

## Non-Hong Kong Companies / HK Listed Companies - Requirement to Disclose Prescribed Information in Contracts and Other Documents by 1 August 2019

July 2019

### Summary

From 1 August 2019, all companies incorporated outside Hong Kong that are registered under Part 16 of the Hong Kong Companies Ordinance (**non-Hong Kong companies**) (including therefore all Hong Kong listed companies incorporated outside Hong Kong) must comply with the [Non-Hong Kong Companies \(Disclosure of Company Name, Place of Incorporation and Members' Limited Liability\) Regulation](#) (the **Regulation**).

From that date, a non-Hong Kong company must state its (i) name; (ii) place of incorporation; and (iii) where its members have limited liability, a statement of that fact (together, the **Prescribed Information**) in every “communication document” and “transaction instrument” of the company in Hong Kong. It must also display such information at every “business venue”.

The inclusion of “transaction instrument” broadens the existing requirements, in particular as it encompasses the non-Hong Kong company’s contracts, receipts and cheques (amongst other documents). The Regulation is not intended to catch documentation issued by the overseas head office of the non-Hong Kong company - the focus is on the Hong Kong place of business.

Non-Hong Kong companies should take action in advance of 1 August 2019 to identify documents that fall within scope of the Regulation (see table below) and ensure the Prescribed Information is included in such documents to the extent they are issued by the company from 1 August 2019 for use in Hong Kong. This should include updating template documentation. See the “Action Points” section below for further detail. We are hopeful the Companies Registry will issue further guidance to clarify some areas of uncertainty.

### A snapshot of the key requirements

Requirement	Now	From 1 Aug 2019	Key Change
Display of Prescribed Information at certain physical locations	Conspicuously exhibit at every place where it carries on business in HK	<p>Easily seen by any visitor at every “business venue” of the company. “Business venue” means:</p> <ul style="list-style-type: none"> <li>place in HK where it carries on business and is open to the public</li> <li>principal place of business in HK</li> </ul>	Potentially <u>narrower</u> scope of location under the new position - a place in HK where the company carries on business need not display the information if it is not open to the public (unless that venue is the principal place of business)

Requirement	Now	From 1 Aug 2019	Key Change
Disclosure of Prescribed Information in certain documents	State in legible characters in every bill-head, letter paper, notice and other official publication of the company in HK	<p>State in legible characters in every “communication document” and “transaction instrument” (in hard copy, electronic or other form) of the company in HK.</p> <p>“<u>Communication document</u>” means:</p> <ul style="list-style-type: none"> <li>i. business letter;</li> <li>ii. notice; and</li> <li>iii. other official publication.</li> </ul> <p>“<u>Transaction instrument</u>” means:</p> <ul style="list-style-type: none"> <li>iv. Contract or deed purporting to be signed by or on behalf of the company</li> <li>v. Bill of exchange, promissory note or endorsement purporting to be signed by or on behalf of the company</li> <li>vi. Cheque or order for money or goods purporting to be signed by or on behalf of the company</li> <li>vii. Consignment note, invoice, receipt or letter of credit</li> </ul>	Wider scope of documents under the new position (e.g. will encompass <u>contracts</u> , <u>deeds</u> , <u>cheques</u> and receipts of the company in HK).
Disclosure of additional information if in liquidation	No change		

### Analysis and areas of uncertainty

The existing requirements relating to the display and disclosure of the Prescribed Information by non-Hong Kong companies are set out in section 792 of the Companies Ordinance. From 1 August 2019, section 792 will be repealed and the Regulation will apply. As a reminder, all overseas

companies that establish “a place of business” in Hong Kong are required to register as non-Hong Kong companies.

All Hong Kong listed companies incorporated overseas would have been registered as non-Hong Kong companies pursuant to the Rules Governing

the Listing of Securities of The Stock Exchange of Hong Kong Limited.

The more onerous change for most non-Hong Kong companies will likely be the requirement to include the Prescribed Information in the company's "transaction instruments" in Hong Kong. The scope of "transaction instruments" broadens the existing requirements, in particular as it captures contracts. It is unclear how this requirement will apply to cheques as its format is not something that non-Hong Kong companies can necessarily dictate.

The definition of "communication documents" (business letter, notice and other official publication) is derived from existing requirements, so action may not be required in relation to this category of documents.

The requirements apply to the relevant documents "of the company in Hong Kong" - this should mean documents that will be used by the Hong Kong place of business. It is not intended to catch documentation issued by the overseas head office.

If the liability of the members of a non-Hong Kong company is limited, that fact must be stated in the relevant documents and displayed at every business venue. It is unclear whether a statement "incorporated with limited liability" would satisfy this requirement or whether it must refer to the liability of *members* being limited.

It should be noted that *Hong Kong incorporated* limited companies (except for a narrow sub-set such as charitable associations) do not have to

specifically disclose their limited liability - such companies merely have to disclose their registered name (which name must, under the Companies Ordinance, end with the word "Limited"). It remains to be seen whether the Companies Registry will issue an FAQ to clarify whether non-Hong Kong companies can benefit from a similar exemption.

It is an offence to contravene the requirements relating to the display and disclosure of the Prescribed Information (with the company, its responsible persons or agents potentially liable to a fine at level 3). The Companies Registrar may however choose to give notice to a person believed to be in breach of the provisions, offering the person an opportunity to remedy the breach within a specified period and pay a specified amount.

### Action points

In advance of 1 August 2019, non-Hong Kong companies should update:

- relevant template documents<sup>1</sup> ; and
- procedures to ensure compliance when signing or issuing any contract or other relevant documents from 1 August 2019.

As mentioned above, there are areas of uncertainty where you may wish to seek further guidance from the Companies Registry before implementing changes. We are happy to help, and are hopeful that the Companies Registry will issue further FAQs to assist non-Hong Kong companies to comply with the new requirements.

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1. It is unclear how best to update already-issued chequebooks. Possible actions include preparing a chop with the required information and stamping it on the back of each cheque and/or requesting the issuing bank to issue an updated chequebook that complies with the Regulation.



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