**HK SOCIAL ENTERPRISES**

1. **General / Introduction**

WYNG Foundation and Urban Spring ***[Ada to provide brief description]*** have partnered withWhite & Case, an international law firm, to prepare a set of reference materials for use by social enterprises in Hong Kong.

1. **What are social enterprises?**

Social enterprises are businesses with a social purpose. Unlike an ordinary business which is focused on maximizing profits for its owners/shareholders, the main objective of a social enterprise is the achievement of specific social objectives through business approaches. Unlike a charity which has social objectives but does not generally carry on a business or commercial activities, a social enterprise carries on business and is often “for-profit”.

Social enterprises can take many legal forms. A social enterprise is not defined by its legal form but by its social mission, objectives, the participation of its shareholder groups in its governance and activities and the way it uses the profits generated by commercial activities.

1. **Legal structures for social enterprises**

Before setting up a social enterprise, one should carefully consider the social mission of the social enterprise, risk management, access to finance, tax and power structure. Such considerations may affect the choice of a legal form.

One way of limiting the potential risks to the founders and shareholders of a social enterprise is to use a “limited company” legal form for the social enterprise. In Hong Kong, many **social enterprises are established as a private company limited by shares or a private company limited by guarantee.** However, the legal form must still allow the social enterprise the freedom and flexibility to take advantage of any business opportunities that arise.

Please check out this link for an overview and comparison of possible legal structures for a social enterprise: ***[insert link to legal comparison]***

The legal comparison contains (i) a summary and comparative analysis of legal structures which are commonly used by social enterprises in Hong Kong, the United Kingdom, the United States and Singapore and (ii) a description of distinctive features of innovative legal structures only available in the United Kingdom and the United States.

1. **Model constitution for Social Enterprises**

One way to protect the social mission and the corporate governance of a social enterprise is to have safeguards, checks and balances built into its constitution.

To illustrate, many social enterprises have adopted a “mission lock” statement and a cap on profit sharing in their constitution.

The constitution should also contain a carefully thought out structure. In general, a two-tier structure is most common in common law jurisdictions such as the United Kingdom, Hong Kong and Singapore where a smaller group of individuals is responsible for the day-to-day running of the organisation (i.e. the board of directors, board of management, management committee or board of trustees), but are accountable to a wider group of individuals (i.e. the members or the shareholders). In general, the members or shareholders are only involved in making the key, critical decisions and meet less frequently as compared to the board. This basic structure may be developed in a number of ways to suit the particular social enterprise.

We have prepared sample constitution for social entrepreneurs who wish to establish their social enterprises as a private company limited by shares or a private company limited by guarantee in Hong Kong:

* Private company limited by shares: ***[insert link to sample constitution]***
* Private company limited by guarantee: ***[insert link to sample constitution]***

In preparing the sample constitution above (the “**Model Constitution**”), we have considered various sources, including the constitution set out in the Hong Kong Companies Ordinance that would be adopted by default (unless otherwise specified) to all companies incorporated in Hong Kong (the “**HK Default Constitution**”).

We have used the HK Default Constitution as a starting point and added certain aspirational and recommended provisions based on a review of other sources, such as the constitution of notable social enterprises in Hong Kong, Singapore and the United States, the certification criteria for B-Corps, the Corporate Governance Code under the Hong Kong Listing Rules and the terms of reference of well-known companies listed on the Hong Kong Stock Exchange such as Swire Pacific, MTR Corporation and Hong Kong Broadband.

To increase the transparency and accountability of a social enterprise’s social impact performance, the Model Constitution contains a provision for the preparation of an “Annual Benefit Report”.

To raise the standard of corporate governance, the Model Constitution also contains optional references to the establishment of committees by the board of directors, such as audit, remuneration, nomination and corporate governance committees.

Please also check out the links below for sample “terms of reference” of board committees for the following companies listed on the Hong Kong Stock Exchange.

***[Insert links for Swire Pacific, MTR Corporation, HK Broadband Network]***

1. **Where can I get advice on starting a social enterprise?**

Please find below a list of useful resources for entrepreneurs who are keen to start a social enterprise.

