company.²³ In order to do so, they must first write and sign the articles of the company.²⁴ The articles must identify the company's name, its objects, its ownership or membership structure, its capital and initial shareholding, and any limitations on the owners' or members' liability.²⁵ Afterward, the founders must deliver the articles to the Companies Registry along with the

¹¹ Hong Kong Companies Ordinance, (2012) Cap. 622, §§ 66.

¹² *Id.*

¹³ *Id.*

¹⁴ *Your Obligations*, HONG KONG COMPANIES REGISTRY (MAR. 3, 2014), <http://www.cr.gov.hk/en/compliance/obligations.htm>.

¹⁵ Hong Kong Companies Ordinance, § 8.

¹⁶ *Id.* § 10.

¹⁷ *Id.*

¹⁸ *Hong Kong Incorporation Entity Types*, HAWKSFORD (HK) LTD, <http://www.guidemehongkong.com/incorporation/introduction/hong-kong-incorporation-entity-types> (“Rarely do investors opt for an unlimited company.”).

¹⁹ Hong Kong Companies Ordinance, § 9.

²⁰ *Id.*

²¹ *Non-Profit Organisation Formation Package*, BRIDGES EXEC. CENTRE LTD, http://www.bridges.hk/en/professional_services_2_6.php.

²² *Hong Kong Incorporation Entity Types*, *supra* note 16.

²³ Hong Kong Companies Ordinance, § 67.

²⁴ *Id.*

²⁵ *Id.* §§ 81-85.

appropriate incorporation form, listing the company's directors.²⁶ The incorporation form also must include the following:

1. The proposed name of the company;
2. The proposed address of the company's office;
3. A statement as to whether the company is to be limited by shares, unlimited, or limited by guarantee;
4. A statement whether it will be a private or public company; and
5. In the case of a company limited by guarantee, the number of members at the time of registration.²⁷

The Companies Registry will generally act on an application within three weeks. The Registry reserves the right to reject a company's proposed name if it is used by another company or if its use would constitute a criminal offense, is offensive, or is otherwise contrary to the public interest.²⁸ If the Registry rejects a company name, the company has three weeks to appeal the decision to the Administrative Appeals Board.²⁹

A company may voluntarily dissolve by submitting an application for deregistration with the Companies Registry.³⁰ In order to be approved, the following conditions must occur:

1. All the members must agree on dissolution;
2. The company must not be operating;
3. The company must not have outstanding liabilities;
4. The company must not be party to any legal proceedings; and
5. The company's assets (as well as those of any subsidiaries) must not consist of any immovable property located in Hong Kong.³¹

The Hong Kong Companies Registry may also act on its own to deregister an insolvent company.³² In that case, the Registry must provide notice of its intention to deregister the company.³³ If the company does not show cause why it should not be dissolved within 30 days, the Registry may remove its name from the list of registered companies.³⁴

Finally, it should be noted that anyone conducting business in Hong Kong—whether or not they plan to form a company—must register with the Inland Revenue Department, Hong Kong's tax authority.³⁵ Typically this happens automatically when an individual or group submits an incorporation form to the Companies Registry.³⁶

²⁶ *Id.* § 67.

²⁷ *Id.* § 68.

²⁸ COMPANIES REGISTRY, GUIDELINES ON REGISTRATION OF COMPANY NAMES FOR HONG KONG COMPANIES (2014), available at http://www.cr.gov.hk/en/companies_ordinance/docs/Guide_RegCompName-e.pdf.

²⁹ Hong Kong Companies Ordinance, § 109(3).

³⁰ *Id.* § 750.

³¹ *Id.*

³² *Id.* § 746.

³³ *Id.*

³⁴ *Id.*

³⁵ *Business Registration*, INLAND REVENUE DEPT. (June 28, 2014), http://www.ird.gov.hk/eng/tax/bre_gen.htm.

³⁶ *One-stop Company and Business Registration*, INLAND REVENUE DEPT., http://www.ird.gov.hk/eng/pdf/one_stop.pdf.

B. Not-For Profit Organizations

a. Laws

Hong Kong law does not require Not-for-profit Organizations to register. However, for tax and organizational reasons, many non-profits choose to do so. They generally register under one of three categories:

1. A Company Limited by Guarantee established under the Companies Ordinance;
2. A Society established under the Societies Ordinance; or
3. A Charitable Trust established under the Trustee Ordinance or Registered Trustees Incorporation Ordinance.

