

The B Corp legal framework helps companies protect mission of considering impact on all their stakeholders



Lab

Hong Kong/
Macau

Explanatory Note - B Corp Legal Requirement for Hong Kong

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Disclaimer

This document is for information only. It does not constitute legal or other advice.

Current and prospective B Corps should seek legal advice on the meaning and adoption of this Legal Requirement. Adopting this Legal Requirement has important legal implications.



Legal requirement

1. What is the B Corp legal requirement?

- 1.1. Certified B Corporations (“B Corp”) are a new kind of business whose purpose includes being financially profitable and also creating a material positive impact on society and the environment. Around the world they voluntarily commit to meeting the high standards of verified social and environmental performance, public transparency, and legal accountability as required by the B Impact Assessment (“BIA”) and the rest of the B Corp Certification process as administered by B Lab. By becoming a B Corp, the entity agrees to take on legal obligations to consider its impact on workers, customers, suppliers, community, and the environment. Meeting the B Corp Legal Requirement is one of the three key pillars of B Corp Certification, and how this can be achieved vary from jurisdiction to jurisdiction. It may be met either by adopting the Benefit Corporation legal form where such legal form is available (e.g. in 36 states and District of Columbia in the United States), or amending the constitutional or governing documents of the entity to include language that legally commits the entity to consider stakeholders’ interests, where such language has been drafted and approved by B Lab for that particular jurisdiction (e.g. in United Kingdom, Australia, and now Hong Kong). Where the legal form of Benefit Corporation is not available in the jurisdiction and language for amending the constitutional or governing documents has not yet been introduced, B Corps in that jurisdiction are exempted from meeting the B Corp Legal Requirement in the meantime for B Corp Certification.
- 1.2. After over a year of preparation, the HK Legal Requirement will become effective in January 2021,

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and this means that all existing and prospective B Corps in Hong Kong will have to, within a timeframe, go through the process of amending their constitutional documents to include a commitment to creating benefit for all stakeholders, not just shareholders, in an agreed form. As there is no specific legal form for Benefit Corporation in Hong Kong, this HK Legal Requirement is intended for mission alignment internally, i.e. aligning the values of founders, shareholders (and future shareholders), directors and management. For the avoidance of any doubt, there is no Hong Kong legislative process for this HK Legal Requirement to become part of any Hong Kong legislation. Adopting this HK Legal Requirement is not required under Hong Kong law or regulations, but is only required by B Lab for Hong Kong B Corps as part of B Corp Certification.

- 1.3. The HK Legal Requirement is deliberately a minimalist requirement and does not aim to be overly prescriptive, so that it has wide applicability and can be used by all existing and prospective B Corps. If in doubt, you should seek legal advice for your specific circumstances or consult with B Lab (Hong Kong & Macau) for any suggested law firms. Adopting the HK Legal Requirement has important legal implications.
- 1.4. The HK Legal Requirement has been developed jointly by B Lab Standards Trust and B Lab (Hong Kong & Macau), with pro bono support from Hong Kong-based law firm Vivien Teu & Co LLP. This accompanying explanatory note has been prepared by Vivien Teu & Co LLP, building on the foundation of the UK Legal Requirement explanatory note and integrating feedback from B Lab (Hong Kong & Macau) together with the B Corp community in Hong Kong, and as reviewed by B Lab Standards Trust to ensure consistency across jurisdictions

2. Does it apply to all legal forms of business in Hong Kong?

- 2.1. There are various legal forms that can be used for conducting business in Hong Kong:
 - company limited by shares,
 - company limited by guarantee,
 - partnership,
 - limited partnership,
 - limited liability partnership (a form of partnership available only for law firms),
 - sole proprietorship, and
 - branch office of a foreign company in Hong Kong (not being a separately incorporated subsidiary company)

- 2.2. For Hong Kong businesses seeking B Corp Certification, the HK Legal Requirement currently applies to companies and partnerships only, as sole proprietorship lacks the corporate governance structure required for B Corps, and a branch office is not a separate legal entity and it follows the constitutional document of its head office (note: while a wholly owned subsidiary of a certified B Corp may be exempt, any company that is not a wholly owned subsidiary will likely still need to meet the HK Legal Requirement). To confirm whether your legal form is eligible for B Corp Certification and how you may be able to meet the HK Legal Requirement, please consult B Lab (Hong Kong & Macau).

