

**Companies Ordinance Cap 622 (Part 1)
(Relevant to AAT Examination Paper 6 – Fundamentals of Business Law)**

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Introduction

The new Companies Ordinance Cap 622 (“CO”) will come into operation probably in the first quarter of 2014. This new legislation aims at modernizing the law and is drafted in plain English. This article examines the major changes in the company law as related to the AAT Examination Paper 6 – Fundamentals of Business Law. Under the current syllabus, candidates are only required to show an understanding of the ownership and governance structures of different types of businesses and to compare the ownership and governance structure of companies with other business structures. They have to be able to explain the concept of limited liability, describe the process of registration for a company and describe the accounting and audit requirements for companies. This article and the following articles will look at these various aspects of the company law.

Candidates should be aware that the HKIAAT operates a six-month rule whereby they will only be examined on standards and legislation that had been released six months prior to the first day of the month in which the examination takes place. In addition, they will also be examined on standards and legislation which have been effective or will become effective on or before 13 months after the first day of the month in which the examination takes place. As the effective date has not been announced as at the date of printing of this article, **the new law will not affect the December 2013 examination**. All candidates taking examinations after 2013 are advised to look at HKIAAT announcements to see if they will be examined under the new law.

The new CO is a substantive piece of legislation comprising 921 sections with 11 schedules. Most of the areas of company law are updated and modernized and the needs of small and medium-sized enterprises are catered for. The law enhances corporate governance and encourages the use of information technology. However, areas of law relating to liquidation and prospectuses have not been changed and the related provisions under the old Companies Ordinance (Cap 32) remain in force.

Types of companies

Apart from statutory corporations, companies operating their business in Hong Kong must be either a company formed and registered under the old/new Companies Ordinance or a registered non-Hong Kong company. The new law uses the term “body corporate” to include these two types of companies.

CO divides companies formed and registered under CO into two separate categories: limited and unlimited company; private and public company. Under the limited company category, there are two further sub-divisions: company limited by shares and company limited by guarantee.

Private vs Public	Limited vs unlimited
Public company	Unlimited company
Private company	Company limited by shares
	Company limited by guarantee

In theory, there should be six possible combinations. But under section 66 of the CO, five types of companies may be formed under the CO: 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 other words, there is only one category of company limited by guarantee: this cannot be further classified as private or public.

For the first time, a public company is statutorily defined. Section 12 of the CO defines a public company as a company which is not a private company and is not a company limited by guarantee.

The definition of private company is more or less the same as that of the old law. Under section 11(1) of the CO, a private company is one which by its articles: (i) restricts the right to transfer its shares; (ii) limits the number of its members to 50; and (iii) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Again, as before, the definition of “member” in section 11(1)(ii) excludes persons who are current employees or those who became members while being employed and continued to be members after ceasing employment with the company. An invitation to the public to subscribe for any shares or debentures of the company is clarified in section 6(2) CO to include an invitation to a section of the public whether selected as members or debenture holders of the company or as clients of the person making the invitation. Unlike the old law, a private company is expressly defined as one which is not a company limited by guarantee. In other words, under the new law, a company limited by guarantee could not be a private company as well.

As far as liability classification is concerned, there are no major differences between the old and new law. An unlimited company continues to be one not having any limit on the liability of its members (section 10 CO). The articles of an unlimited company must state that the liability of its members is unlimited (section 83(2) CO). Candidates often confuse the concepts of legal entity with limited liability. These are two related but not identical principles. A body corporate can be regarded as a separate legal person but the liability of its members can be unlimited, as in the case of an unlimited company.

The articles of a limited company must state that the liability of its members is limited (section 83(1) CO). For company limited by shares, the liability of its members is limited by the articles to the amount, if any, unpaid on the shares held by them (section 8 CO) and the articles must state that this is the case (section 84(1) CO).

A company limited by guarantee does not have a share capital and the liability of members is limited to the amount they undertake to contribute to the assets of the company in the event of its being wound up (section 9 CO). The articles of a company limited by guarantee must state that in the winding up of the company, each member undertakes to contribute to the assets of the company while he is a member, or within one year after he ceases to be a member, such amount as may be required, not exceeding a specified amount for payment of the debts and liabilities of the company contracted before he ceases to be a member, and for the payment of the costs, charges, and expenses of winding up, and for adjustment of the rights of the contributories among themselves (section 84(2) CO).

There is also another classification: holding company and subsidiary company. A body corporate is a holding company of another body corporate if it controls the composition of the board of directors of the subsidiary; or it controls more than half of the voting power of the subsidiary; or it holds more than half of the issued share capital of the subsidiary. A body corporate is also a holding company of another body corporate if it is a holding company of a body corporate that is that other corporate's holding company (section 13 CO).

In subsequent parts of this series of articles, other major changes in the companies legislation will be discussed.