If a non-profit organization chooses to do so, they may also register for a tax exemption as a charitable organization.³⁷

Because Companies Limited by Guarantee shield their members from liability and only require a nominal contribution, they are a popular choice for non-profit organizations.³⁸ The requirements for registering a Company Limited by Guarantee, described above, are the same for non-profit and for-profit organizations.

To form a Society, an organization must register with the Society Licensing Office of the Hong Kong Police.³⁹ Societies do not have a separate legal status. They therefore cannot own property, acquire debts, or shield their members from liability. However there is no filing fee, which can make this an attractive option for smaller non-profits. In order to apply for a license, the proposed society must submit the following:

1. A Completed Application Form;
2. A constitution showing the objects and purposes of the society;
3. Copies of the identification documents of each registered office-bearer;
4. Documents showing the address of the society; and
5. A letter from the owner of the premises where the society is located permitting them to use the location.⁴⁰

The Licensing Office will generally act on a Society application within four weeks.⁴¹ To terminate a Society, the members must adopt a resolution of termination and notify the Commissioner of Police in writing. The Secretary of Security may prohibit the continued operation of a society if he or she believes the prohibition is required “in the interests of national security or public safety, public order or the protection of the rights and freedoms of others,” or if the society is a political body associated with a foreign political organization or a political organization of Taiwan.⁴² If this occurs, the society may appeal

³⁷ *A Tax Guide for Charitable Institutions and Trusts of a Public Character*, INLAND REVENUE DEPT (Dec. 4, 2014), http://www.ird.gov.hk/eng/tax/ach_tgc.htm.

³⁸ *Hong Kong Incorporation Entity Types*, *supra* note 16.

³⁹ Hong Kong Societies Ordinance, (1997) Cap. 151, § 5A.

⁴⁰ *Id.* § 5.

⁴¹ Tim Hui, *The Things You Need to Know Before and After Forming a Legal Entity – From the Company Secretarial Perspective*, HONG KONG ARTS ADMINISTRATORS ASSOCIATION (Mar. 15, 2011), http://www.hkaaa.org.hk/uploads/hkaaa/201203/20120326_092311_pHxJxXBpu_f.pdf.

⁴² Hong Kong Societies Ordinance, § 8.

to the Hong Kong Chief Executive in Council within 30 days.⁴³ The Chief Executive in Council will then make a final decision to confirm, vary, or revoke the order.⁴⁴

A Charitable Trust is similar to other types of trusts. A set of assets is transferred to the trust, which is managed by a trustee. But while many trusts are formed for the benefit of an individual or a specific group, charitable trusts are formed to benefit the public through a charitable cause.⁴⁵ In order to form a charitable trust, the donor of the assets must execute a valid trust deed in front of witnesses. This document generally will include the following:

1. The charitable trust's objects;
2. Limitations on the use of the trust's funds;
3. The responsibilities of the charitable trust's governing body;
4. Instructions on how to distribute assets in the case of a dissolution; and
5. Other requirements on the operation of the trust.

In general, trusts are not required to apply for regulatory approval.⁴⁶ However, some specialized trusts are overseen by particular regulators. For example, certain pension-related funds are regulated by and must register with Hong Kong's Mandatory Provident Fund Schemes Authority (MPFA).⁴⁷

C. Analytical comparison of the legal process of registration

Hong Kong law imposes few additional registration requirements on non-profit organizations. Indeed, many non-profits register as Companies Limited by Guarantee. Registration is no more burdensome for these organizations than the process would be for for-profit companies registering as Companies Limited by Share or Unlimited Companies. If anything, Hong Kong law affords greater flexibility to non-profit organizations, which can also choose to register as a Society or form a Trust. That being said, if a non-profit-organization registers as a society, the process can take longer and they must register with the police rather than the Companies Registry. Additionally, the Secretary of Security can prohibit their operation based on various grounds, including national security, public order, and connections with foreign political organizations. Aggrieved parties then must appeal to the Chief Executive in Council for a final decision. This can impose a burden on the operation of some non-profit organizations. There are also additional requirements for non-profit organizations that would like to receive a tax exemption as a charitable organization. Those requirements are discussed below.

III. Tax Laws

A. For-Profit Organizations

a. Laws

Hong Kong prides itself on its straight-forward tax system and low rates. Profits from a Hong Kong trade or business are subject to a profits tax of 16.5%;⁴⁸ income from property is subject to a property tax of

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ KPMG, HONG KONG TRUST INDUSTRY: A CROSS-SECTOR PERSPECTIVE (2013), <http://www.kpmg.com/CN/en/IssuesAndInsights/ArticlesPublications/Documents/Hong-Kong-Trust-Industry-201306.pdf>.

⁴⁶ *Id.* at 29.

