

The Aspen Post

April 2014



Don't want to bore you with a long newsletter.

NEW HONG KONG

CHANGES TO THE COMPANIES ORDINANCE

In our previous newsletter we informed you of the extensive rewrite, the new Hong Kong Companies Ordinance (CO). From March 2014, every private company must have at least one natural person to act as director, to enhance transparency and accountability. Corporate directorships are still allowed in conjunction with the individual director and we recommend this combination for ease of management.

Aspen is able to provide professional, individual directors suitable for every structure. Please contact us directly for fees and details.

IF YOU WON'T READ MORE, READ THIS:

All Hong Kong Companies **MUST** have at least one natural person as director. Companies registered before March 2013 have 6 months to add or replace its directorship.

PUBLIC HOLIDAY

Our offices will be closed in observance of the following days:

Friday, April 18, 2014	Good Friday
Monday, April 21, 2014	Easter Monday
Thursday, May 1, 2014	Labour Day
Tuesday, May 6, 2014	The Birthday of Buddha

We will not monitor our e-mails. For urgent matters please contact lourdes@aspenoffshore.com.

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PANAMA

AN ELECTION YEAR

On May 4, 2014 the Republic of Panama will hold its presidential elections. There are now, 3 presidential candidates but this can rapidly change as we approach the election date; by then, bygones will be bygones and operation mending fences must have begun. In preparing to exercise my voting rights, I have learned a few things about my Panama that I wish to share to illustrate a little more about my beautiful and competent country.

1. VOTING BY INTERNET

This is the first time in the history of Panama that Panamanians residing abroad will be able to vote online. I elected this method simply to experience the process and to see, what gives. The process has been uncomplicated, straightforward and filled with the necessary security levels as should be for such a sober civil right. Early in 2013, the Electoral Tribunal served notices through its diplomatic representations informing overseas Panamanians the manner in which they had to register to vote. There are 2

methods, by mail and by internet. Registering to vote has been a direct and personal endeavor through Skype face-to-face interviews. Later, secured, encrypted e-mails, passwords and measured instructions leading up to the day of voting. An overseas voter can only vote for the President. I've registered to vote, by internet from overseas and I'm excited. If you've ever been to Panama, you'll know, it's no fun to stand in the searing heat, high humidity or heavy rain waiting to cast a ballot.

Internet voting is a wonderful enhancement to our right to vote. It's like armchair shopping. In this era of 'selfies' and online parallel lives, it would be great if even those who reside in the country could vote online. It could impact the results.

In 2009, the estimated total population of the Republic of Panama was 3,360,474 (give or take a few hundred thousand). The Electoral Tribunal states that 1,636,503 persons voted which is a little more than half of the population. Not bad, I say! The 2012 population was recorded at 3,802,000 (give or take a few hundred thousand) and if I follow the pattern of previous elections, 50% of the population will vote.

The Panama America online newspaper's interactive site, states the total number of Panamanians living abroad is 5,112, April 2013. No Panamanians were recorded to live in Hong Kong, nor the rest of Asia, except Taiwan. According to the site, 155 Panamanians reside in Europe mainly Italy (81), United Kingdom (32) and Switzerland (42). Even Russia boasts 10 Panamanians. I am confident that there are more Panamanians abroad than is formally and informally recorded.

The government of Panama should continue actively promoting this E-voting trend. It will be a trend until it is the norm. I believe for this electoral period it was well done and it all point towards a very modern, state of the art administrative system in Panama. Many Panamanians I know missed the registration period because they didn't get a notice from their consulates or for a myriad of reasons.

In a small country such as Panama, a couple of hundred thousand overseas nationals can throw a curve ball to any election. Let this be a warning to any upcoming candidates. And, to you Panamanian of the world: voting is a right that too often is taken for granted. Después no te quejes.

2. NEW PANAMANIAN PASSPORT

The Republic of Panama released the new format for its passports in January 2014. The old passport featured watermarks showing traditional patriotic symbols or beloved sites such as the bridge of the Americas or the famous Holy Spirit orchid. The new passport features new modern structures such as the Metro subway station, the upgraded Historical Centre and other new infrastructures built in the past 5 years. Personally, I believe the passport has surpassed every expectation. The new passport has changed colors from a tropical blue to a dark [institutional] blue and can be obtained in 32 or 64 page formats. Amen! If you are a frequent traveler a 32-page passport barely lasts a year.

The new passport is electronic, has a barcode and a digital photograph. Some interesting features: the photograph page is polycarbonate and contains an invisible chip. Pictures of a Panama hat (called *sombrero pintao*, in Spanish) and a pollera (national dress of Panama) shows under ultraviolet lights; and the bar code contains the finger print of all 10 fingers.

Older passports will continue to be valid until their imprinted expiry date and may continue to hold valid visas issued by other countries with expiration dates that exceed that of the old expired (tropical blue) passport or the new ones.

3. THE METRO

On April 5, 2014 Panama opened for operation Line 1 of its first-ever metro railway system. It may not be a big deal for anyone who lives in a megacity like Hong Kong or historical cities like London or New York. But for Panamanians it is a big deal and a pride. The metro authorities issued an instruction manual promoting the expected metro-riding conduct in the train, at the stations, and platforms; and for the purchase of tickets.



