

**立法會**  
***Legislative Council***

Ref: CB1/BC/4/00/2

**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

**Verbatim transcript of meeting  
held on Friday, 12 October 2001, at 8:30 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, (Chairman)  
Hon Margaret NG, (Deputy Chairman)  
Dr Hon David LI Kwok-po, GBS, JP  
Hon NG Leung-sing, JP  
Hon James TO Kun-sun  
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Hon Jasper TSANG Yok-sing, JP  
Hon Henry WU King-cheong, BBS  
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Albert HO Chun-yan  
Hon Eric LI Ka-cheung, JP  
Hon Bernard CHAN  
Hon Ambrose LAU Hon-chuen, GBS, JP  
Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Miss AU King-chi  
Deputy Secretary for Financial Services
- Ms Salina YAN  
Principal Assistant Secretary for Financial Services
- Mr Howard YAM  
Assistant Secretary for Financial Services
- Ms Betty CHOI  
Acting Senior Assistant Law Draftsman
- Mr Michael LAM  
Senior Government Counsel

**Attendance by invitation** : Mr Mark DICKENS  
Member of the Commission and Executive Director

Mr Brian HO  
Senior Director of Corporate Finance

Mr Anthony WOOD  
Senior Counsel

**Clerk in attendance** : Ms Connie SZETO  
Chief Assistant Secretary (1)4

**Staff in attendance** : Mr LEE Yu-sung  
Senior Assistant Legal Adviser

Mr KAU Kin-wah  
Assistant Legal Adviser 6

Mr S C TSANG  
Senior Assistant Secretary (1)7

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1 **主席：**

2  
3 各位同事，法定人數已經足夠，現請政府的代表進入會議廳。

4  
5 委員會將會在今天的會議逐項審議《證券及期貨條例草案》第XV  
6 部的條文，文件編號是CB(1)2121/00-01，該文件載述政府當局就第XV部英  
7 文本提出的Committee Stage amendments。至於對中文本提出的修正案，則  
8 載於CB(1)15/01-02(01)號文件。此外，有兩份文件值得一提，分別是  
9 CB(1)2120/00-01號文件——有關政府當局對公眾提出的意見所作回應的  
10 修訂文件，以及CB(1)2020/00-01號文件——政府當局就證券法例的約束  
11 力在國際間的比較情況而提供的資料文件。

12  
13 委員會特此歡迎Mr Mark DICKENS出席會議。我們知道他最近休假  
14 一段時間以便休養，謹此祝Mr DICKENS早日康復。

15  
16 現在討論CB(1)2121/00-01號文件。第XV部關乎市場披露的事宜。

17  
18 我們首先審議英文本的條文，然後才研究中文本。現在討論第299  
19 條—— Interpretation of Part XV。Pages 1 to 6，各位有沒有問題？

20  
21 Page 7載有“合資格借出人”的定義。請問當局為何在這裏作出如此  
22 重大的修訂？

23  
24 **財經事務局副局長區環智女士：**

25  
26 這並不是一項修訂，而是將該定義的位置重新安排。由於該定義的  
27 適用範圍並不局限於先前載列該定義的條文，因此我們認為在第299條加入  
28 該用語的定義，是更適當的做法。

29  
30 **主席：**

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1  
2 關於第8頁，各位有沒有問題？那麼第9頁呢？現在討論第10頁。

3  
4 **余若薇議員：**

5  
6 關於第10頁所載“relevant share capital”的定義，該定義第(a)段訂  
7 明，relevant share capital “means the listed corporation’s issued share capital  
8 of a class the shares in which carry rights to vote in all circumstances at  
9 general meetings of the corporation.” Can we change it to something like  
10 “means the listed corporation’s issued share capital of a class of shares which  
11 carry rights to vote in all circumstances at general meetings.” Would the  
12 meaning be the same? It seems to read slightly better if you change it to  
13 “..... of a class of shares which carry rights”。

14  
15 **財經事務局副局長區璟智女士：**

16  
17 或者我請蔡律師考慮一下。蔡律師，請問你是否希望即場作出回  
18 應？

19  
20 **署理高級助理法律草擬專員蔡敏儀女士：**

21  
22 我認為，這種寫法的意思是，“the listed corporation’s issued share  
23 capital of a class”，而“the shares in which”的意思，是指“the shares in which  
24 class carry rights to vote in all circumstances.....”

25  
26 **Hon Audrey EU Yuet-mee, SC, JP:**

27  
28 Yes, but if I change it to “the share capital of a class of shares which carry rights”,  
29 is it going to change the meaning?  
30

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1 **Ms Betty CHOI, acting Senior Assistant Law Draftsman:**

2  
3 I think if you do so you change the meaning slightly, because what I am trying to  
4 say here is that I am talking about shares in the listed corporation's capital, and these shares  
5 belong to a class of shares. This particular class of shares carries rights to vote in all  
6 circumstances. That is the meaning I am trying to convey.

7  
8 **Hon Audrey EU Yuet-mee, SC, JP:**

9  
10 I actually do not insist on that very strongly. I just think it reads better and does  
11 not change the meaning, but if you do not agree I do not really intend to argue.

12  
13 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

14  
15 Let me think about it, and we will see if it is necessary to change it in the way you  
16 suggested. Thank you.

17  
18 **主席：**

19  
20 關於page 10，各位還有沒有其他問題？現在討論page 11。請問各位  
21 有沒有問題？那麼page 12呢？法律顧問。

22  
23 **助理法律顧問顧建華先生：**

24  
25 多謝主席。我希望就page 11所載“淡倉”一詞的定義提出問題。關於  
26 第(a)(iii)及(a)(iv)款該用語的定義，英文本的草擬方式是，“.....if the price of  
27 the underlying shares of the equity derivatives declines.....”。由於價格的升  
28 跌其實是相對的，而這裏提及價格下跌，並沒有說明相對甚麼而言。根據  
29 該兩項條文的寫法，是否每當出現價格下跌的情況時，便符合有關的規定？  
30 如果這是一般的說法，大家也可以明白箇中的意思。然而，當作為一個法

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1 律定義時，是否需要更精確的說明呢？一般來說，就衍生工具而言，如果  
2 相對於本身的合約所訂的價格，該等工具的相關股份的價格下跌了，只有  
3 在這情況下，才需要支付或收取有關款項。條例草案是否需要詳細說明這  
4 一點？

5  
6 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

7  
8 I do not think it is really necessary. If you take subclauses (iii) and (iv) together  
9 you get the thought that you either receive an amount if the price declines, or your loss is  
10 reduced if the price declines. If you have a short position you will be better off whenever the  
11 price declines. If it declines from what it was a minute ago, you are a little bit better off.  
12 You may only be reducing a loss, but the short position is worth more, or has a lesser negative  
13 worth. I do not think it is actually necessary to tie it to the wording of the instrument itself.

14  
15 **主席：**

16  
17 關於page 11，各位有沒有其他問題？那麼page 12呢？胡經昌議員。

18  
19 **胡經昌議員：**

20  
21 政府當局把第12頁所載“受託人”一詞的定義刪除。據解釋，該定義  
22 由於只擬用於第307(5)條所提及的受託人有關的條文，所以已轉移至第  
23 307(8)條。請問這做法或寫法是否一貫如此？即每部的開首列出各個用語的  
24 定義。如果某個用語只適於個別的分部，便在有關分部列出該用語的定義。  
25 以第7頁所載“合資格借出人”一詞的定義為例，該用語原本載於某項條文，  
26 當局現在把該定義載於第XV部的開首。我們以往參閱條例草案的條文時，  
27 曾數次出現以下的情況：當我們參閱某個分部所載的條文時，在翻查整個  
28 分部後，也找不到有關用語的定義，其後才發覺該用語的定義原來載於另  
29 一地方。政府的做法是不是以下這樣：如果有關用語的定義只適用於某項  
30 條文，當局便會把該用語的定義載於有關的分部。當局是否會在特定的位

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1 置載列各個用語的定義？對於我們這些layman來說，有時未必明白箇中的  
2 做法。請問是否有特定的寫法呢？