- 2.3. For companies, while the HK Legal Requirement can apply to both a company limited by shares and



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a company limited by guarantee, this explanatory note focuses on a company limited by shares. This is because for-profit companies in Hong Kong tend to adopt company limited by shares as a legal structure, as company limited by guarantee lacks the mechanism to share profits. The Companies Ordinance (Cap. 622) (“Companies Ordinance”) uses “members” for both types of companies to refer to the “owners” of the companies, which are equivalent to shareholders in the case of a company limited by shares.

3. What does HK Legal Requirement involve?

3.1. To meet the HK Legal Requirement, an existing or prospective B Corp that is in the legal form of company or partnership will be expected to include appropriate language, as developed by B Lab, in its constitutional documents to demonstrate legal commitment to consider stakeholders' interests. In the remaining of this document we will focus on the suggested language, adoption procedures and timeline for companies, while such information for partnerships or limited partnerships is set out in the Appendix.

The suggested language for companies as set out below consists of two parts: objects clause (suggested clause 1), and clauses on directors' duty to consider stakeholders' interest (suggested clauses 2-4):

- (1) It shall be an object of the Company, through its business and operations, to create a material positive impact on society and the environment, taken as a whole.
- (2) A Director must act in the way he or she considers, in good faith, most likely to achieve the objects of the Company including as set out in Article [X], and in doing so shall have regard (amongst other matters) to the following:

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- (a) the likely consequences of any decision of the Directors in the long term;
 - (b) the interests of the Company's employees;
 - (c) the need to foster the Company's business relationships with suppliers, customers and others;
 - (d) the impact of the Company's operations on the community and the environment;
 - (e) the desirability of the Company maintaining a reputation for high standards of business conduct;
and
 - (f) the need to act fairly as between members of the Company.
- (3) For the purposes of a Director's duty to act in the way he or she considers, in good faith, most likely to achieve the objects of the Company including as set out in Article [X], a Director shall not be required to regard the benefit of any particular group affected by such action as set out in Article [Y], including the members, as more important than any other.
- (4) Nothing in this Article, express or implied, is intended to or shall create or grant any right or any cause of action to, by or for any person (other than the Company).

Background on the suggested language of the HK Legal Requirement

3.2. The suggested language for companies of the HK Legal Requirement has been developed so that it is a meaningful requirement by which B Corps can be differentiated from other companies, whilst still operating within the framework of the Companies Ordinance and allowing scope for interpretation and directors' discretion to reflect the specific circumstances, such as the size, nature of business or business

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operations, or the industry sector, of the company in each case. In particular, it is recognised that directors will need to exercise a degree of judgment in deciding how to weigh and reconcile the factors set out in paragraph (2), depending on the circumstances and context of the company. In developing the language for the HK Legal Requirement, the requirement for the language to create clear differentiation has been balanced with the concern that it should not be set at a level which makes it too onerous or prescriptive, which may make it difficult for existing companies in Hong Kong to obtain the shareholder approval necessary to amend their constitutional documents, i.e. the articles of association (“articles”), to incorporate the language, or for new companies to accept the language to be incorporated in the articles a the outset.

As per paragraph 3.7, it is no longer mandatory for a Hong Kong company to state its objects. Therefore, this clause is intended to apply to the object stated in Paragraph (1), together with other objects of the company stated in the articles, if any; or in the absence of other objects explicitly stated, it would apply to the object stated in Paragraph (1).

