

File Ref. : CO/2/2C(2018)

LEGISLATIVE COUNCIL BRIEF

COMPANIES ORDINANCE (CHAPTER 622)

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation

Companies Ordinance (Amendment of Schedule 7) Notice 2019

**Companies (Amendment) (No. 2) Ordinance 2018
(Commencement) Notice**

INTRODUCTION

Following the implementation of the Companies (Amendment) (No. 2) Ordinance 2018 (“Amendment Ordinance”), the Financial Secretary (“FS”) and the Secretary for Financial Services and the Treasury (“SFST”) have made the following pieces of subsidiary legislation, namely –

- (a) the **Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation** (“the Regulation”) (Annex A) to provide for disclosure requirements on non-Hong Kong companies;
- (b) the **Companies Ordinance (Amendment of Schedule 7) Notice 2019** (“the Schedule 7 Notice”) (Annex B) to add certain offences under the Regulation to Schedule 7 of the Companies Ordinance (“CO”); and
- (c) the **Companies (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice** (“the Commencement Notice”) (Annex C) to appoint 1 August 2019 as the commencement date for the remaining provisions of the Amendment Ordinance¹.

¹ These refer to sections 79 and 89 of the Amendment Ordinance which have yet to commence operation as explained in paragraphs 6-8.

JUSTIFICATIONS

2. The Amendment Ordinance was enacted by the Legislative Council (“LegCo”) on 28 November 2018 and came into effect on 1 February 2019. One of the objectives of the Amendment Ordinance is to align the obligations of non-Hong Kong companies with those of Hong Kong companies in the display of company names and disclosure of liability status. In this regard, the Amendment Ordinance has added new sections 805A and 805B to the CO to empower FS to make regulations to require non-Hong Kong companies to disclose prescribed information and to set out the criminal consequences of failure to make such disclosures.

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members’ Limited Liability) Regulation

3. At present, the obligations for a Hong Kong company to display its company name and to disclose the company’s status of limited liability are set out in the Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) (“Cap. 622B”). Modeling on Cap. 622B, the Regulation provides for, in relation to a non-Hong Kong company, the requirements on the display of company name and place of incorporation, and the disclosure of members’ limited liability. The Regulation also re-enacts the existing provisions in section 792 of the CO concerning compliance of such requirements when a non-Hong Kong company is in liquidation. In line with the objective of aligning the obligations of non-Hong Kong companies with those of Hong Kong companies, the Regulation is drafted in a way similar to Cap. 622B.

Companies Ordinance (Amendment of Schedule 7) Notice 2019

4. Section 8 of the Regulation stipulates the offences for contravening the provisions therein. Certain offences under section 8 are to be included in Schedule 7 of the CO which specifies offences in respect of which no proceedings will be instituted under certain conditions, similar to the treatment of certain offences in existing section 792 of the CO and Cap. 622B. Pursuant to section 899 of the CO, the Registrar of Companies may give notice to a person who is believed to be in breach of such offences in Schedule 7, offering the person an opportunity to rectify the default by remedying the breach constituting the offence within a specified period and paying a specified amount to the Registrar as a compounding fee. If the person accepts the offer and complies with the terms of the notice, no prosecution action will be

initiated for that offence.

5. Pursuant to section 911(1) of the CO, FS is empowered to amend Schedule 7 by notice published in the Gazette.

Companies (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice

6. While the Amendment Ordinance came into effect on 1 February 2019, sections 79 and 89 of the Amendment Ordinance were specifically carved out for separate commencement on a date to be appointed by SFST.

7. Section 79 of the Amendment Ordinance is to repeal section 792 of the CO which requires a non-Hong Kong company to state its company name, place of incorporation, and that the liability of its members is limited if applicable. Section 89 of the Amendment Ordinance is to amend Schedule 7 of the CO by repealing its item 7 in relation to the offences under section 792 of the CO. As the requirements under section 792 of the CO have been re-enacted in the Regulation, section 792 of the CO, as well as its corresponding offences, i.e. item 7 in Schedule 7 of the CO, can be repealed.

8. It is proposed that 1 August 2019 be appointed, by way of the Commencement Notice, as the commencement date of sections 79 and 89 of the Amendment Ordinance. The Regulation and the Schedule 7 Notice will be commenced in tandem on the same date.

THE SUBSIDIARY LEGISLATION

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation

9. The Regulation comprises eight sections –
- (a) Sections 1 and 2 provide for the commencement of the Regulation and interpretation of the terms used;
 - (b) Section 3 specifies that the name and place of incorporation of a non-Hong Kong company must be displayed continuously in legible characters at every business venue

of the company in Hong Kong such that they can be easily seen by any visitor to the venue, subject to the prescribed exceptions;

- (c) Section 4 stipulates the requirements for a non-Hong Kong company to state its name and place of incorporation in every communication document and transaction instrument in Hong Kong;
- (d) Section 5 stipulates the requirements for a non-Hong Kong company to disclose, where applicable, its members' limited liability at every business venue and in every communication document and transaction instrument of the company in Hong Kong;
- (e) Section 6 stipulates the requirements for a non-Hong Kong company in liquidation to state its name, place of incorporation and members' limited liability in every advertisement of the company in Hong Kong, and to add "(in liquidation)" or "(正進行清盤)" (as the case may be) after its name when displaying or stating its name pursuant to the provisions of the Regulation;
- (f) Section 7 allows the use of certain abbreviations in the display of a non-Hong Kong company's name; and
- (g) Section 8 creates offences in respect of the non-compliance of the requirements under the Regulation.

