

Copyright Ordinance (Cap. 528)
**Use of exception under section 40CB by a specified body for import or obtainment
from an authorized entity for persons with a print disability¹**

This checklist is for general reference and self-assessment only and does not constitute legal advice. The Government of the Hong Kong Special Administrative Region does not accept any liability for any loss or damage caused to any person relying on information given or omitted in the checklist.

Title of accessible copy of work ² requested for import or obtainment from an authorized entity in another jurisdiction	
Copyright owner of the work	

1. Eligibility to use the exception under section 40CB

To be eligible to use the exception, as the requestor of an accessible copy of the work, you must be a “specified body”, i.e. you are –

- a Government school;
- a school exempt from tax under section 88 of the Inland Revenue Ordinance (Cap.112);
- a school receiving direct recurrent subvention from the Government; or
- an organization that is not established or conducted for profit, **and** has a main object or a main function that is charitable or otherwise concerned with the advancement of welfare for persons with a print disability.

If none of the above conditions applies, ***you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.***

¹ The Copyright (Amendment) Ordinance 2020 (the Amendment Ordinance), which came into effect of 26 June 2020, has enhanced the copyright exceptions relating to persons with a print disability in the Copyright Ordinance (Cap. 528) to bring them into line with the standards under the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (“Marrakesh Treaty”). For details on how the new exceptions or permitted acts in the Copyright Ordinance allowing the import or obtainment of specially adapted copies (accessible copies) by specified bodies from authorized entities outside Hong Kong are provided, see the [Amendment Ordinance](#) and the [Copyright Ordinance \(Cap. 528\)](#).

² Section 40CB of Cap. 528 covers the whole or part of a literary, dramatic, musical or artistic copyright work (or its audio form, e.g. an audiobook).

2. Import or obtainment of an accessible copy

You import or obtain and possess an accessible copy from an authorized entity outside Hong Kong and make and supply further accessible copy(ies) from it, and the authorized entity is –

- in a jurisdiction that is a member of the World Trade Organization³ or a contracting party to the Marrakesh Treaty⁴; **and**
- not established or conducted for profit **and** has a main object or main function that is charitable, or otherwise concerned with the advancement of welfare for persons with a print disability.

If none or only one of the above conditions applies, *you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.*

3. Persons with a print disability

You import, obtain and possess an accessible copy and make and supply further accessible copy(ies) from it for the personal use by a person with a print disability, i.e. a person who –

- is blind;
- is visually impaired to the extent that his visual function cannot be improved by the use of corrective lenses (such as glasses) to a level that would normally be acceptable for reading without a special level or kind of light;
- is unable, through physical disability, to hold or manipulate a book;
- is unable, through physical disability, to focus or move his eyes to the extent that would normally be acceptable for reading; or
- has a perceptual or reading disability (including dyslexia) which cannot be improved to give him visual function substantially equivalent to that of a person who has no such disability, such that he is unable to read to substantially the same degree as a person who has no such disability.

If none of the above conditions applies, *you are prima facie NOT eligible to use the exception. Please seek independent legal advice on your eligibility.*

³ For information on the World Trade Organization, see <https://www.wto.org/>.

⁴ The Marrakesh Treaty is an international agreement concluded under the auspices of the World Intellectual Property Organization. Its main goal is to facilitate and enhance access to copyright works in accessible forms for persons with a print disability. The Marrakesh Treaty entered into force in China on 5 May 2022, which also applies to the Hong Kong Special Administrative Region.

4. Status of the accessible copy of the work requested

- The accessible copy does *not* record, or the making of such accessible copy would *not* involve recording, a performance of the whole or part of a musical or dramatic work.

5. Obligations on the maker/supplier of further accessible copy(ies) from an accessible copy imported or obtained from another jurisdiction

- At the time of importing, obtaining, making or supplying an accessible copy (or further accessible copies from it), you have made reasonable enquiries and are satisfied that *no copy* of the work in a form that is accessible to persons with a print disability can be obtained at a reasonable commercial price;
- the sum, if any, charged for importing, obtaining, making or supplying the accessible copy (or further accessible copies from it) does not exceed the cost incurred in importing, obtaining, making or supplying that copy;
- after importing or obtaining the accessible copy, make a record of such importing or obtaining as soon as practicable. Such record must include -
 - (i) the date on which the accessible copy is received by you;
 - (ii) the form of the accessible copy;
 - (iii) the title, publisher and edition of the work or, if the title, publisher or edition is not known, a description of the work;
 - (iv) the name of the authorized entity from which the accessible copy is imported or obtained;
 - (v) the name or description of the person or persons to whom the accessible copy is supplied; and
 - (vi) if more than one copy of the accessible copy is supplied, the total number of the accessible copies;
- retain such record for at least 3 years; and
- allow the copyright owner or a person acting for him, on giving reasonable notice, to inspect and make copies of the record at any reasonable time.

**** WARNING ****

If an accessible copy of the work imported, obtained, possessed, made or supplied in full compliance of all the conditions stated in section 40CB of the Copyright Ordinance (Cap. 528) is subsequently dealt with (i.e. sold, let for hire, or offered or exposed for sale or hire), the accessible copy is to be treated as an infringing copy.