3.3. The HK Legal Requirement aims to achieve two main purposes:

3.3.1. To make clear from the outset that it is an object of the company, at the core of its business model, to create a material positive impact on society and environment;

3.3.2. Each director is explicitly empowered to take into account the interests of stakeholders other than the shareholders or members. This means that if a director, in good faith, makes a decision that he or she thinks furthers the objects of the company (including or being the object to create material positive impact on society and environment), and in doing so takes into account the interests of stakeholders other than the shareholders, he or she *shall not* be construed as being in breach of director’s duties to the company.

3.4. Under the Companies Ordinance, directors of a Hong Kong company are subject to a duty to exercise reasonable care, skill and diligence. At the same time, directors are subject to other duties under common law, and in particular the well-established fiduciary duty to act in good faith in the best interests of the

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company. Directors owe such duties to the company as a whole.

3.5. Although case law has only considered “the best interests of the company” from a financial angle, for the following reasons it can be put forward that it is permitted under Hong Kong’s company law to mandate a company to create positive impact on the environment and society and in this regard take into account interests of stakeholders other than shareholders or members:

3.5.1. It is established Hong Kong company law that the duty to act in the best interests of the company is a duty to act in the best interests of the company as a whole, rather than specifically for the shareholders or shareholders at any point in time. This is illustrated in the publication of the Companies Registry in 2014, “A Guide on Directors’ Duties”, in which the Companies Registry set out 11 general principles on directors’ duties. First and foremost is “a duty to act in good faith for the benefit of the company as a whole” (Principle 1), which is further explained to be “a duty to act in good faith in the best interests of the company” and “a duty to act in the interests of all its shareholders, *present and future*” (emphasis added).

3.5.2. Beginning July 2020, the board of directors of Hong Kong listed companies must make a statement every year disclosing their oversight of environmental, social and governance (ESG) issues, and the board’s ESG management approach and strategy. This is the latest requirement issued by the Hong Kong Stock Exchange (HKEx), which has since 2017 adopted an increasingly stringent guide on companies disclosure in relation to ESG policies. This increasingly stringent development underscores broader global recognition that ESG factors are factors that may be material to a company’s business and financial performance. It is worth noting that internationally company law jurisprudence is moving towards the position that directors may be in breach of their duties if they fail to integrate considerations of ESG factors relevant to the company’s business and operations.

3.5.3. As existing Hong Kong law already allows (or mandates in the case of listed companies) directors

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of a company to consider environmental and social factors, where such factors will be critical to the long-term interests of the company as a whole and its shareholders present and future, directors are not bound to only consider the interest of the shareholders, and directors should not only consider the financial interest of particular shareholders.

- 3.6. In order to distinguish a “B Corp” from other businesses, the HK Legal Requirement specifies that the B Corp must go beyond considering environmental and social factors and must, at the core of its business model, seek to create a material positive impact on society and environment. In this regard the HK Legal Requirement further clarifies and provides for the manner and extent to which environmental and social factors can be taken into account. We further elaborate the rationale below.

Paragraph 1 of the HK Legal Requirement

- 3.7. According to section 82(2) of the Companies Ordinance, it is not mandatory for a company in Hong Kong to state its objects. Sections 115 (1) and (2)(a) further state that, “a company has the capacity, rights, powers and privileges of a natural person of full age”, and it “may do any act that it is permitted or required to do by its articles or any Ordinance or rule of law”.
- 3.8. However, a company can choose to state its objects or set out specific powers to limit the company’s exercise of power. According to section 116(1) of Companies Ordinance, if a company state its objects in the articles, the company “must not do any act that it is not authorized to do by its articles”. And according to section 116(2), if a company expressly modified or excluded some of its powers in the articles, “the company must not exercise the power contrary to that modification or exclusion”.
- 3.9. Pursuant to section 86(1) of the Companies Ordinance, a company’s articles “have effect as a contract under seal – (i) between the company and each member; and (ii) between a member and each other member”; and “are to be regarded as containing covenants on the part of the company and of each

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member to observe all the provisions of the articles". Section 86(2) further provides that the articles are enforceable (a) by the company against each member; (b) by a member against the company; and (c) by a member against each other member."