⁴⁷ *Id.*

⁴⁸ DELOITTE, TAXATION AND INVESTMENT IN HONG KONG 8 (2014), available at <http://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-hongkongguide-2014.pdf>.

15%;⁴⁹ and income from employment or pensions is subject to a salaries tax ranging from 2% to 17%.⁵⁰ Income derived from foreign sources is not taxed by Hong Kong.⁵¹

Hong Kong does not offer many tax incentives to for-profit organizations. However, it offers favorable tax treatment for a handful of categories, including investments in plants and machinery, research and development, technical education, intellectual property rights, and environmentally friendly vehicles.⁵²

B. Not-For Profit Organizations
a. Laws

Hong Kong's Inland Revenue Ordinance allows non-profits to apply for a tax exemption as a charity. Not all non-profits qualify as charitable organizations. In order to qualify for the exemption, the organization must be established *exclusively* for charitable purposes. Specifically, the organization must have one of the following four categories of charitable purposes:

1. The relief of poverty;
2. The advancement of education;
3. The advancement of religion; and
4. Other purposes beneficial to the Hong Kong community.⁵³

The Inland Revenue Department (*IRD*) has identified the following types of activities that fall within these categories:

- Relief of poor people;
- Relief of victims of a particular disaster;
- Relief of sickness;
- Relief of physically and mentally disabled;
- Establishment or maintenance of non-profit-making schools;
- Provision of scholarships;
- Diffusion of knowledge of particular academic subjects;
- Establishment or maintenance of a church;
- Establishment of religious institutions of a public character;
- Prevention of cruelty to animals; and
- Protection and safeguarding of the environment or countryside.⁵⁴

On the other hand, the IRD has stated that the following activities do not fall within the four charitable purposes:

- Attainment of a political object;
- Promotion of the benefits of the founders or subscribers;
- Provision of a playing field, recreation ground or scholarship fund for employees of a particular company or industry;
- Encouragement of a particular sport such as angling or cricket.⁵⁵

⁴⁹ *Id.* at 14.

⁵⁰ *Id.* at 16.

⁵¹ *Id.* at 17.

⁵² *Id.* at 3.

⁵³ See *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531.

⁵⁴ *A Tax Guide for Charitable Institutions and Trusts of a Public Character*, *supra* note 35.

⁵⁵ *Id.*

To apply for tax-exempt status, an organization must submit an application letter to the IRD. If the organization is already established as a company, society, or trust, it must also submit the following documents:

1. A copy of the relevant certificate of registration;
2. A certified true copy of the instrument and rules governing its activities;
3. A list of any activities which have been carried out in the past 12 months (or less, if appropriate), and a list of activities planned for the next 12 months; and
4. A copy of its accounts for the last financial year (if the organization has been established for 18 months or more).⁵⁶

If the organization has not yet been established, it must submit the following documents:

1. A draft of the instrument and rules governing its activities; and
2. A list of the activities planned for the next 12 months from the date of establishment or date of application, where appropriate.⁵⁷

If the IRD rejects the application for charitable status, the organization can appeal to the Commissioner, the Board of Review, and ultimately the Hong Kong courts for a final determination.⁵⁸ The IRD may also, from time to time, review a charity's accounts and activities to determine whether it still qualifies for tax-exempt status. This process is discussed in greater detail below.

C. Analytical comparison

Hong Kong law grants charitable organizations tax-exempt status. This leads to a much lighter tax burden than most for-profit entities face. However, the difference between charitable and non-charitable activities can sometimes seem arbitrary. It is unclear why the “diffusion of knowledge of particular academic subjects” furthers a charitable purpose, while the “encouragement of a particular sport” does not. Access to certain sports may be limited for the poor due to the cost of equipment. Increased physical activity also can be beneficial to one's health, and it can even have educational benefits. Thus encouraging a particular sport could very well serve a public, charitable purpose.

Further, the IRD does not recognize political activity as serving a charitable purpose. While many would agree that efforts to elect a particular candidate to public office does not necessarily serve the public in the way that poverty relief does, it is often difficult to draw the line between charitable activity and political activity. Providing relief for poor people is clearly charitable, but does it cross the line when a non-profit organization pressures the government to adopt laws more favorable to the poor? This issue is hotly debated in Hong Kong—particularly in light of the recent protests.

