

**Frequently Asked Questions (FAQ) –
Transition from a Company Limited by Guarantee to an Association**

1. Why is the Kowloon Junior School Parent Teacher Association Limited a Limited Company?

Prior to 2008, all ESF PTAs operated as Associations. Associations and Societies are regulated by the Hong Kong Police Licensing Section, in accordance with the Societies Ordinance (Cap. 151).

At that time, KJS PTA (along with the majority of ESF PTAs) was responsible for trading operations associated with the provision of student services (e.g. buying and selling of school uniforms and stationery).

In the lead-up to the introduction of The ESF (General) Regulations (Cap. 117A), it was recommended that all the ESF PTAs transition to limited liability companies as a means of managing the risk associated with the operation of what were essentially, small businesses. Limited Companies are regulated in Hong Kong under the Companies Ordinance (Cap. 622).

The transition to the Limited Company limited the liability of all parent and teacher members. However, it also placed significant responsibility and potential liability with the volunteer PTA Committee members who acted as Directors of the Limited Company.

It is fair to say that prior to the transition, the majority of PTA volunteers had little, if any, working knowledge of what would be required of them as Directors of a Limited Company in Hong Kong.

2. What has changed?

Since 2008, the regulatory landscape in Hong Kong and elsewhere has undergone significant change. Reporting and compliance requirements for Limited Companies have increased in response to world-wide concerns around money laundering, preservation of international sanctions and the like. In Hong Kong, as elsewhere, every Limited Company, even a small-scale, non-profit parent teacher association, is subject to the same regulatory and reporting requirements and obligations as a major international commercial enterprise.

Volunteer and paid staff time, energy and resources are necessarily devoted to ensuring that the PTA Limited Company vehicle is operating within the regulatory guidelines. Penalties for failing to meet these requirements (e.g. failing to file documents on time) can be severe and fall on the volunteer Directors, if levied. As a result, many volunteers find themselves unable or unwilling to assume the responsibilities of being a Director of a Limited Company.

Across ESF, PTAs report increasing difficulty in attracting volunteer Committee members, and office holders in particular, (e.g. Chair, Vice Chair, Honorary Treasurer). PTA Committees are, by their nature, transient, with members coming and going every few years. When potential volunteers encounter barriers to participation, the capacity of the PTA to continually renew itself and provide support to the school and benefit all our students is diminished.

In addition to the above, in 2016 the Education Bureau issued updated guidelines regarding trading operations in schools. These effectively prevent PTAs from running commercial operations (e.g. bus services, sales of uniform and stationery). KJS PTA has been working towards full compliance with these guidelines, having moved out of the provision of student services in recent years. With the closure of the 'small businesses', the attached risk to parent and teacher members has, effectively, gone away.

Further protection for the members of the Parent Teacher Associations is also offered under Hong Kong law via The English Schools Foundation Ordinance (CAP1117), which was enacted to establish the ESF, and 'provide for its incorporation, constitution, functions and matters connected therewith.' Section 22 of the ESF Ordinance "Immunity from civil liability" states that:

"A person who is an officer or member of ... a Parent Teacher Association... is not liable to civil proceedings for anything done or omitted to be done by him in good faith in the performance of purported performance of his duties as such officer or member."

All parents automatically become members of the PTA once they enrol their child (or children) in Kowloon Junior School and so this immunity from civil liability extends beyond the members of the PTA Committee, to every parent of a child in the school.

Given this landscape, it is now time for KJS School PTA to progress from the Limited Company structure to a vehicle that is more 'fit for purpose'. This is the background to the PTA Committee members recommending that KJS PTA move towards becoming an Association.

3. Are any other ESF PTAs changing to an Association?

Yes. Three other ESF PTAs are nearing the end of the transition process. The majority of other ESF PTAs already resolved to pursue this transition through a members vote at their AGM last school year, while others held an EGM to begin the process. Currently, 15 out of 17 ESF PTAs will be actively embarking on the transition over the course of the next school year.

4. What are the advantages for KJS PTA of changing from a Limited Company to an Association? What are the benefits after the change?

Time, energy and financial resources are currently channelled towards meeting the reporting and compliance requirements associated with maintaining the Limited Company structure, with no discernible benefit to parent and teacher members. Once Kowloon Junior School PTA is operating as an Association, these resources (both human and financial) can be re-directed towards initiatives designed to support our school community and benefit all our students.

An additional benefit will be increased transparency for interested parent and teacher members. The operations of the limited company are governed by the Memorandum & Articles of Association, a 24-page, densely worded legal document. The operations of the Association will be governed by the Constitution, a 7-page legal document, written in comparatively 'plain English' that is more accessible for the majority of our members.

