

The Financial Year and Its Related Legal Concept under the Companies Ordinance

Financial year

The Company's financial year, as defined under section 367 of the Companies Ordinance (Cap 622), is the key to understand Part 9 (Accounts and Audits) of the Companies Ordinance (the CO), which includes among others when the company should hold the annual general meeting and whether the company is eligible for reporting exemption in the preparation of financial statements. The term financial year encompasses the concept "accounting reference period", which in turn encompasses the concept of "primary accounting reference date".

As per S367(1) of the CO, a company's first financial year begins on the first day of its first accounting reference period and ends on the last day of that period.

As per S367(2) of the CO, every subsequent financial year of a company begins on the date immediately following the end of the previous financial year and ends on the last day of the accounting reference period immediately following the one by reference to which the previous financial year is determined.

First accounting reference period

The first accounting reference period (FARP), as defined under section 368 of the CO, has a start date and a finish date. Different FARP rules apply to (1) companies incorporated before the CO coming into operation, and (2) companies incorporated on and after the CO coming into operation.

As per S368(1), for an existing company formed or registered before the CO coming into operation, the first accounting reference period begins on the date immediately following its primary accounting reference date (the PARD) and ends with the first anniversary of its PARD. In other words, the start date refers to the day that immediately follows the end date of the company's accounts for the financial year that straddles the commencement date of the CO. The finish date here refers to the day immediately preceding the anniversary of the start date.

As per S368(2), for a company formed and registered under the CO, the first accounting reference period begins on its incorporation and ends on its primary accounting reference date.

Subsequent accounting reference period

S368(3) and S370 of the CO provide that every subsequent accounting reference period of a company is the period of 12 months beginning immediately after the end of the previous accounting reference period and ending on the anniversary of its primary accounting reference date, unless the accounting reference period is shortened or extended, as stated in a directors' resolution under section 371(3).

Primary accounting reference date

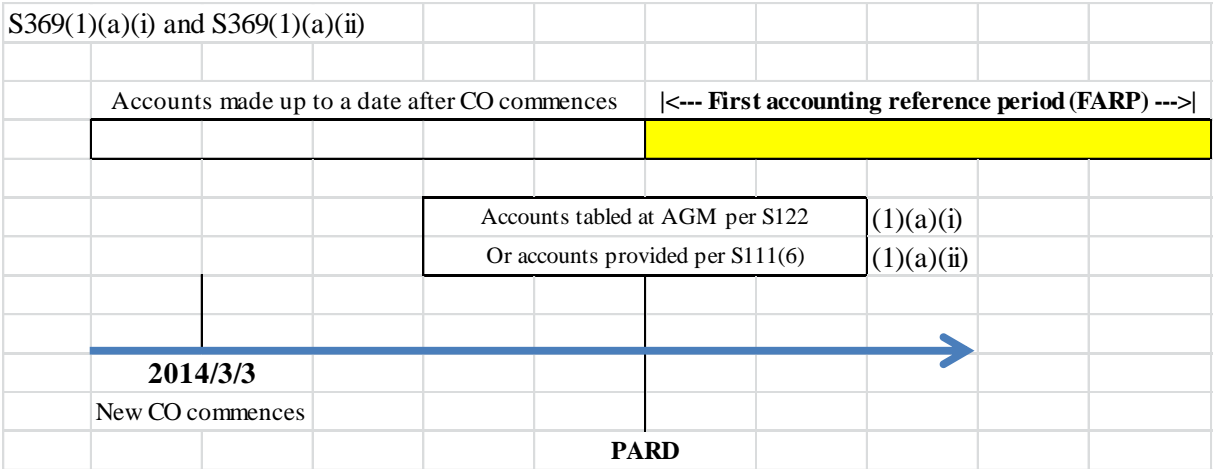
The primary accounting reference date (PARAD), as defined under S369 of the CO, has different rules for the

two categories of Companies: (1) companies established before the commencement of the CO, and (2) established on and after the commencement of the CO.

(1) Companies established before the commencement of the CO

Section 369 (1) of the CO provides that the PARD for a company established before the CO comes into operation is:

(a) the date up to which the company’s accounts are made if, on or after the commencement date of this section of the CO, the company’s accounts (i) have been laid before the company in general meeting under section 122 of the predecessor Ordinance; ¹ or (ii) have been provided to the members under section 111(6) of the predecessor Ordinance;