IV. Financial Transaction Laws

A. For-Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Internal Revenue Ordinance, Cap. 112, § 66-69.

Hong Kong's Basic Law protects the "free movement of goods, intangible assets and capital."⁵⁹ The government does not impose significant restrictions on foreign investment. Foreign investors can register a business in Hong Kong, and they can invest in almost any local business.⁶⁰ Indeed, they can own up to 100% of most local businesses.⁶¹ There are, however, three exceptions. A foreign investor can only invest 49% in state-owned activities, broadcasting companies, and cable companies.⁶² Nevertheless, Hong Kong authorities are not required to review and pre-approve inbound foreign investment.

ii. Political Contribution Laws

Hong Kong law generally does not impose restrictions on making political contributions, but candidates for certain positions are prohibited from spending above a mandated cap. For example, candidates for the Chief Executive cannot spend more than HK\$13,000,000.⁶³ Any donations in excess of this amount must be donated to a charitable organization after the election.⁶⁴

B. Not-For Profit Organizations

a. Laws

i. Foreign Investment/Foreign Funding Laws

Hong Kong does not impose restrictions on fundraising by non-profit organizations.⁶⁵ They may accept donations from abroad and may use their own funds for overseas aid.⁶⁶ Moreover, there are no additional restrictions on activities or increased reporting requirements if non-profit organizations accept foreign funding.⁶⁷ Indeed, it is fairly common for NGOs that wish to operate in mainland China to register in Hong Kong and conduct projects on the mainland. However, recent proposals on the mainland threaten to tighten the regulation of these cross-border NGOs.⁶⁸

ii. Political Contribution Laws

In theory, non-profit organizations may contribute to political campaigns, however this may prevent them from qualifying for tax-exempt status. The Inland Revenue Department does not view political activity as serving a charitable purpose. Nevertheless, this likely would not prevent individuals within the charity from contributing in their personal capacity. And if a non-profit organization is willing to forego the charitable tax exemption, it would be permitted to contribute to political campaigns directly.

⁵⁹ DELOITTE, *supra* note 44, at 2.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ ELECTORAL AFFAIRS COMMISSION, GUIDELINES ON ELECTION-RELATED ACTIVITIES IN RESPECT OF THE CHIEF EXECUTIVE ELECTIONS 160 (2005),

⁶⁴ *Id.* at 163.

⁶⁵ PENELOPE CAGNEY & BERNARD ROSS, GLOBAL FUNDRAISING: HOW THE WORLD IS CHANGING THE RULES OF PHILANTHROPY (2013).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Sui-Lee Wee & Megha Rajagopalan, *Foreign Non-Government Groups in China Fear Clampdown Under New Law*, REUTERS (Mar. 9, 2015, 9:18 AM EDT), <http://www.reuters.com/article/2015/03/09/us-china-parliament-ngos-idUSKBN0M518X20150309>.

C. Analytical Comparison

Both for-profit and non-profit organizations can and regularly do receive funds from abroad. The Hong Kong government places no significant burdens on foreign investment. It likewise permits non-profit organizations to receive money from abroad and spend their funds on foreign projects. However, non-profit organizations that have applied for a charity tax exemption may lose that exemption if they contribute directly to a political campaign. This imposes a unique burden on charitable organizations that would like to participate in the political process.

V. Auditing/Reporting Requirements

A. For-Profit Organizations

a. Laws

According to the Companies Ordinance, every Hong Kong company must appoint an auditor at its annual meeting.⁶⁹ The auditor regularly reviews the company's records according to reporting standards promulgated by the Hong Kong Institute of Certified Public Accountants.⁷⁰ The company must prepare audited financial statements, but these statements need not be filed with the Companies Registry. Instead, the company files an annual return that identifies the directors, the members, and the location of a registered office.⁷¹ These steps are required for maintaining a company's registration.

Public companies, however, have additional reporting requirements. They must file annual accounts with the Companies Registry.⁷² Additionally, shareholders, directors, and chief executives must disclose transactions that increase their share of the company about 10% or decrease their share below this percentage. Directors, chief executives, and their families must disclose anytime they buy or sell stocks.

B. Not-For Profit Organizations

a. Laws

When non-profit organizations are organized as companies limited by guarantee, they must comply with the same auditing and reporting requirements that cover other private companies under the Companies Ordinance. If an organization has been granted a charity tax exemption, their status may be reviewed from time to time at the discretion of the Inland Revenue Department.⁷³ The Department may call for accounts, annual reports, or other documents to determine whether the organization's purposes are still charitable.⁷⁴ Although charitable organizations that are organized as societies or trusts generally do not have regular reporting or audit requirements,⁷⁵ they are nonetheless required to maintain good management and accounting practices.

C. Analytical Comparison

⁶⁹ Hong Kong Companies Ordinance, § 394.