- 3.10. Paragraph 1 of the HK Legal Requirement has been included so that the company's object in relation to society and the environment are expressed at the outset in a clear manner. The effect of this under section 86 of the Companies Ordinance is that the directors, acting on behalf of the company, are obligated and empowered to conduct the business and operations of the company in pursuit of such an object. The inclusion of Paragraph 1 will also emphasise the fact that at the heart of a B Corp's constitution is the commitment to create a material positive impact on society and the environment.
- 3.11. Our approach to the word "material" is intended to indicate that the "positive impact" which the company is seeking to achieve is meaningful and more than tokenistic or trivial. A company which only dabbles in some corporate social responsibility is unlikely to be considered to be aiming to have a material positive impact on society and the environment and certainly not "through its business and operations", which is about how the company carries out its core business. The use of the word "business" is intended to take into account the relative size and scale of operations of the relevant company, so more impact may be expected of a larger company by virtue of the larger scale of the business and operations of the company.
- 3.12 The word "positive" is intended to be read with the words "taken as a whole" so that the aim is to achieve overall or net positive impact among all relevant stakeholder groups. This means that a company should not pursue strategies that create positive impact for one stakeholder group at the expense of another stakeholder group. This also means that a company must manage and measure both its positive and negative impact on environment and society.
- 3.13. Despite the use of the word "material" the intention of Paragraph 1 of the HK Legal Requirement is to

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set out this/such object of the company, as opposed to setting a benchmark for the impact of the company. Therefore B Corps are not required under the HK Legal Requirement to take steps, such as randomised control trials, to evidence such impact on all key stakeholders in order to categorically demonstrate material positive impact.

- 3.14. The words “taken as a whole” are intended to refer to taking a rounded view of the impact the company has on society and the environment.
- 3.15. If the company fails to achieve a positive material impact on society and environment, taken as a whole in any given financial year, this does not mean to say that the directors will necessarily be in breach of their duties to the company any more than if the company failed to make a profit in the relevant financial year. What is important is that the directors act in good faith and in accordance with their other duties (including the duty of reasonable care, skill and diligence) so that the strategy and activities of the company are directed towards the aim of achieving a positive material impact on society and environment, taken as a whole, and that there is a reasonable prospect this will be achieved in time. The directors are accountable to the members and, the members would be made aware and are deemed party to a binding contract with the company which specifies its objects.

Paragraph 2 of the HK Legal Requirement

- 3.16. With Paragraph 1 in place, arguably it is unnecessary to spell out how directors can achieve such an object of the company. However, we think it is helpful for directors - and members - to have explicitly set out the factors that directors should take into account in achieving such an object of the company.
- 3.17. To consider the “likely consequences of any decision of the Directors in the long term” is in line with B Corps’ belief to create long-term value when balancing purpose and profit.

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- 3.18. The B Corp Certification evaluates how a company’s operations and business model impacts its workers (including supply chain), community, environment, and customers. To consider “the interests of the Company’s employees”, “the need to foster the Company’s business relationships with suppliers, customers and others”, and “the impact of the Company’s operations on the community and the environment” simply reflects these core focus stakeholder groups of B Corps.
- 3.19. To consider “the desirability of the Company maintaining a reputation for high standards of business conduct” is also to consider the company’s impact and standing in the community, and in line with B Corp’s vision of creating a community of businesses that “meet the highest standards of verified social and environmental performance, public transparency, and legal accountability to balance profit and purpose”.
- 3.20. The phrase “the need to act fairly as between members of the Company” is part of directors’ duty in Hong Kong to act for the benefit of the company as a whole (rather than particular shareholders or members). This is also illustrated in “A Guide on Directors’ Duties” by the Companies Registry, in carrying out the duty to act in good faith for the benefit of the company as a whole (Principle 1), a director “must (as far as practicable) have regard to the need to achieve outcomes that are fair as between its members”.
- 3.21. According to s.117 of Companies Ordinance, even if the articles limit a company’s exercise of power, in relation to a person dealing with the company in good faith, the power of the company’s directors to bind the company is considered free of limitation in the articles. However, this clause should not affect Paragraphs 1 to 4 of the HK Legal Requirement as these are not intended to limit the powers of the directors in relation to third parties, but only in relation to their internal covenants.