3  
4 **主席：**

5  
6 蔡小姐。

7  
8 **財經事務局副局長區璟智女士：**

9  
10 各個用語的定義會載於特定的位置。我們以前曾說明有關情況。如  
11 果某個用語適用於整個部分，該用語的定義便會載於該部分的第一項條文  
12 中。以今次的情況為例，如果有關用語只適用於某項條文，該用語的定義  
13 便會載於該條文中。我們希望這樣做能夠方便用家。

14  
15 **主席：**

16  
17 李先生，你可否就這問題作出補充，說明釋義條文應載於哪個部  
18 分？事實上，當局可採取各種不同的做法。就這條例草案而言，政府曾數  
19 次解釋有關情況。如果有關用語只適用於某條clause，該用語的定義便會載  
20 於該條clause之內；如果適用於某一部，便會在該部列出有關用語的定義；  
21 如果適用於整條條例草案，有關用語的定義便會載於Schedule 1，對嗎？李  
22 先生。

23  
24 **高級助理法律顧問李裕生先生：**

25  
26 主席剛才已準確及簡單介紹目前釋義條文的編排方式。事實上，有  
27 關的草擬方式並沒有一定的準則。根據現行法例的做法，很多時候，如果  
28 有關用語在整條法例內也適用，該用語的定義會載於第2條中。至於這條例  
29 草案，則有一些特別的安排。有關用語的定義載於附表1。正如剛才已提到，  
30 如果有關用語適用於某項條文，該用語的定義便會載於該條文中。一些用

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1 語的定義亦會載於該部的開首。至於採取哪種編排方式，很多時候，視乎  
2 草擬人員認為哪一種方法較為恰當。

3  
4 **主席：**

5  
6 OK。我們繼續討論page 12。各位有沒有問題？那麼第13頁呢？

7  
8 現在討論第14頁。余若薇議員。

9  
10 **余若薇議員：**

11  
12 關於 page 14 所載的第(3)款，該條文第二行提到“.....shares  
13 comprised in any class of the issued share capital.....”。當局在前面的一些條  
14 文中，把“any class”改為“a class”，但這裏並沒有作出修改。請問兩者是否  
15 有分別？舉例來說，當局把第1頁第299(1)(b)條中“any”一字，改為“a”。

16  
17 **主席：**

18  
19 當局把第299(1)(b)條中“any”一字刪除了。

20  
21 **余若薇議員：**

22  
23 不，當局將“any class”改為“a class”。

24  
25 **主席：**

26  
27 對，對。

28  
29 **余若薇議員：**

30



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1 如果在刪除“any”後並沒有加入“a”一字，句子便解不通。

2  
3 **財經事務局副局長區璟智女士：**

4  
5 我們請蔡律師就這一點再作研究。

6  
7 **主席：**

8  
9 好的。關於page 15，各位有沒有問題？那麼page 16呢？

10  
11 關於page 17，各位有沒有問題？那麼page 18呢？

12  
13 現在討論page 19的第300條 —— Exemptions。胡經昌議員。

14  
15 **胡經昌議員：**

16  
17 該項有關exemptions的條文訂明，財政司司長會刊登一些指引。

18  
19 **主席：**

20  
21 不是財政司司長，而是證監會。但證監會需要諮詢財政司司長。

22  
23 **胡經昌議員：**

24  
25 對不起，是諮詢財政司司長。由於這些guidelines關乎提出exemption  
26 的申請，請問當局會否就這方面訂定清晰的指引？我們在以往討論第320條  
27 時，該條文也提及有exemption的，但並無明確指引說明怎樣申請豁免。請  
28 問這裏所提及的指引，會否說明根據該等條文申請豁免的情況？

29  
30 **主席：**

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1

2

副局長。

3

4

**財經事務局副局長區璟智女士：**

5

6

我稍後請SFC的同事向各位作詳細解釋。關於該項政策的目標，也就是說，為何條例草案賦權證監會可以發表一些指引呢？這其實是希望透過訂定指引，以便業界知道在甚麼情況下，可向證監會申請有關的豁免。證監會在審批有關的豁免申請時，亦會考慮指引所提及的因素、情況等等。這其實是為了讓業界知道如何申請有關的豁免。這是否已回答你的問題？

10

11

12

**主席：**

13

14

胡經昌議員。

15

16

**胡經昌議員：**

17

18

當局已回答我的問題。

19

20

**主席：**

21

22

我希望知道，就這部分而言，證監會是否有責任向獲豁免人士公布有關情況？

23

24

25

**財經事務局副局長區璟智女士：**

26

27

我亦曾提出這問題。根據現有的做法，證監會並沒有這項責任。然而，從政策層面來看，我們認為如果證監會這樣做的話，其實會增加市場的透明度。當A公司知道B公司根據這指引提出申請時，A公司亦可考慮本身的情況。如果A公司的情況與B公司的情況相若，亦可提出申請。因此，

28

29

30

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1 我們會建議證監會的同事研究日後如何增加透明度，例如在網站載列成功  
2 申請豁免的公司的名稱，又或發出新聞稿等等。我們初步認為這做法並無  
3 問題。

4  
5 **主席：**

6  
7 這條文賦予證監會酌情權。雖然我們可能會接受及同意證監會有這  
8 項酌情權，但當局應該在條例草案的條文，例如在第300條加入一項 sub-  
9 clause，訂明證監會有責任公布該會根據這 guideline 所批准的豁免。如果證  
10 監會公布這方面的資料，不同的公司便會知道有否出現不平等的情況。假  
11 如規定證監會必須公布這些資料，該會便要就多方面作出考慮。

12  
13 **主席：**

14  
15 胡經昌議員。

16  
17 **胡經昌議員：**

18  
19 證監會現時亦會以憲報公布某些申請的結果。除這些豁免外，條例  
20 草案還有沒有同類的情況必須作出公布？

21  
22 **主席：**

23  
24 我相信，證監會必定會公布有關的 penalties。

25  
26 **胡經昌議員：**

27  
28 我並非指 penalties。我的意思是，其他的豁免申請是否亦會採取這  
29 做法？

30

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1 **主席：**

2

3 除這部分訂有豁免外，還有哪些部分訂有豁免？

4

5 **財經事務局副局長區璟智女士：**

6

7 發牌制度下亦有豁免。如果我沒有記錯，該部分亦訂有一些要發表  
8 的要求。我們可以在研究第V至VII部時，再仔細探討這一點。

9

10 **主席：**

11

12 OK.

13

14 **副主席：**

15

16 關於第299條所載“relevant share capital”的definition, I think in a  
17 general comment, the Law Society of Hong Kong and the group of nine  
18 investment bankers have made comments on that definition. And I think the  
19 Administration’s responses are included the CSA. Are we seeing this CSA?

20

21 **Mr Mark DICKENS, Member of the commission and Executive Director:**

22

23 Yes. In clause 305 as amended we have added a new sub-clause (b) on page 42.

24

25 **Deputy Chairman:**

26

27 Thank you.

28

29 **主席：**

30

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1 我們繼續討論在第19及20頁的 Clause 300。政府會提出進一步的  
2 CSA，訂明證監會有責任公布所批准的豁免。現在討論第2分部 ——  
3 Disclosure of interests and short positions。關於第301條 —— Duty of  
4 disclosure，各位有沒有問題？

5  
6 **Deputy Chairman:**

7  
8 Mr Chairman, may I make a general remark here? I think we have debated at  
9 some length this part regarding disclosure, and I think that at the end of the day there is still  
10 considerable disagreement between the Administration and the industry on the extent of  
11 disclosure and the fact that Hong Kong requires a greater extent of disclosure than both the  
12 US and the Hong Kong markets.

13  
14 I personally would not feel very qualified to enter into this debate, but if it has to be  
15 accepted at the end of the day, can we put down a marker and send it to the relevant panel for  
16 discussion, to make sure that if the disclosure required is too extensive in the sense that it  
17 either creates unnecessary hardship or that it affects Hong Kong's compatibility, we can  
18 review it at some time, if at the end of the day we accept the Administration's proposal in this  
19 part? I think that probably is the only way we can deal with it. Thank you, Mr Chairman.

