

Part 1 | Guidance for Non-Profit Organizations: Setting up as an Unincorporated Association and the Potential Contractual Liability

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1. Introduction

Non-profit organisations (the “NGOs”) in Hong Kong play a crucial role in advancing public-interest initiatives, ranging from community welfare and cultural preservation to sports and religious activities. For many founders, choosing the right legal structure is their first step toward formalising operations while aligning with long-term goals.

One of the widely adopted options is the unincorporated association (the “UA”) — a voluntary group of individuals bound together by a shared purpose and a set of governing rules, usually set out in a Constitution.

This structure draws strong support from the constitutional protections in Article 27 of the Basic Law, which guarantees Hong Kong residents the freedom of association, assembly, procession and demonstration, as well as the right to form and join trade unions for public-interest purposes. These rights provide a solid foundation for NGOs seeking to operate without complicated regulatory hurdles, provided they comply with the applicable legal framework.

In light of the growing number of community groups exploring this option, this article will be published in two parts to offer a comprehensive guide on UAs for the NGOs.

Part 1 examines the background, formation requirements under the *Societies Ordinance (Cap. 151)* (the “SO”) and the key rules governing contractual capacity and liability.

1.1 Background

An UA is a voluntary grouping of people who are bound together by a common set of rules and identified by a distinctive name. Unlike commercial entities, it is not formed for the purpose of generating profit.

The SO was first enacted in 1949 to introduce a registration system for societies and to prohibit those that might threaten public order. The legislation was later amended. In 1997, “national security” was added as a new ground on which the Societies Officer may refuse registration after consulting the Secretary for Security. These updates reflect the balance between freedom of association and the need to maintain public safety and order.

1.2 Regulatory Framework and Formation Requirements

The SO remains the primary legislation governing UAs in Hong Kong. Under section 5 of the SO, any local society must apply to the Societies Officer for registration or exemption from registration within one month of its establishment. The application, signed by at least three office-bearers, must include the details of (a) society’s name, (b) objects, (c) the particulars of its office-bearers, and (d) the address of its principal place of business together with any other premises it occupies.



Section 5A allows the Societies Officer to grant an exemption from registration if the society is established solely for religious, charitable, social or recreational purposes or as a rural committee or federation of rural committees. Successful exemption results in the issuance of a certificate of exemption.

As of July 2026, official figures from the Societies Office show that there are 35,080 UAs operating in Hong Kong. The majority belong to categories such as cultural and arts groups, sports clubs and religious organisations. This large number demonstrates the enduring popularity of the UA model among community-focused and non-profit entities.

2. Contractual Capacity and Liability

2.1 Absence of Separate Legal Entity

The most important legal characteristic of an UA is that it has no separate legal personality. Unlike a company registered under the *Companies Ordinance (Cap. 622)*, a UA is not a separate legal “person”.

In *A Consortium Comprising TPL and ICB v AE Ltd [2021] 4 HKLRD 116*, the court emphasised that an UA “*is not a legal entity which can sue or be sued in its name ... [and] in the eyes of the law ... is the sum total of its members.*”

As a result, a UA cannot, in its own name, enter into binding contracts, sue or be sued. All contractual rights and obligations must instead be determined by applying the ordinary principles of agency and contract law to the individuals involved.

2.2 Contracts Entered Through Agents

Although the UA itself cannot enter into contract, its members can still be held liable in contracts entered through their agents. Members are normally jointly liable for contracts entered into on behalf of the UAs.

As the court explained in *Bowardley Enterprises Ltd v Millennium Group Ltd [2005] HKDC 97*, members may be liable if:

- (i) the contract followed the rules in the UAs, or
- (ii) if the members approved it (before or after), or
- (iii) if the members let others believe the signer had authority.

If the person making the contract had no authority, they may be held to have contracted personally; On the other hand, if they had authority, the contract can be enforced by or against the relevant members under the ordinary agency rules. (*Unique Realty Ltd and Another v Hong Kong Real Estate Agencies General Association Ltd and Others [2024] HKCFI 418*)

2.3 Ways to Resolve the Contractual Disputes

Hong Kong law provides practical procedural solutions to handle court cases involving UAs. The proper course is often to sue a responsible official (such as the treasurer or secretary) on



behalf of the UA, or to use representative proceedings where members share the same interest (*TND Group Ltd v Lau Chiang Chu, Vivien and Another* [2010] 5 HKLRD 330).

In *Bowardley Enterprises Ltd*, the court allowed a representative action brought on behalf of all members of the Hong Kong Badminton Association in a sponsorship dispute. Any person claiming to represent the other persons who have the same interest may initiate proceedings as representative plaintiffs. Neither leave of the court nor a representation order is required at any stage. It is important to note that the representative plaintiffs can be self-selected, and the consent of the represented parties is not required.

3. Practical Steps to Mitigate the Contractual Risks

To manage this risk, the UAs should handle all contractual matters with great care. This can significantly reduce the chance that members will face unexpected personal liability.

First, the Constitution of the UAs should clearly stipulate which office-bearers are authorised to execute the contracts and the monetary limits of such authority. Any contract exceeding the prescribed threshold shall require proper approval according to the Constitution. It is suggested that all committee decisions relating to contractual matters should be accurately recorded in the minutes.

Second, when negotiating contracts, the UA should request clear wording stating that the named individuals are signing “*on behalf of the UA and its members*”.

Finally, it is strongly recommended that prior legal advice should be sought before any agreement is signed.

4. Conclusion

UAs provide NGOs with a low-cost and flexible way to pursue their objectives while enjoying the constitutional freedom of association.

Nevertheless, the absence of separate legal personality means that contractual arrangements require careful handling. Understanding the principles of agency and adopting practical risk-mitigation steps can help office-bearers and members protect themselves.

In Part 2, we will examine the tortious liability, the applicability of the rule in *Foss v Harbottle* [1843] 67 ER 189, the rules governing property held on behalf of UAs, and a detailed discussion of the advantages and disadvantages of this structure. Stay tuned for the next part of the article.




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