

Client Alert

January 2019

For further information, please contact:

Tracy Wut
Partner
+852 2846 1619
tracy.wut@bakermckenzie.com

Liza Murray
Partner
+852 2846 1091
liza.murray@bakermckenzie.com

Wendy Lee
Senior Manager
+852 2846 1063
wendy.lee@bakermckenzie.com

Mesa Ho
Manager
+852 2846 1811
mesa.ho@bakermckenzie.com

Nancy Lee
Manager
+852 2846 1059
nancy.lee@bakermckenzie.com

Jannie Mak
Manager
+852 2846 2345
jannie.mak@bakermckenzie.com

New accounting and other cost-saving requirements under the Companies Ordinance effective soon

The Companies Ordinance (Chapter 622 of the Laws of Hong Kong) (the "CO") has been further amended by the Companies (Amendment) (No. 2) Ordinance 2018 (the "**Amendment Ordinance**"). The new amendments (subject to exceptions) will come into force on 1 February 2019. Major amendments include expanding the scope for simplified reporting, updating the accounting-related provisions to reflect the latest accounting standards, and streamlining and clarifying provisions to facilitate compliance.

Whilst companies should stay abreast of the new law to ensure compliance, they may also consider taking advantage of the new law, as applicable, which could help reduce administrative costs.

Key Changes

Some of the key amendments under the Amendment Ordinance that are more relevant to corporate compliance and services are highlighted below.

Updating relevant accounting-related provisions

The new law will update the definitions of "holding company" and "parent undertaking" to reflect the current accounting standards and adopt control as the basis for determining whether an entity is a "subsidiary" of the "parent undertaking".

Administrative, procedural and technical requirements of local companies and non-Hong Kong companies

Accounts

- The financial year of a company may be shortened or lengthened by a period not exceeding 7 days.
- Clarify the primary accounting reference date for a dormant company that has ceased to be dormant.

Company names

- Clarify that a company with both English and Chinese registered names may display either its English name or Chinese name. Its common seal may also be engraved with either name. However, both names must be stated in the company's articles of association.
- The general registration requirement for an alteration of articles to be exempted if the alteration is in respect of a change of company name only.





Shares

- Provide that if all members in a class agree to a variation of the class rights, the variation will take effect on the date as agreed. Members will not have the right to apply to the court to have the variation disallowed. So there will be no need to delay the effective date to allow time for such application.
- Clarify that in the case of a takeover offer for shares in a class, the requirement for 90% of the number of shares means 90% of the number of shares of the class.
- Clarify in the Model Articles that an ordinary resolution is required only for certain types of alteration of the company's share capital.

Non-Hong Kong companies / Companies incorporated outside Hong Kong

- Section 792 of the CO currently requires a non-Hong Kong company to state its name, place of incorporation and (if applicable) liquidation status at every place where it carries on business in Hong Kong, and in its letterheads and other official publications. The provisions under the Amendment Ordinance for repealing this section are not yet in force, but the Ordinance has empowered the Financial Secretary to make regulations for detailed requirements for non-Hong Kong companies on the display of company names and disclosure of liability status to align the obligations of non-Hong Kong companies with those of local companies.
- Clarify that an authorised representative of a registered non-Hong Kong company must have an address in Hong Kong.
- Clarify that in a court-free procedure for horizontal amalgamation, the holding company can be incorporated outside Hong Kong so long as the merging subsidiaries are incorporated in Hong Kong.

Record-keeping

- Expressly allow a company's articles to be in electronic form.
- The requirement to notify the Registrar of Companies of a change in the place where copies of instruments creating charges are kept to be exempted if the change only relates to a change of the company's registered office address (or the principal place of business in Hong Kong of a registered non-Hong Kong company).
- Clarify that a company must also keep records of resolutions passed by directors without a meeting.
- Clarify the records which may be used as evidence of proceedings that are regarded as having duly taken place at a duly held and convened directors' meeting (and similarly for a general meeting).
- Clarify the requirement to notify the Registrar of Companies of the place where minutes of a directors' meeting, resolutions passed by directors without a meeting and written records of a decision of a sole director are kept.



We can help

Overall, the amendments have introduced, among others, provisions that help clarify or amend current provisions that may have caused administrative difficulties or unnecessarily delayed corporate actions. These clarifications could facilitate and streamline compliance and should be welcoming to foreign investors.

If you have questions about the amendments and how they may affect you, we would be happy to assist you. Please do not hesitate to contact us.

www.bakermckenzie.com

Suite 3401, China World Tower 2
1 Jianguomenwai Dajie
Beijing 100004, China
Tel: +86 10 6535 3800
Fax: +86 10 6505 2309

14th Floor, Hutchison House
10 Harcourt Road, Central
Hong Kong SAR, China
Tel: +852 2846 1888
Fax: +852 2845 0476

Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, China
Tel: +86 21 6105 8558
Fax: +86 21 5047 0020

This client alert has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this client alert is not an exhaustive analysis of the area of law discussed. Baker & McKenzie cannot accept responsibility for any loss incurred by any person acting or refraining from action as a result of the material in this client alert. If you require any advice concerning individual problems or other expert assistance, we recommend that you consult a competent professional adviser.

©2019 Baker & McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.