20  
21 **主席：**

22  
23 政府有沒有 comment？

24  
25 **財經事務局副局長區璟智女士：**

26  
27 我相信，每當我們實施新制度時，都需要經常進行檢討，研究是否  
28 與時並進，以及一如副主席所提到，研究我們所推行的制度與外國市場的  
29 比較會是如何。我們以往曾討論這問題。最重要的一點是，我們希望與其  
30 他市場所達致的透明度相類似。由於香港的市場規模較細小，而公眾持股

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1 量相對偏低，因此我們所採用的工具或手段可能會有點不同。我們以往曾  
2 討論這方面的問題，因此我不打算在此詳細覆述當局的意見。

3  
4 但我可以向各位匯報，自從上次與委員會進行討論後，由5月至今，  
5 當局一直與市場人士，尤其是以往曾致函當局表示對這方面有疑問的業界  
6 人士商討有關問題。我很高興地告訴各位，當局已因應業界人士的意見作  
7 出進一步的修訂。

8  
9 證監會的同事稍後可以就這方面作出補充。業界人士給我們的感覺  
10 是，就這一輪的修訂而言，他們認為可以接受。我們最主要考慮的問題是  
11 條例草案不會妨礙市場目前的運作。此外，我們可以透過不同渠道作出豁  
12 免，使有關人士無需向市場披露一些不必要的資料，或者將有關規定載於  
13 其他規則或守則中，而非納入條例草案內。如果無法這樣做的話，便會以  
14 豁免的方式解決有關問題。我認為，我們現時所得出的結論是相當理想。

15  
16 Perhaps Mark or Anthony could supplement my comments.

17  
18 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

19  
20 Between the White Bill and the Blue Bill, we have spent a lot of time with the  
21 industry on the question of disclosure of derivatives, and the reason for that was assuming  
22 they get to 5 per cent of a listed company – some of them do some of the time, maybe they  
23 were worried that we would be compromising their commercial position by disclosing too  
24 much information about the fact that they were exposed under derivatives.

25  
26 What we did there was to cut the level of disclosure back after a lot of discussion  
27 with individual firms and with their actual dealing desks and traders. We have cut the  
28 disclosure back, so what we find out is that there is a derivative, and the number of shares it  
29 underlies. They can live with that. The rest of the work basically between the Blue Bill  
30 and now – and there have been a large number of sessions; Anthony tells me there are 168

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1 emails or something, but there have been numerous meetings, putting successive drafts to the  
2 industry – to make sure that we do not unduly hamper the professional stock borrowing and  
3 lending market.

4  
5 We will be talking about that when we get to it, but can I underline two points?  
6 We are taking out the professional part of the market, which is the institutional part of the  
7 market and the brokers who facilitate that, the stock borrowers and lenders, although the  
8 ultimate borrower would have to disclose, as he does at the moment, when he is borrowing.  
9 We are not exempting stock lending by, for example, substantial shareholders or controlling  
10 shareholders. We are exempting some substantial shareholders if they are institutions, but  
11 not by controlling shareholders. So you have to be a defined sort of institution to get the  
12 benefit of the carve-out. It will be a safe harbour under regulations made under the very last  
13 provision of the bill, and we will discuss that in more detail when we get to it.

14  
15 But the process has been that: we have formed a working group with the major  
16 firms engaged in the stock borrowing and lending business, the broker houses. The Stock  
17 Lending Association has a body called The Pan-Asian Stock Lending Association which  
18 represents the major lenders, and some of the institutions, and worked through the issues.  
19 We now have a system where, providing they tell us for each listed company the size of the  
20 lending pool, so to speak, if it is over 5 per cent, then there is no subsequent disclosure of day-  
21 to-day movements.

22  
23 They are not just day-to-day movements. Some of the stocks in the professional  
24 lending market can move numerous times during the day, and the disclosure there would not  
25 be terribly useful to the market. What it does need to know is what is available. So the  
26 process has been one of exchanging successive drafts. I would not even like to say how  
27 many drafts, but I would not be surprised if it was a dozen or so. I think we have now got  
28 agreement on all but very minor technical points of drafting.

29  
30 **Chairman:**

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1

2           Okay. I think the subcommittee appreciates that.

3

4 ***Deputy Chairman:***

5

6           Mr Chairman, this is the final revised table, and there seems to be still some  
7 disagreement. As I said, I appreciate the Commission's efforts. I can see that you first cut  
8 away requirements which really put a lot of trouble on the market operators, without really  
9 gaining anything for yourselves. Secondly, you take out a chunk, which you say you can  
10 live with, and you are happy with that. But there still remains a gap between the two.

11

12           Mr Chairman, I am just trying to see how the Legislative Council can do its job by,  
13 on the one hand, giving support to all the measures and ensuring that we have the measures  
14 necessary to achieve the aim of protecting Hong Kong's market, and at the same time not  
15 allowing the government to insist on too great a control, such that our compatibility would be  
16 affected.

17

18           I am not qualified to say when that point has been reached, but I think what we can  
19 do is to monitor that process. That is why I suggest that at some point we review the  
20 situation. I have noticed all the things that you have done to this part of the bill, and I  
21 understand the efforts there. If I may just, for the record, record that, and put down a marker  
22 for whatever the right panel may be. Would that be the Panel on Financial Affairs?

23

24 ***Chairman:***

25

26           Yes.

27

28 ***Deputy Chairman:***

29

30           So that we can get views. The reason why I ask for that is just that in the modern



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1 day it is very difficult to get really independent views. There is, throughout the examination  
2 of the Bill, a noticeable tendency for the government to want as much control as possible; so  
3 I am concerned about that. Thank you.

4  
5 **主席：**

6  
7 秘書會把你的意見記錄下來。各位或會留意到，載有市場人士所提  
8 意見的文件在9月27日發出，而載有委員會審議階段修正案的文件在9月29  
9 日發出。我不知道市場人士是否已參考最新提出的委員會審議階段修正  
10 案。在參考該等委員會審議階段修正案後，他們的comments可能會有所不  
11 同。

12  
13 **財經事務局副局長區璟智女士：**

14  
15 我認為，副主席的提議相當具建設性。長遠而言，在條例草案實施  
16 後，我們可以在一、兩年後研究條例草案對市場的影響。

17  
18 **主席：**

19  
20 胡經昌議員。

21  
22 **胡經昌議員：**

23  
24 我也希望作出補充。我在10月3日下午收到這份文件，並已立即將  
25 該份文件送交幾個業界團體及group of nine investment bankers的代表。我們  
26 曾在10月4日舉行會議，但由於他們在10月4日才收到這份文件，所以並沒  
27 有時間參閱有關的內容。我們在該次會議上商定，各個團體包括業界代表  
28 及group of nine investment bankers會自行就該等修正案先作研究。倘若把技  
29 術修訂計算在內，當局對這部分作出的修訂超過100項，各個團體本身也需  
30 要舉行會議，討論該等修正案。他們會就本身的情況研究當局所作出的修

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1 訂。我希望他們會盡快就該等修正案作出回應，以便我可以向委員會或政  
2 府提交他們的意見。

3

4 **主席：**

5

6 多謝你在這方面所進行的工作。我們繼續討論page 21。

7

8 **財經事務局副局長區璟智女士：**

9

10 主席，我也希望作出一點補充。Mr. WOOD剛才提醒了我，當局向  
11 議員提交這份修訂前，已將草擬本送交業界參閱。他們也有一些法律專家  
12 研究有關的條文。當局希望確保有關規定切實可行，然後才把修正案提交  
13 各位參閱。

14

15 **Chairman:**

16

17 Anthony, do you want to supplement that?

18

19 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

20

21 Yes. What we do is to send all the key clauses to them. I think it is clauses 299  
22 up to about 314, plus clause 365A.

