



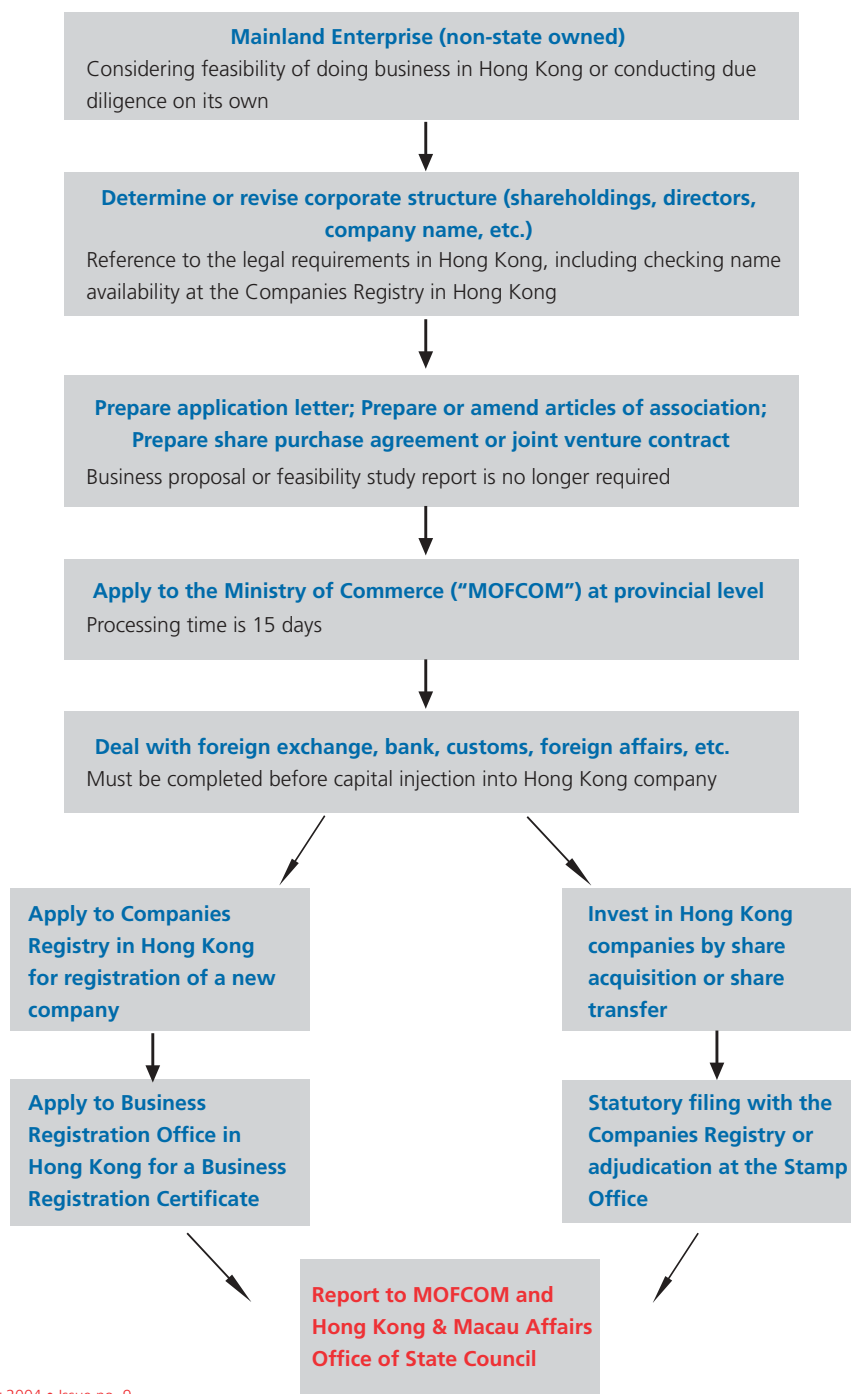
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PROCEDURES

For illustrative purposes, the procedures for a new start-up and a share acquisition are set out in the flowchart (Figure 1) below.

