

Newsletter

Corporate Commercial

16 January 2019

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Welcome to the latest issue of our Newsletter! This edition comes to you at the beginning of 2019, and we would like to take this opportunity to wish you all a Happy and Prosperous New Year!



Companies (Amendment) (No. 2) Ordinance 2018

Machiuanna Chu and Alex Yang

The Companies (Amendment) (No. 2) Ordinance 2018 (**Amendment Ordinance**) was published in the Gazette on 7 December 2018. The Amendment Ordinance introduces revisions to the Companies Ordinance (Cap. 622) (**CO**) and its subsidiary legislations to clarify existing CO provisions and further facilitate corporate activities in Hong Kong. Major revisions under the Amendment Ordinance include: streamlining corporate reporting obligations, enhancing accounting-related provisions, and modifying certain procedural and technical regulations concerning local and non-local (i.e. non-Hong Kong) companies. We would like to highlight the following revisions in particular:

- Hong Kong companies will no longer be required to maintain a printed copy of their articles of association; it will be permissible to solely maintain the articles in electronic form (amending section 76 CO);
- If a company has both an English name and a Chinese name, both names must be stated in its articles of association (amending section 81 CO);
- The existing CO requirement for companies to register an alteration of their articles of association will be exempted if the alteration is made in respect of a change of company name (amending section 88 CO);
- In the event that all holders of a specific class of shares agree to vary the rights attached to that particular class (either by written consent of all such shareholders, or passage of a unanimous resolution by such shareholders in a general meeting), the variation shall take effect on the date of, or such other date as specified in, the written consent or the unanimous resolution. No shareholder may apply to the Court to have such variation disallowed (amending sections 180, 182, 188 and 190 CO);
- Section 275(3) CO, which provides an exemption from the general prohibition on companies for giving financial assistance (where the financial assistance is for the purpose of acquiring shares in its holding company, or reducing or discharging a liability incurred thereof, if the holding company is incorporated outside Hong Kong), has been repealed as it is no longer necessary;
- Both Hong Kong companies and registered non-Hong Kong companies will no longer be required to notify the Registrar of Companies of the change in the place where copies of instruments creating charges are kept if the change only relates to a change in its registered office address or principal place of business, as appropriate (amending section 351 CO);
- The eligibility requirements for private and guarantee companies to qualify for reporting exemptions under the CO (allowing for simplified accounts and director's reports) have been clarified and amended, expanding the types of companies eligible for the exemptions (amending sections 359, 360, and 364 through 366 CO);
- The CO provisions governing 'financial year', 'accounting reference period' and 'primary accounting reference' date have been updated to better clarify their operation (amending sections 367 through 369 CO);
- The CO provisions governing financial statements and directors' reports have largely been amended for better clarity (amending sections 379, 380, 383, 385, 388 and 390 CO);
- The formal authority of the Financial Secretary to regulate revisions of financial statements is extended (amending section 450 CO);
- In addition to the minutes of proceedings at all meetings of directors, a company shall also record all resolutions passed by its directors without a meeting (amending section 481 CO);
- The Amendment Ordinance clarifies that wholly owned subsidiaries of a non-Hong Kong company may undergo horizontal amalgamation (amending sections 678 and 681 CO);
- The Companies (Disclosure of Company Name and Liability Status) Regulation (Cap. 622B) has been amended to require companies having an English or Chinese registered name intending to display or state a name of or for the company (in English or Chinese) to use only such English or Chinese registered name, as appropriate;
- Under the Amendments to Companies (Model Articles) Notice, certain types of alteration of share capital now only require an ordinary resolution, including (i) capitalization of profits; (ii) allotment and issuance of bonus shares; (iii) conversion of shares into larger or smaller number of shares; and (iv) cancellation of shares that have not been taken or agreed to be taken by any person, or that have been forfeited (amending Article 87 of the Model Articles); and
- The Companies (Non-Hong Kong Companies) Regulation (Cap. 622J) has been amended to clarify that the address of the authorized representative of a registered non-Hong Kong company must be an address in Hong Kong (amending section 9 thereof).

Apart from the amendments to sections 792 and schedule 7 of the CO, the Amendment Ordinance will come into force on 1 February 2019.

Hong Kong Employment Law update

Cynthia Chung

1. Record increase in Hong Kong minimum wage

The Executive Council has recently endorsed the biggest increase in the Statutory Minimum Wage (**SMW**) recommended by the Minimum Wage Commission. It is estimated that the increase in SMW from HK\$34.5 per hour to HK\$37.5 per hour will benefit 75,500 low-paid employees.

The Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2019 will be published in the Government Gazette on 18 January and introduced into the Legislative Council on 23 January. Subject to the approval of the Legislative Council, the revised SMW will take effect on 1 May 2019.

According to the Minimum Wage Ordinance (Cap. 608), the Minimum Wage Commission must report to the government its recommendation about the amount of the prescribed minimum hourly wage rate at least once every two years. The next review of the SMW will be no later than 2021.

Under the current Employment Ordinance (Cap. 57), if SMW applies to an employee and the wages payable in a wage period are less than \$14,100 per month, the wage and employment records kept by an employer should include the total number of hours worked by such employee in that wage period. In consequence of the increase in SMW, the Employment Ordinance (Amendment of Ninth Schedule) Notice 2019 will also be gazetted on 18 January and come into force on 1 May 2019 to amend the monthly monetary cap from HK\$14,100 to HK\$15,300 simultaneously.

