

Companies Ordinance Cap 622 (Part 2)
(Relevant to AAT Examination Paper 6 – Fundamentals of Business Law)

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Introduction

The new Companies Ordinance, Chapter 622 of the Laws of Hong Kong (“the CO”), came into operation on 3 March 2014. It has opened up a new chapter in the regulation of companies in Hong Kong. At the same time, the enactment of the new law serves as a good illustration of the legislative process for candidates taking AAT Examination Paper 6. The new Companies Bill was passed by the Legislative Council on 12 July 2012 and was gazetted on 10 August 2012. However, the effective date for the new law is 3 March 2014.

In this series, we consider the different types of company under the new law. Under section 66 of the CO, five types of company may be formed: a public unlimited company with a share capital; a public company limited by shares; a private unlimited company with a share capital; a private company limited by shares; and a company limited by guarantee without a share capital. In this article, we look at the changes in the reporting system for private and guarantee companies under the new law.

Simplified reporting system for private/guarantee companies

One of the major objectives of the new law is to facilitate business operations by streamlining the procedures and by simplifying the accounting and reporting system for small and medium-sized enterprises (SMEs).

Under the old law¹, where all the shareholders of a private company agreed in writing, a private company could prepare simplified accounts and a directors’ report with respect to the company’s financial year. Under the new law, not all private companies are eligible to prepare simplified accounts. Only those private or guarantee companies that qualify as a/an:

- small private company ,
- eligible private company or
- small guarantee company

can use simplified reporting; and they are known as companies falling within the “reporting exemption”².

¹ Section 141D of Companies Ordinance, Cap 32

² Division 2 of Part 9 and Schedule 3, CO

Small private company

In order to fall within reporting exemption, a small private company³ must meet two of the three of the following qualifying conditions⁴:

- (a) that the amount of the company's total revenue for the financial year does not exceed \$100 million;
- (b) that the amount of the company's total assets at the date of the statement of financial position for the financial year does not exceed \$100 million; and
- (c) that the average number of the company's employees during the financial year does not exceed 100.

If a company is a private company formed and registered under the new CO and qualifies as a small private company in its first financial year, the company is qualified for that first financial year, and every subsequent financial year, until it is disqualified.⁵

If an existing private company (i.e. a private company formed and registered under the old CO, Cap 32) satisfies any two of the above qualifying conditions in its first financial year after the coming into operation of the new CO (the "first financial year"), then the company qualifies as a small private company. This is also the case if the existing company qualifies in the financial year immediately preceding the first financial year. In either case, the company qualifies as a small private company for that first financial year, and every subsequent financial year, until it is disqualified.

A company does not qualify as a small private company if any two of the above qualifying conditions are not satisfied for two consecutive financial years. This applies to any small private company whether it was formed under the old or new CO. If this company does not qualify, it is disqualified for the financial year immediately following those two financial years, and every subsequent financial year, until it qualifies again.⁶

The company qualifies again if any two of the above qualifying conditions are satisfied for two consecutive financial years.⁷ It will qualify for the financial year immediately following those two financial years, and every subsequent financial year, until it is disqualified again.

Once a company qualifies as a small private company, it will automatically qualify for simplified reporting.

³ A private company here does not include a company carrying out a banking or insurance business or one that is licensed to carry on a regulated activity under the Securities and Futures Ordinance, section 359 (4) CO.

⁴ Sections 359, 361, 364, Schedule 3 s1 of the CO

⁵ Section 361(1) CO

⁶ Section 361(4) CO

⁷ Section 361(4) CO

Eligible private company

In order to claim a reporting exemption, an eligible private company must meet two of the three of the following qualifying conditions⁸:

- (a) that the amount of the company's total revenue, as would be reflected in the company's annual financial statements, does not exceed \$200 million;
- (b) that the amount of the company's total assets, as would be reflected in the company's annual financial statements, does not exceed \$200 million; and
- (c) that the average number of the company's employees during the financial year does not exceed 100.