Figure 1





Well before the submission of application to MOFCOM, Mainland Enterprises should check with the Companies Registry in Hong Kong whether the proposed name is available for registration. Any name which is identical or too similar to any existing registered name may not be used. Unfortunately, there is no mechanism for name reservation in Hong Kong. Arrangements may be required so as to prevent the proposed name from being registered by others while the application is being reviewed by MOFCOM.

CHARACTERISTICS AND GENERAL REQUIREMENTS OF HONG KONG INCORPORATED PRIVATE COMPANIES

Regulations governing the companies in Hong Kong are different from those of the Mainland. The main characteristics and general requirements on the structure of Hong Kong private companies are summarized below:

- A private company can be formed within 10-12 working days.
- Capital can be denominated in any currency.
- Board meetings can be held anywhere in the world and can be conducted by any electronic means or any other manner as prescribed by the company's Articles of Association.
- High transparency: the general public can conduct a search to obtain information about the company (e.g., directors, shareholding structure, registered office etc.) at the Companies Registry. However, financial information in respect of private companies is not made available for public inspection.

Registered Office and Business Registration

- Every company is required to maintain a registered office in Hong Kong and take out a business registration certificate.

Shareholder/ Director

- There is a minimum requirement of only one shareholder and one director.
- Directors and shareholders may be natural persons or corporations, which can be of any nationality/ jurisdiction.

Company Secretary

- Every company must have one company secretary who may be one of the directors (except where the company has only one director). The secretary of a company may be an individual who must ordinarily reside in Hong Kong or a body corporate which is required to be incorporated/ registered in Hong Kong.

Capital

- There is no statutory upper or lower limit on authorised share capital and no "thin capitalisation" rules. The minimum paid up share capital can be as little as HK\$1.

Common Seal/Registers/Minutes

- Every company must maintain its common seal, registers of directors and shareholders and minutes of all directors' and shareholders' meetings at the registered office or at such other places in Hong Kong as the directors determine.

Before leasing an office premises and hiring employees in Hong Kong, Mainland Enterprises may simply appoint a resident secretary and register an office address. Whilst seemingly straightforward, basic compliance must not be neglected as any non-compliance may lead to court summons and penalties being imposed on the companies as well as the directors, and this may jeopardize the good standing of the companies. A summary of the annual compliance requirements for Hong Kong companies is set out below.

ANNUAL COMPLIANCE

Every Hong Kong company is required to:

- renew its business registration every year or every three years
- convene an annual general meeting of shareholders
- file an annual return with the Companies Registry
- produce audited accounts annually
- submit profits tax return and employer's return to the Inland Revenue Department on an annual basis

In accordance with the corresponding regulations, Mainland Enterprises (non-state owned) with investment in Hong Kong shall also attend to various additional formalities:

- Statistical information reporting
- Joint annual examination of offshore investment
- Assessment of general performance of offshore investment

Statutory Changes in B.V.I.

INCREASE IN B.V.I. LICENCE FEES

The Minister of Finance of the Government of the B.V.I. has recently announced that effective 1 January 2005, there will be an increase in the annual licence fees of International Business Companies ("IBCs"). The increase is summarized in the following table:

Authorised Share Capital of an IBC	Existing Annual Licence Fee	New Annual Licence Fee
Not exceeding US\$50,000, with all of the shares having par value	US\$300	US\$350
Exceeding US\$50,000	US\$1,000	US\$1,100

For those IBCs having shares with no par value, the increase in the licence fee has not been fixed. An IBC incorporated on or after 1 January 2005 that is not prohibited by its Memorandum from issuing bearer shares shall pay the annual licence fee of US\$1,100.

B.V.I. – PROPOSED NEW COMPANIES ACT 2004

The B.V.I. government has recently decided to merge the existing International Business Companies Act ("IBC Act") and the Companies Act (Cap. 285) ("Local Companies Act") into a new single Companies Act which is expected to be finalized and brought into force on 1 January 2005.