Companies Ordinance (Amendment of Schedule 7) Notice 2019

10. Schedule 7 of the CO specifies the offences in respect of which no proceedings will be instituted under certain conditions. This Notice adds certain offences under section 8 of the Regulation to that Schedule.

Companies (Amendment) (No. 2) Ordinance 2018 (Commencement) Notice

11. The Commencement Notice specifies 1 August 2019 as the date on which sections 79 and 89 of the Amendment Ordinance will commence operation.

LEGISLATIVE TIMETABLE

12. The Regulation, the Schedule 7 Notice and the Commencement Notice will be published in the Gazette on 15 March 2019 and tabled before LegCo at the sitting of 20 March 2019. Subject to negative vetting by LegCo, the Regulation, the Schedule 7 Notice and sections 79 and 89 of the Amendment Ordinance will come into operation on 1 August 2019.

IMPLICATIONS OF THE PROPOSAL

13. The Regulation, the Schedule 7 Notice and the Commencement Notice will align the obligations of non-Hong Kong companies with those of Hong Kong companies in the display of company names and disclosure of liability status. This would improve the clarity and operation of the CO, thereby reinforcing Hong Kong's position as an international commercial and business centre.

14. The three pieces of subsidiary legislation are in conformity with the Basic Law, including the provisions concerning human rights. They will not affect the binding effect of the CO.

PUBLIC CONSULTATION

15. During the Bills Committee's scrutiny of the Amendment Ordinance, Members did not raise any issues regarding the proposal to empower FS to make regulations for non-Hong Kong companies relating to the disclosure of prescribed information, with a view to aligning the requirements for non-Hong Kong companies with those for Hong Kong companies. Relevant stakeholders, including professional bodies and chambers of commerce, as well as the Standing Committee on Company Law Reform, were also supportive of the proposals when we consulted them on the legislative amendments in the Amendment Ordinance.

PUBLICITY

16. A press release will be issued on the gazettal of the three pieces of subsidiary legislation. A spokesperson will be available for answering media enquiries.

ENQUIRIES

17. Enquiries should be directed to Mr TE Chi-wang, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 6 at 2528 6384.

Financial Services and the Treasury Bureau
Financial Services Branch
13 March 2019

Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation

(Made by the Financial Secretary under sections 805A and 805B of the Companies Ordinance (Cap. 622))

1. Commencement

This Regulation comes into operation on the day on which section 79 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018) comes into operation.

2. Interpretation

(1) In this Regulation—

approved name (經批准名稱) has the meaning given by section 774(1) of the Ordinance;

business venue (業務場所), in relation to a non-Hong Kong company, means—

- (a) an office or a place in Hong Kong where the company carries on its business and that is open to the public; or
- (b) the principal place of business of the company in Hong Kong;

communication document (通訊文件), in relation to a non-Hong Kong company, means a business letter, notice or other official publication of the company;

corporate name (法團名稱) has the meaning given by section 774(1) of the Ordinance;

transaction instrument (交易文書), in relation to a non-Hong Kong company, means—

- (a) a contract or deed purporting to be signed by or on behalf of the company;
- (b) a bill of exchange, promissory note or endorsement purporting to be signed by or on behalf of the company;
- (c) a cheque or order for money or goods purporting to be signed by or on behalf of the company; or
- (d) a consignment note, invoice, receipt or letter of credit of the company.

(2) In this Regulation, a reference to a non-Hong Kong company's name is, in the case of a registered non-Hong Kong company—

- (a) subject to paragraph (b), a reference to the company's corporate name in characters of the Latin alphabet or in Chinese; or
- (b) if there is an approved name, in relation to that corporate name, shown in the Companies Register, a reference to the approved name.

(3) In this Regulation, a reference to a communication document or transaction instrument is a reference to it in hard copy form, electronic form or any other form.

3. Display of name and place of incorporation at business venue

- (1) A non-Hong Kong company must display continuously its name and its place of incorporation in legible characters at every business venue of the company.
- (2) The name and the place of incorporation must be so positioned that they may be easily seen by any visitor to the business venue.
- (3) If a location is a business venue of more than 6 non-Hong Kong companies, and any of the companies, in purported

compliance with subsection (1), displays both its name and its place of incorporation through an electronic device, the name and the place of incorporation are taken to be displayed continuously for the purposes of that subsection if the condition under subsection (4) is met.