23

24 **主席：**

25

26 Okay, thank you.

27

28 關於page 21，各位有沒有問題？那麼page 22呢？關於page 23，各  
29 位有沒有問題？那麼page 24呢？現在討論page 25。胡經昌議員。

30

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1 **胡經昌議員：**

2  
3 關於在第25頁的第304(1)(d)條，該條文加入了“or part thereof”的字  
4 眼。雖然當局在註解18解釋了加入該等字眼的原因，但我希望知道實際的  
5 情況會是怎樣？

6  
7 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

8  
9 Assume a shareholder has 10 per cent of the equity capital, so he has to make a  
10 disclosure. He then grants an option over 2 per cent. The nature of the whole of his  
11 interest has not changed. 8 per cent is still owned totally beneficially, but the nature of the  
12 part has changed, and we would want him to disclose that he has granted the option over that  
13 2 per cent. That is why there is this change here. There are some quite complicated  
14 changes later on which tell you how to measure this, but that is the basic concept, to say that  
15 if a significant proportion, actually over 1 per cent, of your interest changes, then you still  
16 have to make a disclosure.

17  
18 **胡經昌議員：**

19  
20 我希望作出跟進。由於後面有些條文提到1%，如果採用“or part  
21 thereof”的字眼，這樣的寫法有沒有問題？該條文是否應該訂明需要refer有  
22 關情況，這做法會否比較合適？由於“or part thereof”的涵義較為廣泛，0.5%  
23 或0.1%亦屬於“or part thereof”，當局可否修飾該等字眼？

24  
25 **財經事務局副局長區璟智女士：**

26  
27 這應該不會影響胡議員剛才所提及那一部分的條文的字眼，也就是  
28 說，這並非關乎具報水平的百分率。蔡律師也同意我的說法。這條文所提  
29 及的是，如果有關人士所擁有的股份權益，已達到需要披露的具報水平，  
30 例如是5%，而其中2%並非實質股份，而是期權，當該人行使該2%的期權時，

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1 便會總共 hold 5% 的股份，亦即原本有 2% 的股份權益以期權的方式持有，而  
2 現在行使了，所以變成股份。如果這條文沒有清楚訂明有關情況，有關人  
3 士便不知道需否作出披露。然而，這並不影響剛才所提到的須具報水平，  
4 即擁有上市法團 5% 或以上的股份權益時，必須作出具報的規定。

5  
6 **主席：**

7  
8 政府可否藉此機會解釋，在執行這條例草案時，對那些人士會有甚  
9 麼影響？他們在遵照這條例草案的規定作出披露方面，會否有任何困難？

10  
11 ***Mr Mark DICKENS, member of the Commission and Executive Director:***

12  
13 We do not think compliance is going to be a practical problem for many people. I mean, one  
14 thing you have to remember is that this legislation applies to directors of listed companies and  
15 to people who have 5 per cent stakes in listed companies, and to nobody else. It is not  
16 legislation applying to the ordinary man. It is people who have either take it upon  
17 themselves to become directors of listed companies, or have taken it upon themselves to  
18 become substantial shareholders. To reduce the compliance burden we have spent a great  
19 deal of time working out forms – and in practice what we think the industry will do is to  
20 follow the forms and the directions, rather than try and work out what they have to do by  
21 reading the ordinance – in plain language; and we have consulted on the forms.

22  
23 That is what we have done to help compliance. In terms of compliance itself, you  
24 only have to disclose so far as you are aware of your interests, and the penalty for false  
25 disclosure is only if it is knowingly false or recklessly false. So even if you are aware and  
26 you get it wrong, we still have to prove that you knew or were reckless as to whether it was  
27 false.

28  
29 We have done that with the actual disclosure obligation itself. For directors it is  
30 actually a lot easier than it looks. They do not have to worry about the threshold. They

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1 disclose every movement in their share or debenture holdings, or their holdings in associated  
2 companies, as well as in the listed company itself.

3  
4 For substantial shareholders it can be tricky, but the major burden falls on the  
5 industry participants, and even there we have sat down with them, with the forms, to work  
6 through their obligations, and to explain to them how the forms work. We have got some  
7 quite useful feedback and we have amended the forms in the light of the feedback, to make  
8 them easier to follow. That is what we have done to reduce the burden on the people in the  
9 industry.

10  
11 **財經事務局副局長區璟智女士：**

12  
13 主席，與現有的披露制度比較，我們省卻了一些披露要求，同時也  
14 加入了一些新的要求。

15  
16 **主席：**

17  
18 余若薇議員。

19  
20 **Hon Audrey EU Yuet-mee, SC, JP:**

21  
22 Mr Chairman, I cannot help feeling that it is the fault of lawyers. Why is it that all these  
23 provisions are so complicated, whereas Mr DICKENS tells us that in actual life and reality,  
24 people will just read the forms and that they are very simple to understand, very easy to work;  
25 and then they can be explained to laymen. Why do we have to look at such complicated  
26 provisions? Why cannot law be much simpler, just to say “You have to comply with details  
27 of disclosure as stated in these forms”, and just have the forms become part of the law? I am  
28 worried that what we are looking at may say something different from the forms. In reality  
29 people just look at the forms, whereas lawyers at the end of the day are forced to look at this  
30 very complicated stuff when it comes to practice. Is there some ways of making life easier

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1 for everybody, including lawyers and legislators?

2  
3 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

4  
5 There are different drafting approaches throughout what we used to call the  
6 Commonwealth. The Australians have come up with a much shorter set of provisions, but if  
7 I can say so, having worked with them myself, they are incredibly dense provisions. There  
8 is a great amount of textural explication as to exactly what those provisions mean, because the  
9 draftsman has compressed the concepts very tightly. You get away with about 10 to 15  
10 pages, but then you have to read the commentaries.

11  
12 It is so exhaustive because this is an area where there has traditionally been, for  
13 some participants, a very high propensity to evade. We have moved the emphasis of these  
14 provisions so they do not focus on struggles for control alone any more. They do catch the  
15 struggle for control of a company. So in a classic hostile takeover, the hostile offeror has  
16 every incentive to amass a stake in secret, and to use every legal device he can to keep it  
17 secret. So what you see here is that the draftsman thinks of every device he can, and  
18 specifically sweeps it into the net. We always said in Australia that you can get this into a  
19 couple of pages to an honest businessman, what he has to do. He has to count his  
20 shareholdings and see if they add up to 5 per cent, and when he is counting 5 per cent he  
21 counts long derivative positions. Commercially that is not hard to do. If he is at 5 per cent  
22 he discloses what needs to be disclosed, and that is actually set out in one of the sections in  
23 the ordinance, and we will get to it later in the Bill. It is quite straightforward. To make  
24 that even simpler, there is a form. The complexity of the legislation is to prevent evasion or  
25 avoidance. It would be avoidance if we had not been so prolix in our drafting.

26  
27 Just to give you one example, we had a takeover struggle in the days when I was in  
28 Australia, where someone was amassing a takeover stake of over 10 per cent, and desired to  
29 avoid these provisions. What they did was to have a chain of nominee companies, 141  
30 companies long, and each of those companies was in a different jurisdiction world-wide. So

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1 to get to the end of that chain would take an inordinate period of time, and while that was  
2 going on of course he continued to amass the stake. That is why the provisions do this, so  
3 you cannot use a trust, you cannot use certain complex legal interests, you cannot use  
4 derivatives, to get the commercial control of the shares, without having a disclosure  
5 obligation. I think to the honest and reasonable man, the controlling shareholder of a listed  
6 company, this is not hard. “What shares and options do you have? Please disclose them”.  
7 The concept is simple.

8  
9 ***Deputy Chairman:***

10  
11 Mr Chairman, may I just make a general remark? I share Audrey’s feeling, but it  
12 is too much and too late, because this is what this whole Bill is like. Of course we will  
13 follow through and do the best we can, but I sincerely hope that this is not going to happen  
14 again. I understand Mr DICKENS’s position, but if you think about it logically, between  
15 any two points there is always a mid-point, and however small the gap is, there is always a  
16 gap. You can never tighten in such a way as to make all escape routes and all loopholes  
17 impossible. This is drafted by lawyers; so do they have lawyers. Then that is again why  
18 I think a review may be useful in time.

