

New Companies Ordinance
Briefing Notes on
Companies (Disclosure of Company Name and Liability Status) Regulation

BACKGROUND

Section 93 of the old Companies Ordinance (Cap. 32) (“the old Ordinance”) requires a company to paint or affix its name in legible characters in a conspicuous position outside every office or place in which its business is carried on. This section further provides that a company shall state its name in its communication documents and transaction instruments. Permitted abbreviations of terms such as “HK”, “Co.” and “Ltd.” that may be used in the display of the company’s registered name are set out in section 94 of the old Ordinance.

2. Under the new Companies Ordinance (“the new CO”), section 659 provides for the making of subsidiary legislation to prescribe the requirements for the display and disclosure of registered names by companies and for the disclosure of their liability status, and other matters previously set out in sections 93 and 94 of the old Ordinance. Section 660 further provides that the subsidiary legislation may also provide for the criminal consequences of contravention of such requirements.

THE SUBSIDIARY LEGISLATION

Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) (“the Regulation”)

Major Changes

3. The Regulation sets out the requirements for disclosure of company name and liability status to provide protection for persons dealing with a company. While re-enacting the majority of requirements set out in sections 93

and 94 of the old Ordinance, the Regulation introduces the following changes with the aim to facilitate business and lower compliance costs –

- (a) the requirement for a company to paint or affix its name on the outside of every office or place in which the company's business is carried on in a conspicuous position in legible characters has been relaxed. Under the Regulation, a company would have complied with the disclosure requirements if the company displays continuously its registered name in legible characters at the registered office and every business venue¹ and the company's name is so positioned that it may be easily seen by any visitor to the premises. The new requirement provides flexibility and allows a company to display its registered name either inside or outside the registered office and business venue;
- (b) a business venue is subject to the requirement in paragraph (a) only if it is open to the public;
- (c) taking into account the usual practices of company service providers and liquidators, the requirement to display the registered name of the company concerned is dispensed with where –
 - (i) the company has had no accounting transactions at any time since its incorporation; or
 - (ii) a liquidator, receiver or manager of the property of the company has been appointed and the registered office or any business venue of the company concerned is also the place of business of the liquidator, receiver or manager; and
- (d) to facilitate electronic display of company names at a location which serves as the registered office or business venue of more than 6 companies (such as in the case of the office of a company service provider), provisions are also added to accommodate the use of electronic devices for the display of company names at such a location².

¹ A business venue refers to an office or a place, other than the company's registered office, which is open to the public and in which the company's business is carried on.

² Specifically, the requirement for display of a company name will be complied with provided that the company's registered name can be displayed in such cases –

4. The obligation to state a company's registered name (and its liability status where applicable) in all communication documents³ and transaction instruments⁴ under the old Ordinance is re-enacted in the Regulation. The Regulation further clarifies that this obligation also applies to any such documents and instruments in electronic form. A company is also required to display its registered name and liability status in legible characters on any website of the company. However, a company does not need to state its registered name and liability status on any of its unofficial publications.

5. The Regulation does not regulate domain names.

6. In addition, under the old Ordinance, both the company and every officer of the company who is in default can be held liable if a company fails to display its name at its premises, whereas only the former can be held liable in the case of its failure to state the company's name on communication documents or transaction instruments or to state the company's liability status. Considering the similar nature and context of these requirements, the Regulation aligns these offences such that the company concerned and every responsible person of the company can be held liable.

The Regulation

7. The Regulation comprises seven sections –

- (a) *Sections 1 and 2* provide for the commencement of the Regulation and interpretation of the terms used;
- (b) *Section 3* specifies that a company's registered name must be displayed continuously in legible characters at its registered office and every business venue of the company such that it may be easily seen by any visitor to the location, subject to the prescribed exceptions;

(a) for at least 15 continuous seconds at least once in every 4 minutes; or

(b) within 4 minutes after a request to make the display is made through an electronic device.

³ Communication documents include business letters, notices and other official publications.

⁴ Transaction instruments include contracts, deeds, bills of exchanges, invoices, receipts, etc.

- (c) *Section 4* provides for the communication documents or transaction instruments of a company on which the company's registered name must appear. A company is also required under this section to state its registered name on its websites;
- (d) *Section 5* stipulates the requirements for a company to disclose its limited liability status or otherwise in the prescribed manner;
- (e) *Section 6* allows the use of certain abbreviations in the display of a company's registered name; and
- (f) *Section 7* creates offences in respect of the non-compliance of requirements under this Regulation.

Companies Registry
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