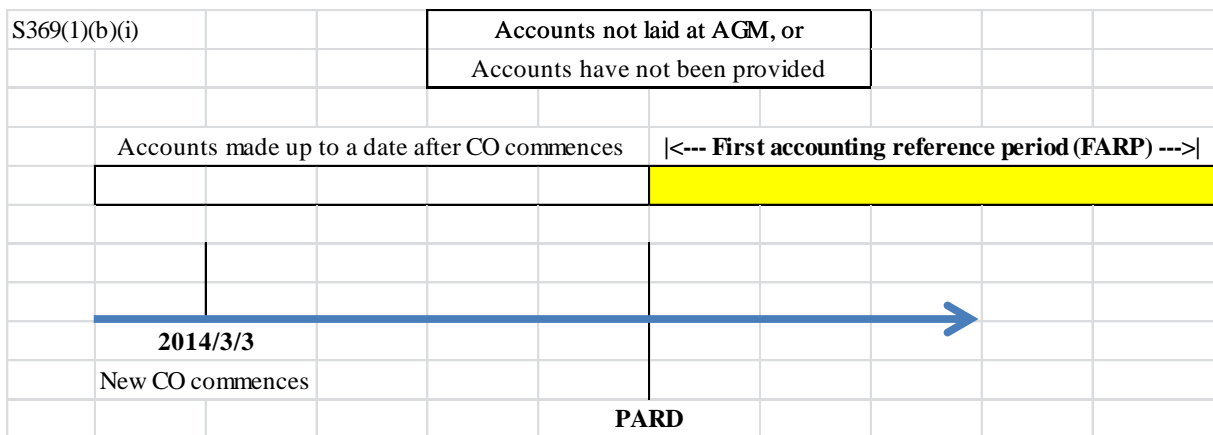
[Note: As per S369(2), the provision for the PARD in the above paragraph (S369(1)(a)) does not apply if those accounts are made up to a date falling more than one day before the commencement date of the CO. As per S369(3), the subparagraph S369(1)(a)(i) does not apply unless the AGM is held within 18 months of the incorporation date in the case of the Company’s first AGM, or in other case, within 15 months, in the year, after the Company’s last AGM.]

Subparagraph (b) of paragraph (1) under S369, (S369(1)(b)) lays down rules to determine the PARD under the situation that no annual general meeting is held (eligible for exemption under the CO), or no accounts have been sent to members (applicable to a dormant company), as provided under section 369(1)(a)(i) and (ii).

(b) if, on or after the commencement date of this section, such company’s accounts have not been laid or provided as mentioned in subparagraph (a)(i) or (ii) of S369(1), one of the following scenarios (i), (ii), or (iii) shall apply:

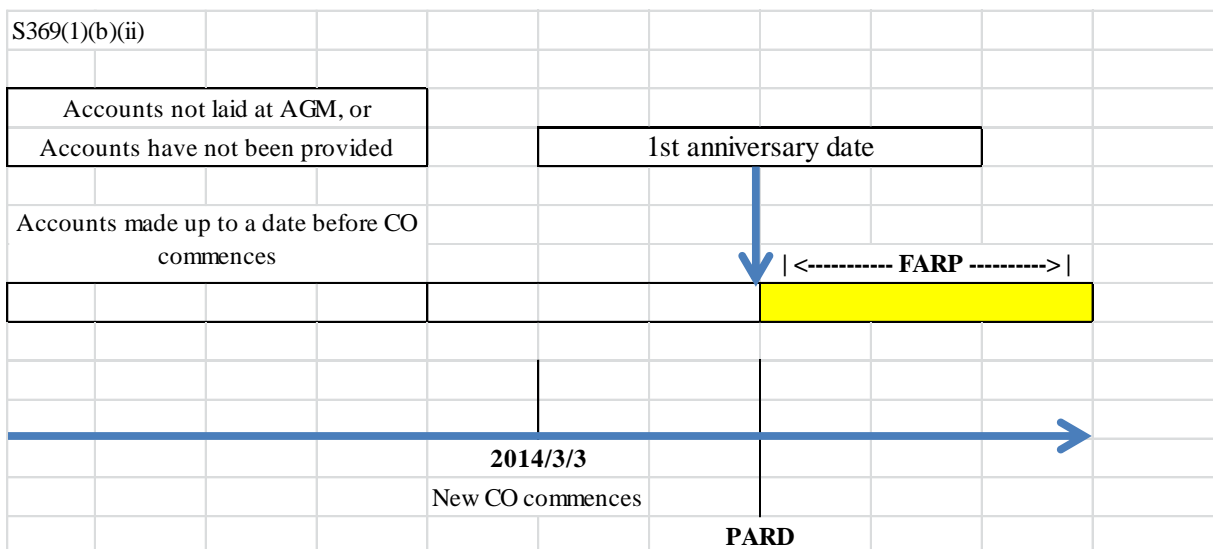
Scenario (i): in the case where such accounts have been prepared on or before the date by which the company is required by section 111(1) of the predecessor Ordinance to hold a general meeting, the date up to which those accounts are made;

¹ That has a continuing effect under Schedule 11 of the new CO (Cap 622).



[Note: as per S369(2), the provision for the PARD in the above paragraph (S369(1)(b)(i)) does not apply if those accounts are made up to a date falling more than one day before the commencement date of the CO.]

Scenario (ii): in the case where subparagraph (i) of S369(1)(b) does not apply, but accounts made up to a date falling more than one day before the commencement date of this section have been prepared on or before the date by which the company is required by that section 111(1) to hold a general meeting, the first anniversary of the date up to which those accounts are made; or



[Note: as per S369(4) of the CO, the provision for the PARD in the above paragraph (S369(1)(b)(ii)) does not apply if the accounts are made up to a date falling more than one day before the beginning of the period of 12 months before the commencement date of the CO.]

Scenario (iii): in any other case, the date by which the company is required by that section 111(1) to hold a general meeting.

The conceptual framework for financial year, first accounting reference period (FARP) and primary accounting reference date (PARD) in relation to the companies established before the commencement date of the CO is set out below:

