

The financial year and its related legal concept under the Companies Ordinance

Alfred Chan explains the importance of determining the correct accounting reference period under the revised Hong Kong legislation

A company's financial year, as defined under section 367 of the Companies Ordinance (Cap 622), is key to understanding part 9 (Accounts and Audits) of the ordinance, 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 section 367(1) of the ordinance, 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 section 367(2), 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, as defined under section 368 of the ordinance, has a start date and a finish date. Different rules apply to (i) companies incorporated before the ordinance coming into operation, and (ii) companies incorporated on and after the day it came into operation.

As per Section 368(1), for an existing company formed or registered before the ordinance coming into operation, the first accounting reference period begins on the

date immediately following its primary accounting reference date and ends with the first anniversary of its primary accounting reference date.

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 ordinance. The finish date here refers to the day immediately preceding the anniversary of the start date.

As per section 368(2), for a company formed and registered under the ordinance, the first accounting reference period begins on its incorporation and ends on its primary accounting reference date.

Subsequent accounting reference period

Sections 368(3) and 370 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, as defined under section 369, has different rules for (i) companies established before the commencement of the ordinance, and (ii) established on and after the commencement of the ordinance.

Companies established before the commencement of the ordinance

Section 369(1) provides that the primary accounting reference date for a company established before the ordinance 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 ordinance, the company's accounts (i) have been laid before the company in general meeting under section 122 of the predecessor ordinance; or (ii) have been provided to the members under section

111(6) of the predecessor ordinance; (see diagram 1 below)

[Note: As per section 369(2), the provision for the primary accounting reference date in the above paragraph does not apply if those accounts are made up to a date falling more than one day before the commencement date of the ordinance. As per section 369(3), the subparagraph section 369(1)(a)(i) does not apply unless the annual general meeting 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 section 369, (section 369(1)(b)) lays down rules to determine the primary accounting reference date under the situation that no AGM is held (eligible for exemption under the ordinance), 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 of Section 369 (1)(a)(i) or (ii), the following scenarios three 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; (see diagram 2) [Note: as per section 369 (2), the provision for the primary accounting reference date in the above paragraph does not apply if those accounts are made up to a date falling more than one day before the commencement date of the ordinance.]

Scenario (ii): in the case where section 369 (1)(b)(i) does not apply, but accounts, which are 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

Diagram 2

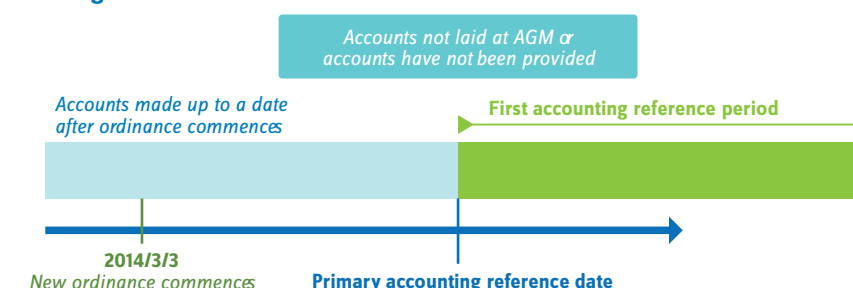
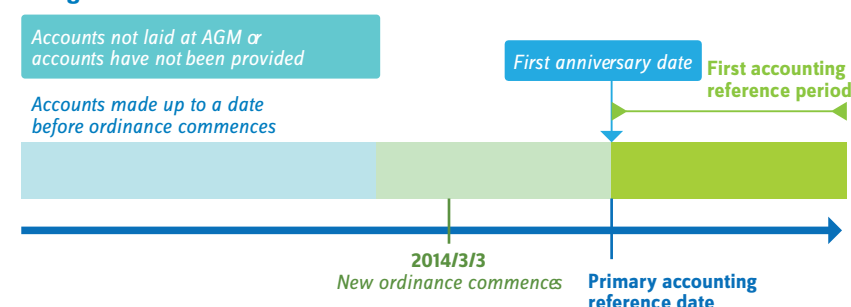


Diagram 3



general meeting, the first anniversary of the date up to which those accounts are made; (see diagram 3)

[Note: as per section 369(4), the provision for the primary accounting reference date in the above paragraph 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 ordinance.]

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

Company established on and after the commencement of the ordinance

Section 369(5) provides that for a company formed and registered under the ordinance, the primary accounting reference date is a date specified by the directors before the relevant date (section 369(5)(a)); or in the absence of such a specified date, it is the relevant date (section 369(5)(b)).

Section 369(6) and (7) provides that the relevant date means the last day of the month in which the relevant anniversary of the company's incorporation falls. The relevant date, in relation to a company's incorporation, means the anniversary of the company's incorporation that first occurs after the commencement of the ordinance. A date specified above must fall within 18 months after the date of the company's incorporation.



Alfred Chan is Managing Owner of K.K. Chan & Company, Certified Public Accountants and China Tax & Investment Consultants.