19  
20 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

21  
22 Personally I think I would like to be much closer to the American system where  
23 you lay down broad general principles, but you can then rely on the courts to be creative in  
24 filling in the interstices. Historically that has been difficult in the British-influenced  
25 jurisdictions.

26  
27 ***Deputy Chairman:***

28  
29 Even as we copy from some of the concepts and rules from the Australian model, in  
30 a couple of meetings in your absence, Mr DICKENS, when we look at the Australian model,

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1 the legislation, it is easier to understand what the law requires. But when we read our own it  
2 reads like an extended codified message.

3

4 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

5

6 I understand that. We had a great dilemma here. The old provisions, the  
7 Securities (Disclosure of Interests) Ordinance, is modelled on the British version.  
8 “Modelled” is the operative word, because at the time it was put together in the late 80s in  
9 Hong Kong, the draftsman decided to add some provisions of his own, and it became more  
10 complex. When we came to the task of amending it, we asked the profession what they  
11 preferred. Because despite its complexities – and there are genuine complexities in the  
12 drafting – they had got used to it over the 10 years, and developed a body of interpretation for  
13 themselves, in giving opinions to clients. They preferred us to stick to the concepts in the  
14 old law if we could, other than coming up with a fresh approach. There was a very creative  
15 attempt made in the Commission to put this all into plain language, and after listening to the  
16 profession we put it in a drawer and closed the drawer.

17

18 ***Deputy Chairman:***

19

20 Thank you.

21

22 **主席：**

23

24 我們繼續討論其他事宜，我也明白你所面對的問題。

25

26 現在討論第304條 —— Circumstances in which duty of disclosure  
27 arises。關於page 25，各位有沒有問題？那麼page 26呢？關於page 27，各  
28 位有沒有問題？那麼page 28呢？

29

30 關於page 29，各位有沒有問題？那麼page 30呢？關於page 31，各



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1 位有沒有問題？那麼page 32呢？

2  
3 現在討論在page 33的條文。請問各位有沒有問題？在page 34及35  
4 的條文have been deleted。關於page 36，各位有沒有問題？那麼page 37呢？  
5 關於page 38，各位有沒有問題？那麼page 39呢？

6  
7 現在討論第305條 —— Percentage level in relation to notifiable  
8 interest and short positions。關於page 40，各位有沒有問題？

9  
10 **胡經昌議員：**

11  
12 主席，我希望就第36頁提出問題。第36頁的註解提到，SFC可以make  
13 rules。政府可否告訴我們，證監會是否按照正常程序，也就是說，以附屬  
14 法例形式訂立這些規則，抑或透過公告形式訂立這些規則？這是不是新加  
15 入的？

16  
17 **財經事務局副局長區璟智女士：**

18  
19 這屬於附屬法例，亦即按照平常的模式處理。

20  
21 **主席：**

22  
23 現在討論page 40。各位有沒有問題？那麼page 41呢？關於page  
24 42，各位有沒有問題？

25  
26 這裏提及很多不同的classes，我希望知道，在實行方面會否有困  
27 難？由於很多內地公司在香港掛牌，當局在執行這些規定時會否有重大困  
28 難？

29  
30 **財經事務局副局長區璟智女士：**

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1  
2 據我的理解，這其實是反映現時市場的狀況。一些公司如太古股份  
3 有限公司，該公司分別發行A股及B股，有關規定適用於這種情況。

4  
5 **主席：**

6  
7 我知道太古股份有限公司分別發行A股及B股，但就本地公司而言，  
8 除太古股份有限公司外，相對較少出現這種情況。然而，在香港掛牌的內  
9 地公司的股份類別比較多，當局經常提到要盡量吸引外地公司來港掛牌，  
10 訂定那麼嚴格的規定會否令該等公司很難在本港上市？

11  
12 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

13  
14 I think the answer to that is “No”. So far the derivatives market has not  
15 developed much. The main complication is derivatives. The companies we are talking  
16 about have H shares listed in Hong Kong and A shares listed on the mainland. The 5 per  
17 cent limit is the mainland limit, so we have lined up at that level of disclosure.

18  
19 **Chairman:**

20  
21 Because H shares do not have any rights for voting, you mean?

22  
23 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

24  
25 H shares have rights to vote, and A shares have right to vote, but they are separate  
26 classes, so the 5 per cent limit applies in relation to the class of A shares and in relation to the  
27 class of H shares. So far so good; and 5 per cent is the mainland limit as well. So if you  
28 are talking about straightforward interest in A shares, it is relatively easy. You can comply  
29 with both the mainland and our law by doing the same thing, pretty much.

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1           If complicated derivatives positions build up in the A shares – in other words, in the  
2 mainland-traded shares which can only be traded in RMB, and by mainland nationals – then  
3 our disclosure provisions would cut in at an earlier point than the mainland provisions,  
4 because we would be counting derivatives and the mainland has not really got its head around  
5 derivatives yet. So the threshold would be lower. It anticipates a situation where someone  
6 off-shore is doing something quite complex in relation to their on-shore interests. Would it  
7 deter companies listing in Hong Kong? We would say “No”. The reason that mainland  
8 companies list in Hong Kong – and this is a matter of state policy more than anything else – is  
9 not to raise capital so much, because the PEs are higher on the mainland. It is to get the  
10 benefit of being seen to comply with a higher set of standards that are closer to international  
11 levels. We do not think this will act as a deterrent.

12  
13           It is similar to the point being made by the Deputy Chairman, that we must be  
14 careful that our systems are sufficiently compatible both with overseas systems and with  
15 mainland systems, so as not to not to deter people doing business here. We believe we have  
16 struck that balance.

17  
18 **主席：**

19  
20           關於page 42，各位有沒有問題？現在討論第306條 —— Notifiable  
21 percentage level and specified percentage level。各位有沒有問題？那麼page  
22 43呢？

23  
24           現在討論第307條 —— Notification of family and corporate interests  
25 and short positions。各位有沒有問題？那麼page 44呢？關於page 45，各位  
26 有沒有問題？那麼page 46呢？關於page 47，各位有沒有問題？

27  
28           現在討論第308條 —— Agreement to acquire interests in particular  
29 listed corporation。關於page 48，各位有沒有問題？那麼page 49呢？關於  
30 page 50，各位有沒有問題？那麼page 51呢？關於page 52，各位有沒有問

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1 題？

2  
3 現在討論第310條 —— Duty of parties to agreement acting together  
4 to keep each other informed。關於page 53，各位有沒有問題？那麼page 54  
5 呢？關於page 55，各位有沒有問題？那麼page 56呢？

6  
7 現在討論page 57，各位有沒有問題？那麼page 58及59呢？關於page  
8 60，各位有沒有問題？顧先生。

9  
10 **Mr KAU Kin-wah, Assistant Legal Adviser:**

11  
12 Thank you, Chairman. May I come back to clause 311(1)? It is on Page 54. I would refer  
13 to subclauses (a) and (c) in respect of the last part of the sentence. “By virtue of another  
14 person’s interest...”, which appears in both subclauses. If we compare these two  
15 formulations with that in subclause (b), we would see that in subclause (b), it is more  
16 specifically said that the result was achieved by virtue of a change in the nature of another  
17 person’s interest, but I think in both subclauses (a) and (c), a somewhat short form is being  
18 employed which may suggest that, I do not know, it appears to me, that it may suggest an  
19 acting which is possible.

20  
21 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

22  
23 Perhaps I can help to clarify the meaning of these paragraphs. The questions  
24 asked is a relation to subclauses (a) and (c), what they seek to say, is that the reference to a  
25 person acquiring an interest in shares, includes a reference to his coming to have or ceasing to  
26 interested by virtue of another person’s interest. This actually echos back what we said in  
27 clause 307, where we talked about “Family Interest” and “Corporate Interest”, so that,  
28 somebody who’s wife, for instance, is interested in shares, that person is deemed to be  
29 interested, and the shares of his wife is interested in, or somebody controls a company and by  
30 that, I mean, holding more than a third of the voting power of a company, then, that person

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1 would be deemed to be interested in the shares in which company.