2. Notification requirements relating to paternity leave

The Employment (Amendment) (No.3) Ordinance 2018 (**Amendment Ordinance**) will come into effect on 18 January 2019. The Amendment Ordinance seeks to increase the statutory paternity leave for male employees with a child born on or after 18 January from 3 days to 5 days.

To qualify for paternity leave, a male employee who intends to take paternity leave must notify his employer:

- of his intention at least 3 months before the expected date of the delivery of the child; and
- the intended date of his leave before taking the leave

If an employee has already given the three months' notice, he may take paternity leave immediately after informing his employer of the actual dates of leave. If an employee fails to give his employer the three months' prior notice, he must notify his employer of each intended date of his paternity leave at least 5 days before that date.

Transitional period

For an employee with a child born on or after 18 January 2019, if he has notified his employer of his intention to take paternity leave before the commencement of the Amendment Ordinance (i.e. the first three days of the paternity leave), before taking the newly increased fourth and fifth days (**Extended Leave**), he must give at least 5 days' prior notice to his employer of the actual dates of Extended Leave.

Comment

In view of the changes, employers and HR professionals should pay attention to the effective date of these policies and implement the new arrangements accordingly.

Maternity leave to be extended to 14 weeks - specific recommendations following the 2018 Policy Address

Vickie Leung and Jamie Tso

Further to the Chief Executive's proposal to extend the statutory maternity leave (**ML**) from the current 10 weeks to 14 weeks, the Labour and Welfare Bureau recently submitted a Review of Statutory Maternity leave (**Review**) to the Legislative Council Panel on Manpower, providing detailed recommendations and technical amendments to be made to certain provisions of the Employment Ordinance (Cap. 57) (**EO**) regarding ML.

Recommendations

The Review sets out the following details regarding the extension of ML from 10 weeks to 14 weeks:

1. The proposed increase of ML should take effect in one go and the extended period would become the 11th to 14th weeks of ML, to be taken continuously after the 10 weeks' ML;
2. The rate of the ML pay for the extra 4 weeks of ML should be maintained at four-fifths of the employees' average daily wages;
3. The cost for the extra 4 weeks ML pay would be borne by the government. The employer will have to pay the employee first on the normal pay day and then seek reimbursement from the government upon providing proof of payment;
4. The cap for the extra 4 weeks ML pay should be \$36,833 per employee, which is equal to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks.

Technical amendments to EO

The Review also proposes to amend the EO in the following manner:-

1. To change the definition of "miscarriage" to mean "the expulsion of the products of conception which are incapable of survival after being born before 24 weeks of pregnancy", as opposed to 28 weeks of pregnancy in the current definition. In this regard, the employee's entitlement will be changed as follows:

Existing position	Proposed change
An employee will only be entitled to <u>sick leave</u> if she encounters cessation of pregnancy between 24 weeks and before 28 weeks of pregnancy.	An employee who has suffered miscarriage in the 24 th week of pregnancy or after will be entitled to <u>ML</u> , provided that other conditions are satisfied as well.

2. To require the employer to pay sickness allowance to an employee who has attended pre-natal medical examination in relation to her pregnancy so long as she can produce relevant documentary proof of having attended that medical examination. In this regard, the employee's entitlement will be changed as follows:

Existing position	Proposed change
An employee will be entitled to sickness allowance only if she can produce a <u>medical certificate</u> in relation to the medical examination.	An employee will be entitled to sickness allowance if she can produce a <u>certificate of attendance</u> or other documentary proof of having attended that medical examination.

Conclusion

The government will proceed to draft the legal instrument to give effect to these proposed changes. It intends to introduce a bill to amend the EO to the Legislative Council in late 2019. Employers should take note of the proposed changes and prepare for the necessary measures to ensure compliance with the amended EO once it comes into effect.

Awards and recognition

Deacons recognised in 2018 Asian-mena Counsel In-House Community Firm of the Year awards



We are delighted to announce Deacons has been awarded several accolades in the 2018 Asian-mena Counsel In-House Community Firm of the Year awards.

Over 2,376 in-house lawyers in 14 jurisdictions participated in the largest survey of in-house counsel in the region to nominate the firms that have best served them across a range of practice areas, and which have been the most responsive to their needs.

Participants were asked, among other things, for their comments on the quality and value of service they received from external counsel in their jurisdiction, as well as which firms they prefer to use for various activities.

Deacons was awarded 'Hong Kong Firm of the Year', 'Most responsive domestic law firm of the year' and 'Firm of the Year' in the following practice areas:

- Employment
- Telecomms, Media & technology
- Real Estate & Construction
- Litigation & Dispute Resolution
- Intellectual Property
- Compliance & Regulatory
- Banking & Finance

These awards demonstrate Deacons' impressive reputation among clients and within the wider legal industry.

Want to know more?

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Whilst every effort has been made to ensure the accuracy of this publication, it is for general guidance only and should not be treated as a substitute for specific advice. If you would like advice on any of the issues raised, please speak to any of the contacts listed.

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