There are many commercials featuring loved local musicians and talent, explaining the routes and more. The cost to ride the full metro line will be less than US\$1.00. Not bad.

SHAREHOLDER IN A PRIVATE LIMITED COMPANY

A private limited company is a company that has a capital that is divided by shares. Truthfully speaking, companies from any of the well known jurisdictions work perfectly well, they are known as International Business Companies (IBCs) and their capital is limited by shares. Some of the more traditional jurisdictions include Belize, British Virgin Islands, Seychelles, and Nevis. However, Hong Kong, Panama, or Singapore offer a similar product.

Private limited companies are an excellent option for the individual who wants to protect their assets. It is not illegal to *use* them anywhere in the world. For this reason, they have always been the choice of property investment companies. A single investor can serve as the sole shareholder and director and enjoys the protection that the company can offer, while retaining full control of the day to day decisions relating to the company. This can offer a very tax efficient way of managing a portfolio.

In some jurisdictions, the registration of the director and shareholder must be done at the public registry for public record and viewing but in other jurisdictions the names of the shareholders and directors is not disclosed.

But what happens when there are multiple investors participating in a joint venture? Or if a small property investment business takes off and they choose to take on additional investors? Then, the private limited company has some shortcomings that every investor should be aware of.

To simply own shares in a company does not give an individual automatic rights to say or determine how a company is run. In fact, some companies restrict some shares to be with or without voting rights.

As a shareholder, there are few rights that can be exercised without interference of the directors. But, perhaps the most powerful one is the right to appoint or remove directors by the majority or quorum of shareholders.

Inexperienced investors may find that their money falls into the control of directors, whose view they do not share. In small companies, shareholders may feel pressured to move their company in a direction that they did not foresee. This is why the right to remove or appoint directors is essential whenever possible.

PROTECTION FOR THE SHAREHOLDERS

Following these very simple rules can reduce the exposure of the shareholder:

- ALWAYS have a shareholders' agreement. Ensure that the shareholders agreement includes the right to appoint or remove a director.
- State a clear dividend policy.
- State pre-emption rights which ensure that any proposed sale of shares is first offered to fellow investors.
- Place restrictions on competing with business, poaching staff, soliciting clients, etc.
- Have a dispute resolution to handle disagreements through arbitration. Arbitration avoids costly litigation in the event of a disagreement.

IF YOU WON'T READ MORE, READ THIS:

Aspen Global Incorporations can assist you in preparing simple or intricate shareholders and partnership agreements that are tailored to your needs. Please contact us directly for a quote.

THE SHAREHOLDERS AGREEMENT

A shareholder agreement does not have to be too technical, extensive, detailed, or complicated but it should contain elements that are important to the shareholders.

Clauses often ignored are those pertaining to the death or incapacity of the shareholder.

Starting each venture, there is always hope, grand expectations, trust, giddiness, and yes, love. At this stage, no one thinks that failure is possible.

Breaking up is hard to do but it is even harder when there are no rules or guidelines indicating how the shareholders should go about separating and breaking up the venture. It may be cynical but break-ups can happen between families, the best of friends, and the greatest lovers. As such, shareholder agreements should be made when happy but while considering the worse possible scenarios. It is a sobering process.

Shareholders' agreements should also include specific guidance to the company secretary with regards to compliance at the jurisdiction and at the country of tax residence of the shareholder.

The shareholder agreement should also include details as to whom, how, and where the books and records of the company are to be kept and how the shareholders will have access to them. Consider including how the administrative and corporate services fees and expenses will be paid.

Shareholders and partnership agreements don't have to be complicated or overly detailed. Aspen can assist you in preparing a reasonable shareholder agreement.

Last but not least, include a clear clause indicating what happens to your investment/share/contribution should you decide to withdraw from the venture and a realistic, specific date of when you'll get paid. Too many shareholders part empty-handed.

A shareholder or partners agreement is a powerful and useful tool that can benefit and safeguard investments and ensure the success of the business for all parties.

P. S. EASTER IS HERE

It's just around the corner! Gauging by the fantastic weather we've had in Hong Kong in recent days, then, I have to say it will be splendid.

Regardless of your religious beliefs and practices, Easter is an important season because it is one of the few holidays with more than 4 days where we can all enjoy the time to share with our loved ones, take a little vacation, or simply sleep in. The important thing is to take some time to pause and reflect. Take a little longer for your breakfast and go on that bike ride with your children. Use some of your free time to visit the elderly and those who are unwell.

The word Easter comes from *Ēastre*, the goddess associated with spring. In Spanish, Easter is Pascua

and in some places it is referred to as Pascua Florida, alluding to the blooms of the season. In Hong Kong, people take advantage of the empty



roads and venues to enjoy the city at a slower pace. Most importantly, they enjoy time to eat with great leisure.

Whatever your belief, it is clear, that it is a time for rebirth, to clean out your closet, filing cabinets, pay your old bills, and put things in order.

In March, I caught the beginning of spring in the Alentejo of Portugal at the magnificent Herdade dos Grous. That was the view from my room. LHB

Aspen Group Limited wishes you, your loved ones, and corporate families a Happy Easter.

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