A Bill for a new Companies Act ("Proposed Act") has been drafted and is being circulated to financial services industry and to other stakeholders for consideration and comment.

OBJECTIVES OF THE PROPOSED ACT

The objectives of the Proposed Act are to retain the simplicity of the IBC Act and to be a flexible and useful tool for the new company entity being essentially the IBCs with a comprehensive list of aids attached to cater for onshore and offshore use. The Proposed Act is sought to be enabling in nature and not regulatory or punitive.

The principal aim has been to prepare a modern piece of companies legislation that will meet the twin objectives of being attractive to international clients whilst also providing a suitable legal framework for the incorporation of companies that will undertake business within the jurisdiction.

SUMMARY OF THE MAJOR FEATURES AND PROVISIONS OF THE PROPOSED ACT

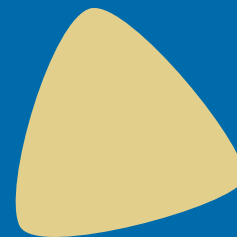
Some of the major features and provisions of the Proposed Act are as follows:

Types of Companies

- The Proposed Act provides for additional types of companies:
 - Companies limited by guarantee, hybrid companies (limited by shares and guarantee) and unlimited companies with or without a share capital.
 - Restricted purposes companies for use as special purpose vehicles.

Incorporation and Names of Companies

- The company number can be used as the company's name.
- Statutory recognition is given to foreign character names and the reuse of company names is permitted in certain limited circumstances.
- Any person may be an incorporator although the application to incorporate must be filed by the company's registered agent.
- The incorporator will be the first member of the company.



Registration of Charges

- Entirely new procedure has been introduced for registration of charges which is still optional although registration governs priority.
- Registration may be effected by the secured creditor.
- There is no time limit for registration.
- Failure to register will not make the charge unenforceable against a liquidator or the creditors.

Shares and Share Capital

- The concept of authorised capital has been abolished. However, a company will have to specify the maximum number of shares that it will be able to issue.
- Clarification has been made to the provisions prohibiting distributions if a company does not satisfy the solvency test.

Disclosure of Directors' Interests and Conflicts

- A director is required to disclose any conflicts of interest to the other directors.
- A director is not prohibited to attend a meeting concerning, or vote on, a matter in which he has an interest.
- A transaction may not be voided if the company received fair value.

Foreign Companies

- There are new provisions governing the registration of foreign companies carrying on business in the B.V.I..

Voluntary Liquidation

- The voluntary liquidation provisions have been redrafted to interface with the new Insolvency Act.
- A voluntary liquidator (where the company is solvent) must be an individual although he is not necessarily a licensed insolvency practitioner.
- There is a clear transfer route from a solvent liquidation to an Insolvency Act liquidation in the event that the company is found to be insolvent.

Since the Proposed Act is being circulated for consultations and discussions, amendments and adjustments may be made thereto.

TRANSITION PERIOD

It is proposed to adopt a two-year transition period before the Proposed Act ("BVI Business Companies Act") takes full effect. The transition of the three corporate statutes in the B.V.I., namely the Local Companies Act; the IBC Act; and the new BVI Business Companies Act is scheduled as below:

- In 2005, new incorporations will be possible under any of the three Acts.
- In 2006, new incorporations will only be possible under the BVI Business Companies Act and companies already on the Register will be permitted to operate under the existing IBC Act and Local Companies Act for one final year to enable them to prepare for transition to the new BVI Business Companies Act.
- On 1 January 2007, any companies remaining on the Register maintained under the existing Local Companies Act and the existing IBC Act will automatically be re-registered under the BVI Business Companies Act. By 2007, it is therefore envisioned that all companies registered in the B.V.I. will be operating under the new regime.