5. In what ways does the proposed change benefit the students, as well as the parents?

Kowloon Junior students benefit from a strong sense of school community, supported by parents and teachers. Following transition to an Association, KJS's volunteer PTA Committee members can focus on what's important – building community and supporting the education and development of our students, rather than devoting time and resources to managing and maintaining the Limited Company structure.

With barriers to participation reduced, it is hoped that the PTA Committee will continue to be refreshed and renewed with new volunteers every year, while retaining the knowledge and experience of those members who choose to make a consistent volunteer contribution throughout their children's school career.

6. What are the next steps after the AGM and how long will it take?

Following the AGM, the draft Constitution will be submitted to the Inland Revenue (IRD) to seek approval for non-profit status for the Association. The IRD processing time will be a minimum of six to eight months, based on the experience of the other ESF PTAs who have already embarked on the process. At the same time, we will also embark on the process of deregistering the Limited Company, and this process will take a minimum of ten to 12 months. Members are advised that all government department processing times have been impacted by the various waves of COVID, so precise timelines are difficult to predict. The Kowloon Junior School PTA Committee will keep parent and teacher members informed regarding the progress of, and timeframe for, the transition.

Should the Kowloon Junior School PTA not move towards becoming an Association for any reason, the PTA would be obliged to amend its Memorandum and Articles of Association to ensure compliance with changes to the Companies Ordinance. This would be a lengthy and potentially costly process taking about 15-18 months from start to finish.

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7. Will the purpose of the KJS PTA and the Committee members be different after the transition to Association?

The Objects of the Limited Company (according to its Memorandum & Articles of Association) and the Association (according to the draft Constitution) are very similar and reflect the ESF Ordinance (Cap. 1117) which states that:

It shall be the function of the Parent Teacher Association of a school to promote co-operation between the parents of students of the school and members of the teaching staff of the school.

Kowloon Junior School's PTA is an important source of support for the school community and the PTA Committee provides a structure for harnessing the goodwill, energy and commitment of parents and teachers into activities and initiatives that benefit our students.

The composition of any PTA includes both parent and teacher members and that will continue when operating as an Association. The PTA exists to serve the school community and this will be the case regardless of whether the PTA operates as a Limited Company or as an Association.

A limited company does exist as a separate legal entity (sometimes referred to as a 'legal person'), which is relevant if entering into contractual arrangements, such as those necessary to conduct trading operations (e.g. uniform supply contracts etc.). The Association will not have this status. Following the transition, the Association may continue to maintain its own bank account/s and be responsible for its own finances, as it is now.

9. What procedures will be in place to ensure accountability?

Business Dictionary defines accountability as:

The obligation of an individual or organisation to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner. It also includes the responsibility for money or other entrusted property.

Under the proposed Constitution for the Association, there is an obligation on the PTA Committee to:

- maintain a proper account of all receipts and disbursements
- prepare a balance sheet for every financial year and make this available for members to review

In addition to this, the Constitution provides for an Annual General Meeting to take place each academic year, with appropriate notice given to all parent and teacher members. The purpose of this meeting shall include reporting on the financial position of the Association.

Currently, the Directors of the Limited Company are required to prepare, for each financial year, financial statements that comply with the relevant sections of the Companies Ordinance. This means engaging the services of a firm of Chartered Public Accountants for a fee. A full set of Directors' Report & Accounts is required to be lodged with the Companies Registry annually.

Apart from the financial reporting referred to earlier, there are no specific audit procedures mandated for Associations under the Societies Ordinance. This will allow the parent and teacher members of the KJS PTA to determine and agree on an appropriate level of financial scrutiny for the parent teacher association, based on a 'fit for purpose' reporting model.

In addition to the option of continuing to retain an external auditor, ESF Internal Audit has already agreed to work with PTAs who have transitioned to an Association, to provide external scrutiny and reporting and ensure that fair and proper financial and operational controls are being exercised. A further alternative arrangement may be to find an appropriately qualified external person who would be prepared to undertake a review of the balance sheet and accounts and compile a report for distribution to members (an 'honorary auditor').

The current PTA Committee will continue to ensure that existing financial reporting and audit procedures will be upheld to ensure that Kowloon Junior School PTA Limited meets all relevant regulatory requirements. Transition to an Association will be managed with a view to maintaining the transparency and integrity of the PTA accounts, for the benefit of members.

Regardless of whether KJS PTA operates as a Limited Company or an Association, it is and will continue to be the responsibility of the members of the PTA Committee to ensure that they account for the activities of the PTA, accept responsibility for those activities and transparently disclose the results to members.

10. Who is eligible to vote at the AGM?

All parent members of the Kowloon Junior School PTA Limited are eligible to vote at the general meeting, provided that each family shall have only one vote. This means that if both parents are in attendance, only one parent's vote can be counted. Parent members are eligible to vote, regardless of whether their family has paid their PTA Subscription fees for the academic year. Teacher members may not vote to elect parent representatives but are eligible to vote on all other matters at the AGM.