2  
3 So subclause (a), for instance, refers to the situation where a person is interested in  
4 shares, what it seeks to say that reference to this person becoming or ceasing to be interested  
5 in shares, is actually a reference to his becoming or ceasing to be interested by virtue of  
6 another person's interest. But subclause (b) is slightly different, it is saying that a reference  
7 to the nature of a person's interest is being not the same, includes a reference to exchange to  
8 the nature of the interest by virtue of a change in the nature of that sort of person's interest.

9  
10 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

11  
12 The real problem is the policy intention behind the provisions. Because of the  
13 short form employed, it could also be interpreted to mean that for example, the director who  
14 has a position in particular shares but because of the short position of another person, he may  
15 be considered to ceased to have interest. I mean, the present formulation does not seem to  
16 stand up to possible interpretation.

17  
18 ***Ms Betty Choi, Acting Senior Assistant Law Draftsman:***

19  
20 This is sort of corporation again letting off his contain to another provision. It is  
21 spelled very clearly that in another provision which says then when you are calculating shares  
22 in which you are interested in, you are not allowed to take into account short position in  
23 shares, which has included what we result in a reduction in your long position that is spelled  
24 out very clearly.

25  
26 In present section 317 on particulars to be notified.

27  
28 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

29  
30 I have no quarrel with that. But we are not talking about the percentage or

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1 percentage level, we are talking about ceasing or being interested. So, I mean within these  
2 two possibilities, I do not know whether “by virtue of another person’s interest” is enough.

3  
4 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

5  
6 I agree, there is nothing to do with the percentages, all I am saying is that a  
7 reference to a person interested in shares includes a reference to his becoming interested or  
8 ceasing to be interested, because there’s another person interesting.

9  
10 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

11  
12 Yes, that is what I am saying.

13  
14 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

15  
16 And clause 307, it is not a short formulation as you suggested.

17  
18 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

19  
20 Well, I think your proper meaning is that the corresponding interest of the other  
21 person, would be considered to be the interest of the first mentioned person, and the ceasing  
22 of interest by the other person would be taken. That is what you mean when you say “by  
23 virtue of another person’s interest”.

24  
25 ***Ms Betty CHOI, acting Senior Assistant Law Draftsman:***

26  
27 Yes.

28  
29 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

30

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1           But this is not spelled out and therefore I say that this formulation would possibly  
2 allow an interpretation that because of the other person's interest, that means that could be a  
3 short position, when combined with the first mentioned person's position to result in a ceasing  
4 of being interested.

5  
6 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

7  
8           Perhaps I can make two points, first, I think that the "person" wording is clearing  
9 out, I do not think that I have to repeat in a long-winded saying. The legislation is  
10 complicated enough. It will be very wordy if I say, for instance, a reference is becoming and  
11 ceasing to be interested in shares by virtue another person becoming or ceasing to the  
12 interested in shares. I think the present wording is clear enough that it includes being  
13 interested in shares by virtue another person's interest. If you go back to clause 307, and  
14 that spelled out very clearly how another person can become interested and yet another  
15 person's shares. As far as the second point is concerned, that I did not stated very clearly  
16 whether in calculating that other person's interests, there may be some letting off allowance,  
17 but as I said in clause 317, we spelled out clearly that in determining and formulating a  
18 person's interest, he cannot let off any short position he has against his loan, so that would  
19 apply as a rule of interpretation to any person's interest.

20  
21 ***Deputy Chairman:***

22  
23           I am prepared to accept the Administration's explanation because it is not the end  
24 of the situation, the way I see the difference between subclauses (a), (c) on the one hand, and  
25 subclause (b) on another, are the former referring to comprise and cease to be interested, so it  
26 is pretty categorical. That is why the interest is not going to quantify. However, the latter  
27 involves a concept of whether something is the same, and that is why the term changed in the  
28 nature of other people introduced in subclause (b). I am not sure if I understand what it is all  
29 about, though I do not have any idea what it is going on, it is just looking at the logic of these  
30 three parts.

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1

2 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

3

4           You are absolutely right, Deputy Chairman.

5

6 **Deputy Chairman:**

7

8           So probably that as to letting whether you would be allowed to do so, I think  
9 subclause (1) would allow you to do all sorts of things but other provisions exist in other parts  
10 which would prevent you from doing so. I think that is what they are trying to do.

11

12 **主席：**

13

14           OK。關於page 61，各位有沒有問題？那麼page 62呢？關於page 63，  
15 各位有沒有問題？那麼page 64呢？關於page 65，各位有沒有問題？

16

17           現在討論clause 314。關於這條文，銀行公會提出了一些comments。  
18 關於page 66，各位有沒有問題？那麼page 67呢？關於page 68，各位有沒有  
19 問題？那麼page 69呢？

20

21 **胡經昌議員：**

22

23           由於我對drafting的程序並不熟悉，政府可否告訴我，關於在第65  
24 頁的第314條，其實當局只是在這條文中加入“and short positions”的字眼，  
25 而其他措辭是一樣的，為何需要作出這樣的刪改？

26

27 **Chairman:**

28

29           The following interests, and.....

30



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1 **胡經昌議員：**

2  
3 不，不。我所指的是第314條的標題。這條文的標題是，“Interests and  
4 short positions.....”，然後當局把“to be disregarded for the”刪去，但在下一  
5 行加入“to be disregarded for the”的字眼，接着又把“purpose of notification”  
6 的字眼刪去，並在下一行加入“purpose of notification”的字眼。為何需要作  
7 出這樣的刪改？當局是否只需加入“and short positions”便可以了？我不明  
8 白為何條文的標題會採取這種寫法。

9  
10 **主席：**

11  
12 這是不是關乎word追蹤修訂的問題？

13  
14 **胡經昌議員：**

15  
16 理論上，條文的標題只不過是加入“and short positions”的字眼，為  
17 何會採取這種做法？我實在不明白。

18  
19 **財經事務局副局長區璟智女士：**

20  
21 主席，我們在註解48嘗試解釋有關情況，原意是訂明這條文的規定  
22 可伸延至淡倉。

23  
24 **副主席：**

25  
26 這完全是technical的，當局首先把“to be disregarded for the”刪除，  
27 然後又加入該等字眼。此外，在刪除“purpose of notification”後，又再加入  
28 有關字眼。這有甚麼作用？

29  
30 **主席：**

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1  
2 我說對了，這是因為當局採用自動追蹤修訂而出現的問題。

3  
4 關於第69頁，各位有沒有問題？那麼第70頁呢？關於第71頁，各位  
5 有沒有問題？那麼第72頁呢？

6  
7 關於第73頁，各位有沒有問題？那麼第74頁呢？關於第75頁，各位  
8 有沒有問題？現在討論第4分部。

9  
10 **余若薇議員：**

11  
12 政府可否告訴我們，關於配偶及子女擁有的股份權益須視為有關人  
13 士擁有的權益的規定，假如該人與配偶及子女的關係惡劣，又或與配偶離  
14 婚，哪部分訂明有關的股份權益並不計算在內，又或有何方法給予這些情  
15 況豁免？

16  
17 **主席：**

18  
19 有沒有訂定有關的做法？

20  
21 **財經事務局副局長區璟智女士：**

22  
23 我請SFC的同事解答這問題，向各位解釋有關人士的配偶所擁有的  
24 股份權益在甚麼情況下可以計算及不計算在內。

25  
26 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

27  
28 They have to be calculated for stock, the legislation neither the old law nor the new  
29 law would over-simplify the human law. It is regoing to count these things, so there is  
30 absolutely broad line that here is, but the state of the divorce becomes final, then I do not care

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1 anymore, but all the way to this, even if the wife is exercising it that totally separate maybe in  
2 a hostile, she maybe in the family dispute, they still have to be disclosed. Now, you can put  
3 a little footnote inside but I really cannot control, another of law might have a better  
4 disclosure. But you still have to treat them as the part of the family interest until that point.  
5 The only way around that would under the current law and under this, it would be an  
6 application for exemption to the SFC, and then we have to publish in guidelines and match it  
7 well. No one has the answer, no one has the answer, under the takeover disclosed this sort of  
8 provisions is reportable but that is because of the ... (indistinct) ... not a law.