**General / Global**

* **Aspen Network of Development Enterpreneurs (ANDE)** is a global network of organizations that propel entrepreneurship in emerging markets. ANDE is part of the Aspen Institute, an educational and policy studies organization and its members include both for and nonprofit investment funds, capacity development providers, research and academic institutions, development finance institutions and corporations from around the world.

https://www.aspeninstitute.org/programs/aspen-network-development-entrepreneurs/

* **Ashoka** is an international organization that promotes social entrepreneurship by affiliating individual social entrepreneurs into the Ashoka organization. Their stated mission is "to shape a global, entrepreneurial, competitive citizen sector: one that allows social entrepreneurs to thrive and enables the world's citizens to think and act as change-makers".

https://www.ashoka.org/en

* **B Lab** is a non-profit organization which created, and awards, the B Corporation certification for for-profit organizations and campaigns for the adoption and improvement of benefit corporation statutes at the state level. The "B" stands for beneficial and indicates that the certified organizations voluntarily meets certain standards of transparency, accountability, sustainability, and performance, with an aim to create value for society.

https://www.bcorporation.net/

* **Acumen** is a non-profit global venture fund that uses entrepreneurial approaches to solve the problems of poverty. It aims to help build financially sustainable organizations that deliver affordable goods and services that improve the lives of the poor.

http://acumen.org/

**Hong Kong**

* **Hong Kong Companies Registry** administers the registration and filings for companies incorporated in Hong Kong and foreign companies with a place of business in Hong Kong.

http://www.cr.gov.hk/en/home/index.htm

* **Hong Kong Government – Social Enterprises Promotion Unit** is established under the Home Affairs Department to implement various programmes to strengthen the support services for the development of social enterprises as well as to enhance public understanding of social enterprises.

http://www.social-enterprises.gov.hk/en/home/index.html

http://www.social-enterprises.gov.hk/en/info-pub/publications.html

* **Hong Kong Inland Revenue Department** administers taxes and duties and the related rules and regulations.

http://www.ird.gov.hk/eng/welcome.htm

* **Hong Kong Code on Corporate Governance Practices** is a non-statutory document issued under the Rules Governing the Listing of Securities

https://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/documents/main%20board\_app14(code).pdf

* **Environmental, Social and Governance Reporting Guide**, published by HKEx, sets out minimum parameters for HK listed companies to disclose their environment and social policies and performance.

https://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/esg/guide\_faq.htm

* **Hong Kong Social Enterprise Summit** takes place annually and is a major cross-sector platform for joint efforts in promoting innovative entrepreneurship for social change.

http://ses.org.hk/

**Singapore**

* **Legalese** is a publication of the Law Society of Singapore, and aims to provide bite-sized pieces of information to the general public on the various legal aspects of setting up and running a social enterprise or non-profit entity.

http://probono.lawsociety.org.sg/Pages/LegaleSE.aspx

* **Primer on Governance for Social Enterprises in Singapore**, published by Social Enterprise Association and written in a “question and answer” format, is intended to assist social enterprises in Singapore to think about key governance issues.

http://governanceforstakeholders.com/wp-content/uploads/2013/03/social-enterprise-governance-primer.pdf

**United Kingdom**

* **Social Enterprise UK** is a national membership body for social enterprises in the United Kingdom.

http://www.socialenterprise.org.uk/

* **GOV.UK** provides a general guidance on setting up a social enterprise in the United Kingdom.

https://www.gov.uk/set-up-a-social-enterprise

* **Inspire2Enterprise** is a free-to-access service for the social enterprise sector providing information, specialist advice and support from start-up to initial growth and beyond.

http://inspire2enterprise.org/

* **UnLtd - The Foundation for Social Entrepreneurs** is a charitable organization in the United Kingdom that promotes social entrepreneurship. It offers cash awards, networking and mentorship opportunities for social entrepreneurs in the United Kingdom, and has affiliate organizations in a number of other countries.

https://unltd.org.uk/

**United States**

* **Social Enterprise Alliance** is a national membership organization for social enterprise movement in the United States.

https://socialenterprise.us/

* **Community-Wealth.org** is a project initiative that aims to provide information about the broad range of community wealth strategies, policies, models, and innovations in the United States.

http://community-wealth.org/

* **The Institution for Social Entrepreneurs** provides information, education and training sources to help launch and expand social enterprises in the United States.

http://www.socialent.org/index.htm

1. **About Us**

* **WYNG**

***[For Ada’s input]***

* **Urban Spring**

***[For Ada’s input]***

* **White & Case**

[White & Case is an international law firm with 2,000 lawyers in 39 offices and 28 countries, including Hong Kong, Singapore, London and New York.

For more information, please visit: http://www.whitecase.com/]

***[Note: Further information to come, subject to review/input by John Shum and W&C marketing team.]***