Paragraph 3 of the HK Legal Requirement

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- 3.22. As mentioned above, there is no case law nor statute that explicitly obligates directors to prioritise members' or shareholders' interests over other stakeholders' interests in Hong Kong. It is however important to explicitly state that the directors need not place the interests of the members or shareholders ahead of other stakeholders' interests when fulfilling their duties in pursuit of the company's objects, but shall consider the interests of other stakeholders, who may be affected by the company's business and operations, alongside the interests of members or shareholders.
- 3.23. Paragraph 3 of the HK Legal Requirement is intended to be read in conjunction with Paragraph 2, explaining how the directors can consider the various factors set out in Paragraph 2.

Paragraph 4 of the HK Legal Requirement

- 3.24. As mentioned above section 86(2) of the Companies Ordinance provides that the articles are enforceable (a) by the company against each member; (b) by a member against the company; and (c) by a member against each other member.
- 3.25. The HK Legal Requirement has not created – and does not intend to create - new rights for any other persons to bring claims against the directors under their duties to carry out the objects of the company as set out in the HK Legal Requirement. This is an important Paragraph to deal with any concern that, because directors are now obligated to consider interests beyond those of the shareholders or members, there is any potential liability to those other stakeholders as explicitly mentioned in the HK Legal Requirement.
- 3.26. For the avoidance of any doubt, Paragraph 4 has been included so that the HK Legal Requirement does not introduce legal obligation owed by directors to other stakeholders. The legal position is that the duty of the directors is owed to the company, and directors should not be exposed to claims from a



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broad range of stakeholders if they adopt the B Corp structure. The proper claimant with a right of recourse against directors is only the company itself (or in limited circumstances a shareholder taking derivative action on behalf of the company).

- 3.27. Furthermore, under the current law in Hong Kong, stakeholders also do not have the right to enforce a company's articles as they are third parties not in privity to the contract. While the Contracts (Rights of Third Parties) Ordinance (Cap.623) ("TP Ordinance") provides limited exceptions to the common law principle of privity of contract, namely allowing certain contracts to be enforceable by third parties, section 3(g) of the TP Ordinance specifically precludes a company's articles from the TP Ordinance's application. This means that the articles are not enforceable by a third party, even under the TP Ordinance.

4. How to meet the HK Legal Requirement?

- 4.1. An existing company seeking B Corp Certification would need to amend its articles of association by special resolution (i.e. a resolution passed by a majority of at least 75% of members) to include the language of the HK Legal Requirement. Upon such amendment, the company is required to submit, among other things, a certified copy of the amended articles and a copy of the special resolution for filing with the Companies Registry. A new company seeking B Corp Certification should include the language in its articles when the company is incorporated.
- 4.2. An existing or prospective B Corp may decide to adopt a higher standard or develop more specific provisions including additional objects or additional stakeholders; however, to meet the HK Legal Requirement, at least the suggested language, or language to the effect of the suggested language, must be included in the constitutional documents.
- 4.3. Adopting the HK Legal Requirement has important implications. Legal advice should be sought to fully understand these implications specific to a company and its business activities, besides any legal assistance in amending the constitutive document of the company. Some key aspects to consider are:
 - 4.3.1. The implications of the HK Legal Requirement should be properly communicated with or between all shareholders and directors of the company, as the HK Legal Requirement involves key provisions in the contract between the shareholders (i.e. the articles of association) and



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regarding directors' duties as explained above.