9  
10 **Chairman:**

11  
12 Is there any escape clause for分居? No? Okay.

13  
14 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

15  
16 Except for the exemption of ...

17  
18 **Miss AU King-chi, Deputy Secretary for Financial Services:**

19  
20 Mark, did you say that there is some provisions where a person can apply for an  
21 exemption?

22  
23 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

24  
25 They could apply for exemption, we would then have to publish some guidelines  
26 about how we would apply that exemption. Let me be frankly, if someone make an  
27 application, the chance is about to get in advice, our scope of that another fair mind the  
28 human being, we pretend to be experts about the securities markets, and we basically just  
29 have to take the parties as we are for.

30

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1 ***Hon Audrey EU Yuet-mee, SC, JP:***

2  
3 Is there a provision somewhere?

4  
5 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

6  
7 It is generally exempting provisions under clause 300, we have to do it under that,  
8 there is no other provision.

9  
10 ***Deputy Chairman:***

11  
12 I think people should be taught that marriage is basically a legal institution, and all  
13 couples lining up to get married should be given a copy of these people.

14  
15 ***Hon Audrey EU Yuet-mee, SC, JP:***

16  
17 To what extent up to what age, the children's' interest is included as yours?

18  
19 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

20  
21 Only minor children under 18.

22  
23 ***Hon Audrey EU Yuet-mee, SC, JP:***

24  
25 And parents?

26  
27 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

28  
29 No, unless they are acting unconscious.

30

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1 **Hon Audrey EU Yuet-mee, SC, JP:**

2  
3 And is that the whole extent other than your control company, I mean the family  
4 member are just wife and minor children?

5  
6 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

7  
8 Just the minor children and parents who are acting unconscious.

9  
10 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

11  
12 Can I refer to clause 311 there are some details about interest? And on Page 56,  
13 stated that you have to know the relevant fact with respect to the other person's interest. So  
14 if your wife has shares she did not know about and you would be taken the interest in them.

15  
16 **主席:**

17  
18 Shall we continue?現在討論Division 4 —— Requirements for giving  
19 notification。關於第315條 —— Notification to be given, 各位有沒有問題?

20  
21 現在討論第316條 —— Time of notification。由於現時香港人經常  
22 需要離港遠行, 這條文規定必須在3個business days作出具報, 有關期限是  
23 否足夠?當然, 我也明白, 作出具報的時間並不能夠過長, 假如所訂定的  
24 期限過短, 亦會有困難。政府為何以3個營業日作為期限?這是否已經過平  
25 衡各方面的因素而訂定的?

26  
27 **財經事務局副局長區璟智女士:**

28  
29 關於這個問題, 我們其實是考慮到國際間的做法。規定在3個營業  
30 日內作出具報, 這期限並不是最短的, 我們認為這是合理的安排。有關人

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1 士是持有某上市公司5%或以上的股份權益的人士，我們相信該等人士必定  
2 有下屬替他們辦事。如果事先作好安排，即使他們並不在港，也沒有問題。  
3 也就是說，他們亦能夠在有關期限內作出具報。

4  
5 **主席：**

6  
7 當局可否訂定一些安排，使他們較容易符合這方面的規定？  
8

9 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

10  
11 Can I point one thing out? If you are traveling and you do not know the time runs  
12 out when you become aware, and if someone can find you to tell you that you are required to  
13 give notice on shareholdings, you will also be out of time to tell him to launge the notice for  
14 you. Most Jewish edition use two days, the US uses much long time, we chose 3 days to  
15 lose a day and to line up with the mainland. But if you do not know, you have no obligation,  
16 time does not run out again until you know.

17  
18 **主席：**

19  
20 我對這部分也相當躊躇。事實上，有時在遵守法規方面，是較為困  
21 難，但與此同時，我認為條例草案訂有這條文，對市場來說也是好的。一  
22 些人士曾提到，例如company secretary把某張表格交給其中一名董事，而該  
23 名董事可能離港公幹數天，當他回來後，發現tray內有這份表格，但期限已  
24 經過了。該名董事其後通知有關當局，而有關當局卻以逾期作出具報為理  
25 由對該名董事提出起訴。假如該名董事沒有作出具報，反而可能不會面對  
26 被起訴的後果，但當他選擇逾期作出具報，有關當局卻對他提出起訴。請  
27 問當局有否訂定escape clause，讓有關董事在漏報或逾期作出具報，但當中  
28 並無涉及substantial benefit的情況下，提出抗辯理由？  
29

30 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

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1  
2           Okay. There is no defence as such. It would be a matter for the magistrate to  
3 take into account, but in fact before it gets to the magistrate, before we make the decision to  
4 prosecute, one of the things we have in our internal prosecution guidelines, specifically on the  
5 point you raised, “What if you trusted someone else to do it and it didn’t get done? What if  
6 you thought someone else was doing it and it didn’t get done?”, that is actually a factor that  
7 we take into account in our prosecution guidelines. It is quite a common excuse, but the  
8 legal division also has a separate look at the excuse to make sure the guidelines are being  
9 applied fairly. There is no point, as a practical matter, in dragging before magistrates  
10 company directors who have tried to do the right thing. You will not get a conviction  
11 anyway. So we have put it in the prosecution guidelines. The magistrate takes it into  
12 account.

13  
14 ***Deputy Chairman:***

15  
16           Mr Chairman, in fact I was not going to refer to this part until I come to clause 319,  
17 which is the offences section. It is precisely because of this that I see the architecture of this  
18 part is that you put a duty on people to disclose or give notification, and then you put in  
19 requirements of notification. Then when people do not comply, then that constitutes a  
20 criminal offence. The front part is all very good until you come to the offence, and then it  
21 becomes dreadfully unfair.

22  
23           Although Mark said that as a matter of prosecution policy someone who has done it  
24 inadvertently or has a good excuse will not be prosecuted. Leaving that to the hands of the  
25 prosecution, I think, when we come to it – it is in your hands – I would point out all the  
26 difficulties.

27  
28 ***Chairman:***

29  
30           Okay. We will leave the questions until clause 319.

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1

2 **Deputy Chairman:**

3

4           As far as your comment is concerned, Mr Chairman, about three business days, I  
5 have no difficulty with three business days in the requirement. It seems reasonable, but what  
6 if I do not do it?

7

8 **主席：**

9

10           關於這些規定，我其實並沒有很大意見。我所關注的是，在提出檢  
11 控及作出懲處時，究竟應怎樣處理呢？關於第77、78及79頁，各位有沒有  
12 問題？

13

14           現在討論第317條 —— Particulars to be contained in notification。  
15 關於第80頁，各位有沒有問題？那麼第81頁呢？關於第82頁，各位有沒有  
16 問題？那麼第83頁呢？

17

18           現在討論第84頁，各位有沒有問題？那麼第85頁呢？關於第86頁，  
19 各位有沒有問題？那麼第87頁呢？關於第88頁，各位有沒有問題？那麼第  
20 89頁呢？

21

22           現在討論第318條。關於page 90，各位有沒有問題？那麼我們討論  
23 第319條 —— Offences for non-compliance with the notification  
24 requirements。

25

26 **Deputy Chairman:**

27

28           Mr Chairman, here is where I have some concern, and maybe the Administration  
29 will explain in somewhat greater detail. You see what constitutes the offence, under  
30 subclause (1) a person who "...fails to perform within the specified period a duty of disclosure



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1 arising under Division 2 in accordance with the provisions of this section and Divisions 2 and  
2 3 applicable to that duty...” If you go to the end of that, the top part of page 91, then you see  
3 that if he does not do subclause (a) then he commits an offence, and you see what he is liable  
4 to. This really is a strict liability. If you fail to do so within the specified period then you  
5 have committed an offence. Of course in subclause (b), which is a separate offence, you can  
6 see that there is mens rea, so to speak. You have to know, or it is reckless. There is a  
7 mental element there, but there is no mental element as to subclause (a).