⁷⁰ Hong Kong Professional Accountants Ordinance, (2004) Cap. 50.

⁷¹ Hong Kong Companies Ordinance, § 662.

⁷² *Id.*

⁷³ *A Tax Guide for Charitable Institutions and Trusts of a Public Character*, *supra* note 35.

⁷⁴ *Id.*

⁷⁵ Charitable organizations that are organized as companies, on the other hand, do have regular reporting requirements as discussed above.

Because non-profits regularly register as private companies, their auditing and reporting requirements are similar to those of private, for-profit companies. As discussed above, charitable organizations face additional regulatory requirements. This includes the sporadic review of a charitable organization's books and records to confirm that it still qualifies for its tax exemption. However, many non-profits choose to operate without such a tax exemption.

VI. Penalties for Non-Compliance

A. For-Profit Organizations

a. Laws

- i. Civil
- ii. Criminal

If Companies fail to comply with their reporting or auditing responsibilities, the Companies Registry may issue a summons in the Magistrates' Courts against the noncompliant company.⁷⁶ If convicted, the company must pay a fine that can be as high as HK\$300,000.⁷⁷ If the offense is ongoing—for example, a company is found to be late in filing a return—the Court can impose a daily default fine of up to HK\$2,000 per day. According to the Companies Registry, publicly listed companies generally face tougher fines than private companies.⁷⁸

In more serious cases, directors or employees of companies may face both fines and imprisonment. For example, if any person knowingly or recklessly makes a misleading, false, or deceptive statement in a filing, they can face jail time.⁷⁹ The maximum jail sentence under the Companies Ordinance is two years.⁸⁰

B. Not-For Profit Organizations

a. Laws

- i. Criminal

When Hong Kong non-profits are organized as companies, they are subject to the same penalties as for-profit entities. There is no evidence that non-profit organizations face greater scrutiny by the Companies Registry or other Hong Kong authorities. When Hong Kong non-profits are organized as charities or societies fail to comply with regulations that govern their operation their continued operation may be prohibited, but they do not face additional fines.

C. Analytical comparison

⁷⁶ Hong Kong Companies Ordinance, § 864.

⁷⁷ *Id.* § 875.

⁷⁸ *Compliance: Our Enforcement*, COMPANIES REGISTRY (Mar. 3, 2014), <http://www.cr.gov.hk/en/compliance/enforcement.htm>.

⁷⁹ *Id.* § 863.

⁸⁰ *Id.*

Under Hong Kong law, non-profit companies that are organized as private companies fall under the same regulatory regime as for-profit companies. There is no evidence that non-profit organizations are targeted more frequently for enforcement actions.

D. Statistics on actual penalties for each group (if, available)

In 2014, the Companies Registry issued 6,542 summonses.⁸¹ The Registry does not report how many of those summonses were issued against non-profit or for-profit organizations.

OVERVIEW CHART

Please identify 3-4 of the main issues discussed above for each category.

Issue	For-Profit Organizations	Not-For Profit Organizations	Similarities
Registration Procedures	Must file company articles and incorporation forms.	If registering as a private company limited by guarantee, must file company articles and incorporation form. If registering as a society, must file application with the Police Department. If organized as a charitable trust, must execute valid trust document. If registering as a charity, must submit application to the Inland Revenue Department.	If a not-for-profit registers as a company limited by guarantee, the registration procedures are relatively similar.
Tax Laws	Profits, property, and salaries are taxed.	Charitable organizations are exempted from taxes. For other organizations, profits, property, and salaries are taxed.	Non-charity not-for-profit organizations are taxed in the same manner as for-profit organizations.
Financial Transaction Laws	Foreign investment moves freely across the border. No major incentives, but no major obstacles.	Funds may be donated from abroad and spent on projects abroad.	Both foreign investment and foreign donations move freely into and out of Hong Kong.
Auditing/Reporting Requirements	Company records must be audited. Private companies have light reporting responsibilities. Public companies face stricter rules.	Not-for-profits organized as companies limited by guarantee face the same audit and reporting requirements as private, for profit companies. Societies do	Companies limited by guarantee operate under the same regulatory environment as for-profit companies.

⁸¹ *Statistics*, COMPANIES REGISTRY (Apr. 15, 2015), http://www.cr.gov.hk/en/statistics/statistics_09.htm.

		not have ongoing reporting requirements.	
Penalties	Depending on the severity, fines up to HK\$300,000, and imprisonment up to 2 years.	Companies limited by guarantee face the same penalties. Societies may have their license revoked, but no criminal or civil penalties.	Companies limited by guarantee operate under the same regulatory environment as for-profit companies.