If you need any further information or wish to discuss the contents of this issue of TechNews, please approach any of your usual Tricor contacts.

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Member of the BEA Group

Please visit our website at www.tricor.com.hk
E-mail: info@tricor.com.hk

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Beijing

Tricor Consultancy
(Beijing) Limited
Suite 1715-1716
China World Tower 1
China World Trade Centre
1 Jian Guo Men Wai
Avenue
Beijing 10004
China

Tel: (86) 10 6505 8950
Fax: (86) 10 6505 8952

Hong Kong

Tricor Services Limited
28/F, BEA Harbour View
Centre
56 Gloucester Road
Wanchai, Hong Kong

Tel: (852) 2980 1888
Fax: (852) 2861 0285

Tricor Services Limited
24/F, Prince's Building
Central, Hong Kong

Tel: (852) 2289 3222
Fax: (852) 2890 9262

Macau

Tengis Business Services
Limited
17 Andar E
Praia Grande Commercial
Centre
No. 417-429, Av. Da Praia
Grande
Macau

Tel: (853) 788 022
Fax: (853) 788 021

Shanghai

Shanghai Tricor Tengis
Consultancy Limited
Room 3109-17
31/F Shanghai Central
Plaza
381 Huai Hai Zhong Road
Shanghai 200020
China

Tel: (86) 21 6391 6893
Fax: (86) 21 6391 6896

Singapore

Tricor Singapore Pte
Limited
#11-00 PWC Building,
8 Cross Street,
Singapore 048424

Tel: (65) 6236 3333
Fax: (65) 6236 4399

Tortola (BVI)

Tricor International
Trustee Limited
East Asia Chambers, P.O.
Box 901
Road Town, Tortola
British Virgin Islands

Tel: (1 284) 495 5558 /
(1 284) 495 5888
Fax: (1 284) 495 5088

TRICOR SERVICES LIMITED

CHIEF EXECUTIVE & MANAGING DIRECTOR

Johnny Ng

Tel: (852) 2289 3422 johnny.ng@tricor.com.hk

MANAGING DIRECTOR

Julian Chow

Tel: (852) 2980 1238 julian.chow@tricor.com.hk

DIRECTORS - BUSINESS SERVICES

Shirley Tsang

Tel: (852) 2980 1298 shirley.tsang@tricor.com.hk

Kimmy Chan

Tel: (852) 2289 3214 kimmy.chan@tricor.com.hk

H C Ying

Tel: (852) 2289 1402 h.c.ying@tricor.com.hk

Patrick Wong

Tel: (852) 2980 1200 patrick.wong@tricor.com.hk

DIRECTORS - CORPORATE SERVICES

Natalia Seng

Tel: (852) 2980 1688 natalia.seng@tricor.com.hk

Patsy Cheng

Tel: (852) 2980 1338 patsy.cheng@tricor.com.hk

Susan Lo

Tel: (852) 2980 1618 susan.lo@tricor.com.hk

Betty Yeung

Tel: (852) 2289 3289 betty.yeung@tricor.com.hk

Diana Chung

Tel: (852) 2289 3266 diana.chung@tricor.com.hk

Paul Moyes

Tel: (852) 2289 3274 paul.moyes@tricor.com.hk

Cynthia Wong

Tel: (852) 2980 1328 cynthia.wong@tricor.com.hk

DIRECTOR - INVESTOR SERVICES

Allan Tong

Tel: (852) 2980 1818 allan.tong@tricor.com.hk

DIRECTORS - CHINA SERVICES

Natalia Seng

Tel: (852) 2980 1688 natalia.seng@tricor.com.hk

Shirley Tsang

Tel: (852) 2980 1298 shirley.tsang@tricor.com.hk

SENIOR CONSULTANT

Marina Wong

Tel: (852) 2289 1311 marina.wong@tricor.com.hk

DIRECTOR - EXECUTIVE RESOURCES

Fiona Yung

Tel: (852) 2289 3230 fiona.yung@tricor.com.hk