4.3.2. Meeting the HK Legal Requirement is related to meeting the governance aspect of the BIA for B Corp Certification. Fulfilling the commitment as set out in the suggested language would require the B Corp to have proper governance structure and system in place, such as board diversity to anti-discrimination policy to a high standard of decision-making process to ensure stakeholders' interests are considered consistent with the adopted object.

4.3.3. An existing or prospective B Corp may also need to confirm whether any consents by or notices to any third party or any other actions are required in relation to an amendment of its constitutive document.



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5. What is the timeline for meeting the new HK Legal Requirement?

- 5.1 Existing B Corps in the form of companies will have 2 years from January 1, 2021 to make amendments to their articles to meet the HK Legal Requirement, while prospective B Corps with 10 employees or more in the form of companies will have one year from the date of receiving B Corp Certification. Prospective B Corps with less than 10 employees in the form of companies are expected to meet the HK Legal Requirement prior to certification.
- 5.2 If you have any queries about the HK Legal Requirement, please contact B Lab (Hong Kong & Macau) by emailing yettyor@blabhkm.com.
- 5.3 B Lab Standards Trust and B Lab (Hong Kong & Macau) reserve the right to develop and update the HK Legal Requirement over time and in light of market and other developments.

December 3, 2020

Appendix

Suggested language for the HK Legal Requirement applicable to Partnerships and Limited Partnerships:

1. The suggested language:
 - 1.1. It shall be an object of the Partnership, through its business and operations, to create a material positive impact on society and the environment, taken as a whole.
 - 1.2. Each of the Partners must act in the way he or she considers, in good faith, most likely to achieve the objects of the Partnership including as set out in Article [X], and in doing so shall have regard (amongst other matters) to the following:
 - (a) the likely consequences of any decision of the Partners in the long term;
 - (b) the interests of the Partnership's employees;
 - (c) the need to foster the Partnership's business relationships with suppliers, customers and others;
 - (d) the impact of the Partnership's operations on the community and the environment;
 - (e) the desirability of the Partnership maintaining a reputation for high standards of business conduct
 - (f) the need to act fairly as between Partners of the Partnership.

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- 1.3. Each of the Partners shall be under a duty to act in the way he or she considers, in good faith, most likely to achieve the objects of the Partnership including as set out in Article [X], and a Partner shall not be required to regard the benefit of any particular group affected by such action as set out in Article [Y] as more important than any other.
- 1.4. Nothing in this Article, express or implied, is intended to or shall create or grant any right or any cause of action to, by or for any person (other than a Partner). The application of the Contracts (Rights of Third Parties) Ordinance (Cap.623) (“TP Ordinance”) is hereby expressly excluded, and no person or entity which is not a party to this [Partnership Agreement / Deed of Partnership] shall have any rights under this [Agreement / Deed] or the subject matter thereof pursuant to the TP Ordinance.
2. Rationale for the suggested language for Partnerships and Limited Partnerships

Background

- 2.1 There are three types of partnerships in Hong Kong: general partnership (governed by Partnership Ordinance Cap.38), limited partnership (governed by Limited Partnership Ordinance Cap.37) and limited liability partnership i.e. LLP (a form of general partnership in essence, only available for law firms in Hong Kong, and governed by Legal Practitioners Ordinance Cap.159). None of these three forms of partnerships are separate legal entities in Hong Kong. In some states in the US, general partnerships also are not separate legal entities. Following the practice in the US where all general partnerships are required to adopt a legal requirement, the HK Legal Requirement will apply to partnerships in Hong Kong.
- 2.2 The rights and obligations of the partners in a partnership, including their relations to third parties, are governed by their partnership agreement, which can be verbal or written, and the relevant Partnership Ordinance. Amendments to incorporate the HK Legal Requirement are required to be made to the

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partnership agreement or deed of partnership. If a partnership does not have a written partnership agreement or deed of partnership, a partnership wishing to become a B Corp will be required to adopt one and include in the written document the HK Legal Requirement.