In addition, a resolution must be passed at a general meeting by the members holding at least 75% of the voting rights in the company to the effect that the company is to fall within the reporting exemption for the financial year; and the members holding the remaining voting rights do not vote against the resolution, i.e. there must be no objection from a member.⁹ The company must deliver a copy of the resolution to the Registrar for registration within 15 days after it is made.¹⁰ In any case, if there is an objection by notice six months before the end of the financial year, the resolution is regarded as not being passed in relation to the financial year to which the objection relates.¹¹

Similar to the case for small private companies, there are parallel provisions regarding the qualification in the first financial year or in subsequent financial years for an eligible private company and in relation to the disqualification of a previously eligible private company.¹²

Small guarantee company

For a qualified small guarantee company which falls within reporting exemption¹³, the amount of the company's total revenue, as reflected in the company's annual financial statements for the financial year, should not exceed \$25 million. There is no need for members' approval.

Again, there are parallel provisions regarding the qualification in the first financial year or in subsequent financial years for a small guarantee company and in relation to its disqualification.¹⁴

⁸ Sections 359, 360, 362, 365, Schedule 3 s1 of the CO

⁹ Section 360(1) CO

¹⁰ Section 622 CO

¹¹ Section 360(3) CO

¹² Section 362 CO

¹³ Sections 359, 363, 366, Schedule 3 s1 of the CO

¹⁴ Section 363 CO

Other private company with unanimous consent

There is a final category of private company that falls within the reporting exemptions. This is a private company¹⁵ at all times; it does not have any subsidiaries and is not a subsidiary of another company; and all members of the company agree in writing that the company is to fall within the reporting exemption for that financial year only.¹⁶

Holding company

There are similar provisions for the holding company of a group of small private companies, holding company of a group of eligible private companies with requisite members' approval, and holding company of a group of small guarantee companies. For simplicity of discussion, the relevant provisions for these holding companies are not discussed in full in this article: suffice to say that the financial criteria are the same except that the aggregate total revenue, aggregate total assets and aggregate employees are used for the assessment. To be qualified as a group of small private companies, a group of eligible private companies or a group of small guarantee companies, each company in the group must qualify as such. The position is summarised below.

¹⁵ It is also not a company carrying out banking or insurance business or one that is licensed to carried on regulated activity under the Securities and Futures Ordinance, section 359 (4) CO.

¹⁶ Section 359(1)(b)

Type of company	Qualifying criteria			Remarks
	Revenue test	Asset test	Employee number criteria	
Small private company	Total revenue not exceeding HK\$100 million	Total assets not exceeding HK\$100 million	Total number of employees not exceeding 100.	Meeting any 2 of the 3 criteria
Holding company of a group of small private companies	Aggregate total revenue not exceeding HK\$100 million	Aggregate total assets not exceeding HK\$100 million	Aggregate number of employees not exceeding 100.	Meeting any 2 of the 3 criteria
Eligible private company	Total revenue not exceeding HK\$200 million	Total assets not exceeding HK\$200 million	Total number of employees not exceeding 100.	Meeting any 2 of the 3 criteria; Approved by members of at least 75% of the voting rights; and There is no objection from any member 6 months before end of financial year.
Holding company of a group of eligible private companies	Aggregate total revenue not exceeding HK\$200 million	Aggregate total assets not exceeding HK\$200 million	Aggregate number of employees not exceeding 100.	Meeting any 2 of the 3 criteria; Approved by members of at least 75% of the voting rights; and There is no objection from any member 6 months before end of financial year.
Small guarantee company	Total revenue not exceeding HK\$25 million	-	-	
Holding company of a group of small guarantee companies	Aggregate total revenue not exceeding HK\$25 million	-	-	

In subsequent articles in this series, we will discuss other major changes in the companies legislation relevant to Paper 6.