- (4) The condition is that—
- (a) the name and the place of incorporation are displayed for at least 15 continuous seconds at least once in every 4 minutes; or
 - (b) the name and the place of incorporation are capable of being displayed within 4 minutes after a request for the display is made through the electronic device.
- (5) If—
- (a) a liquidator, receiver or manager of the property of a non-Hong Kong company has been appointed; and
 - (b) any business venue of the company is also a place where the business of the liquidator, receiver or manager is carried on,
- subsections (1) and (2) do not apply to that business venue.

4. Name and place of incorporation to appear in communication documents etc.

A non-Hong Kong company must state in legible characters its name and its place of incorporation in every communication document and transaction instrument of the company in Hong Kong.

5. Duty to disclose members' limited liability

If the liability of the members of a non-Hong Kong company is limited, the company must—

- (a) conspicuously exhibit a notice of that fact at every business venue of the company; and
- (b) state in legible characters that fact in every communication document and transaction instrument of the company in Hong Kong.

6. Duty to disclose certain matters while in liquidation

- (1) This section applies to a non-Hong Kong company in liquidation.
- (2) The non-Hong Kong company must, in every advertisement of the company in Hong Kong—
 - (a) state in legible characters its name and its place of incorporation; and
 - (b) where applicable, state in legible characters that the liability of its members is limited.
- (3) The non-Hong Kong company must comply with subsection (4)—
 - (a) when displaying its name under section 3; and
 - (b) when stating its name under subsection (2) or section 4.
- (4) The non-Hong Kong company must—
 - (a) if its name is in a language other than Chinese—add “(in liquidation)” after the name;
 - (b) if its name is in Chinese—add “(正進行清盤)” after the name; or
 - (c) if its name is in Chinese and in a language other than Chinese—
 - (i) add “(正進行清盤)” after the name in Chinese; and
 - (ii) add “(in liquidation)” after the name in that other language.

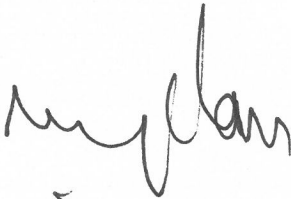
7. Adequacy of certain descriptions of non-Hong Kong companies

The description of a non-Hong Kong company is not inadequate or incorrect only because of—

- (a) the use of—
 - (i) the abbreviation “Co.” or “Coy.” in lieu of the word “Company” contained in the name of the company;
 - (ii) the abbreviation “Ltd.” in lieu of the word “Limited” contained in the name of the company;
 - (iii) the abbreviation “HK” or “H.K.” in lieu of the words “Hong Kong” contained in the name of the company;
 - (iv) the symbol “&” in lieu of the word “and” contained in the name of the company;
 - (v) any of those words in lieu of the corresponding abbreviation or symbol contained in the name of the company; or
 - (vi) any type or case of letters, spaces between letters, accents or punctuation marks that are not the same as those appearing in the name of the company; or
- (b) the use or omission of “The” or “the” as the first word in the description.

8. Offences

If a non-Hong Kong company contravenes section 3(1) or (2), 4, 5 or 6(2) or (3), the company, every responsible person of the company, and every agent of the company who authorizes or permits the contravention, commit an offence, and each is liable to a fine at level 3.



Financial Secretary

15.3.2019

Explanatory Note

This Regulation provides for, in relation to a non-Hong Kong company, the requirements regarding—

- (a) the display of its name and place of incorporation;
- (b) the disclosure of the limited liability of its members; and
- (c) the disclosure of certain matters while it is in liquidation.

2. The Regulation also stipulates the offences for contravening the provisions relating to the matters mentioned in paragraph 1.

**Companies Ordinance (Amendment of Schedule 7)
Notice 2019**

(Made by the Financial Secretary under section 911(1) of the Companies Ordinance (Cap. 622))

1. Commencement

This Notice comes into operation on the day on which section 79 of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018) comes into operation.

2. Companies Ordinance amended


The Companies Ordinance (Cap. 622) is amended as set out in section 3.

3. Schedule 7 amended (offences in respect of which proceedings not instituted under certain conditions)

Schedule 7, after item 8—

Add

- “9. An offence under section 8 of the Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members’ Limited Liability) Regulation (in so far as it relates to the contravention of section 3(1) or (2), 4 or 5 of that Regulation)”.



Financial Secretary

15.3.2019

Explanatory Note

Schedule 7 to the Companies Ordinance (Cap. 622) specifies the offences in respect of which no proceedings will be instituted under certain conditions. This Notice adds an item to that Schedule.

**Companies (Amendment) (No. 2) Ordinance 2018
(Commencement) Notice**

Under section 1(3) of the Companies (Amendment) (No. 2) Ordinance 2018 (35 of 2018), I appoint 1 August 2019 as the day on which sections 79 and 89 of the Ordinance come into operation.



Secretary for Financial Services and
the Treasury

15 . 3 . 2019