- 2.3 The Partnership language of the HK Legal Requirement is very similar to the Company language of the HK Legal Requirement. However, since partnerships are not separate legal entities from their partners, and each partner in a general partnership (and the general partners in a limited partnership) is jointly and severally liable with other partners for all obligations of a partnership, additional protections and measures have been added in paragraph 4 to make sure partners are not exposed to extensive liabilities whilst in pursuit of the new object.

Paragraph 1 of the HK Legal Requirement for Partnerships / Limited Partnerships

- 2.4 In principle, there is no restriction on specific objects being inserted into partnership agreements under the law on partnerships in Hong Kong, and the pursuit of such objects will become an obligation of the partners if stated in the partnership agreement, as a matter of contract between the partners. Being a party to the contract, any partner may potentially bring a claim for breach of the partnership agreement in the event that such objects are not adhered to.

Paragraph 2 of the HK Legal Requirement for Partnerships / Limited Partnerships

- 2.5 Modified to apply to partnerships and limited partnerships, paragraph 2 of the HK Legal Requirement sets out the factors that partners must take into account when carrying out their contractual obligation to pursue the objects of the partnership.

Paragraph 3 of the HK Legal Requirement for Partnerships / Limited Partnerships

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2.6 Partners owe fiduciary duties to the partnership, and must place the partnership's best interests above their own interests. Paragraph 3 of the HK Legal Requirement clarifies the effect of Paragraph 1 of the HK Legal Requirement, so it becomes clear that in pursuing the new objects, a partner need not place the interests of the other partners above its contractual obligation to consider the interests of stakeholders under the partnership agreement.

Paragraph 4 of the HK Legal Requirement for Partnerships / Limited Partnerships

2.7 Each partner of a general partnership under the Partnership Ordinance is personally liable for the acts of the other partners and for all debts of the firm and a third party may sue any and all partners of the partnership for any claim. A limited partnership formed under the Limited Partnership Ordinance (Cap.37) has (i) general partners, who have unlimited liability for the liabilities of the limited partnership and (ii) limited partners, whose liability is capped at the amount of their investment or commitment. It is therefore an important consideration for partnerships and limited partnerships in becoming a B Corp that the partners are not exposed to potential liabilities or claims brought by stakeholders for carrying out their responsibilities under the HK Legal Requirement. The right of recourse or any cause of action shall therefore be limited to a partner or partners suing in the name of the partnership, and not any third party stakeholders outside the partnership.

2.8 Section 4(1) of the TP Ordinance provides an exception to the common law principle of privity of contract in that a third party may enforce a contract term (including a term that excludes or limits liability) if (a) the contract expressly provides that the third party may do so; or (b) the term purports to confer a benefit on the third party. Paragraph 4 of the HK Legal Requirement expressly contracts out of the TP Ordinance, in which case privity of contract applies, and only partners, being parties to the agreement, may sue for any failure to adhere to the objects of the partnership.



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3 How to meet the HK Legal Requirement?

A partnership or limited partnership would need to include the suggested language in its partnership agreement or deed of partnership, and if a partnership or limited partnership does not have a written governing document, it is required to adopt one in order to include the suggested language for B Corp Certification.

4 What is the timeline for meeting the new HK Legal Requirement?

Any existing B Corps in the form of Hong Kong partnerships will have 2 years from January 1, 2021 to make amendments to their partnership agreement or deed of partnership to meet the HK Legal Requirement, while prospective B Corps with 10 employees or more in the form of Hong Kong partnerships will have 90 days from the date of receiving B Corp Certification. Prospective B Corps with less than 10 employees in the form of Hong Kong partnerships are expected to meet the HK Legal Requirement prior to certification.

December 3, 2020