8  
9 Also, there is no mental element as to subclause (c), so if you fail to – perform  
10 within the specified period, it is not just failing to perform, but even if you perform but fail to  
11 do so within the specified period, then you commit an offence. That is the complete  
12 offence. Then you allow certain defences which are specified. You look at subclause (2)  
13 on page 91: “To the extent that an offence under subsection (1)(a) consists of a failure to  
14 comply with sections 315(2) in that notification referred to in that section...” Here you see if  
15 you go to clause 315(2), and that is on page 75, I believe, you are talking about “What have  
16 you failed to do? It may not have much to do with you because it is “...in that the  
17 notification referred to in that section was received by the listed corporation...” You may  
18 have sent it, but if it has not been received then it is your fault. “The relevant exchange  
19 company may not at the same time...” It is not one immediately after another. It is a  
20 defence for a person charged with that offence to prove that he took all reasonable, practicable  
21 steps to comply with that section. In other words, the result may not be your fault, but that  
22 already constitutes an offence, and you are put on the defence to take yourself out of the  
23 offence. Is that fair? Basically I am saying that if something happens and it is not your  
24 fault, you should not be within the ambit of the offence anyway.

25  
26 Then you look at sub-clause (3): “It is a defence for a person charged with an  
27 offence under subsection (1)(c) to prove that it was not possible for him to give the  
28 notification to the other person required by section 310 within the specified ...” So you have  
29 to prove that it was not possible. I really do not know how you prove that something is not  
30 possible. Anything which is contingent, that is possible. You see that the offence is very

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1 strict. You have a limited defence in these sections. So I feel that here there may have  
2 arisen some unfairness, especially when you look at it later on in another section when you  
3 are convicted of an offence under subclause (1)(a). Then you may also be saddled with the  
4 cost of the investigation. May I ask for an explanation of this general architecture, to begin  
5 with, whether that really is excessive?

6  
7 **財經事務局副局長區璟智女士：**

8  
9 關於這方面的刑事罪行的寫法，是以現有條例的草擬方式為藍本。  
10 現有的條例已經運作了10多年，市場人士並沒有提出意見，因此我們並無  
11 在是次改革中就這方面作出大幅修訂。不過，議員剛才所提出的意見其實  
12 十分正面，我們會再行研究。舉例來說，議員要求訂定合理辯解的條文，  
13 我們也認為這是非常合理，可以在有關部分加入這條文，讓當事人有解釋  
14 的機會。也就是說，我們可以考慮把類似第319(1)(d)條的寫法，伸延至有  
15 關其他違規行為的部分，這可能已解決副主席所提出的問題。

16  
17 **Deputy Chairman:**

18  
19 Mr Chairman, maybe I should explain that a little bit more. If one turns to page  
20 75 one sees there clause 315 – Notification to be given – and you turn over the page and see  
21 sub-clause (2): “A notification required by this section shall be given in such manner so as  
22 to ensure that it is received”. Now, first, either you do not have any rules provided for it, in  
23 which case really you are putting a heavy burden on someone to decide on what the manner is  
24 to give notice which would ensure, because at the end of the day, if the notification is not  
25 received, then you have committed an offence unless you can prove something. If you have  
26 rules on the manner in which you give a notification, then the offence really amounts only to a  
27 breach of a way of giving notification. That is what it amounts to. The penalty for  
28 breaching a way of giving notification in my view is somewhat disproportionate. This is  
29 what we are looking at here.

30

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1 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

2  
3 I point out to you clause 363 of Part XV. In clause 363 we set out the method of  
4 giving notification under this Bill. Notification is just one of the documents named in that  
5 clause. It does say that any notification “shall be regarded as being given for the purposes of  
6 this part if...:” and it sets out the various parties to whom the notification may be given, and  
7 situations where it will be regarded as being sent to it.

8  
9 ***Deputy Chairman:***

10  
11 Good. Then may I ask the Administration to refer to it in sub-clause 315(2) so  
12 that people know what is the manner in which they give the notification. Also, if they have  
13 complied with the manner in which notification is given, then if the other party has not  
14 received it, you go back to clause 319(2). If that notification is not received, then that should  
15 not be the fault. His offence must comprise only in that he did not follow the manner which  
16 is laid down by the rules, not that the result was that the notification was not received by  
17 whoever it was intended.

18  
19 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

20  
21 Mr Chairman, I suppose there are two points here. One deals with the manner in  
22 which you send the notification. The other deals with timing. I think the requirement  
23 under clause 315(2) that you are looking at consists of basically two elements. The first is  
24 that it has to be given in a manner that is provided for, as you correctly pointed out, in clause  
25 363, which appears later on in the bill.

26  
27 The second element of this clause is the timing. Suppose that under rule clause  
28 363 I choose to deliver the notification by fax. That is perfectly permissible under clause  
29 363, but the timing of it is also important, so if you choose to deliver it by fax, what this  
30 clause will require you to do is to send, say, the first fax to the listed corporation, and

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1 immediately thereafter to the exchange company. You cannot wait, say, a day before you  
2 send the second notification by fax off to the exchange company. So one is manner, the  
3 other is also timing. The person has to ensure that both faxes have to go off either  
4 simultaneously, or one immediately after the other. That is the spirit of sub-clause (2).

5  
6 **Deputy Chairman:**

7  
8 Mr Chairman, I think we have made this point in many, many places throughout  
9 this Bill, and in fact I think in certain other bills. When the law requires certain effects to be  
10 achieved, you take things out of the hands of the doer of an action, because many things can  
11 intervene. So criminal law, because of the requirement to be certain, must mean that the  
12 person can be in control of those facts. If you require him to give a notice in such manner,  
13 that is all right, that is good. If you require him to give notice within a certain time, which  
14 you specify, that is also good. You can say that. How you specify such a way that the  
15 person can comply at the time when he is trying to comply with the rules is much easier.  
16 What I am asking for are two things: one is that the requirement should be clear, so that at  
17 the time when he has to comply with it, he is able to do so. Secondly, if it is a matter of  
18 compliance with the manner and timing, then the consequence of the offence must reflect it,  
19 because generally the breach of the manner of complying with something is not a huge  
20 criminal matter.

21  
22 **主席：**

23  
24 我也贊同副主席所提出的部分看法，但我希望提出另一觀點。事實  
25 上，規定有關人士必須作出披露，這是因為假如該人並無作出披露，他可  
26 能會從中得到某些利益。當然，這條文也訂明可有reasonable excuse。我明  
27 白，要證監會證明當事人從中獲得利益，有時候是相當困難的。然而，如  
28 果該人在某種情況下，未能comply證監會在程序方面作出的規定，而該人  
29 可以提出證據證明雖然在有關過程中，他確實沒有在指明期間作出具報，  
30 但他並無從中得到任何利益，證監會可否接受該人的解釋，視之為合理的

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1 辯解呢？法例規定有關人士必須作出披露，其精神在於防止他們在得到一  
2 些特別的消息時，從中獲得利益。如果當事人能夠證明並無從中得益，這  
3 是否可以視作一個解釋？你剛才提及的“without reasonable excuse”一句，是  
4 否已包括所有的excuses？

5

6 **財經事務局副局長區璟智女士：**

7

8 “Without reasonable excuse”是比較容易證明的。至於主席剛才提到  
9 由SFC在舉證時，證明有關的當事人必定有收受利益，這是比較困難。

10

11 **主席：**

12

13 我明白。不過，假如有關人士並無根據程序作出披露，但該人能夠  
14 提出證據證明沒有從中得到利益，這是否一個解釋？

15

16 **財經事務局副局長區璟智女士：**

17

18 也就是說，你希望把範圍收窄，有關人士必須證明本身並無得到利  
19 益，才算是一個合理的辯解？

20

21 **主席：**

22

23 我不知道哪個選擇比較理想。採用“without reasonable excuse”一  
24 句，就是由當事人向證監會證明本身有沒有reasonable excuse。這並不關乎  
25 範圍過於狹窄或廣泛的問題，只是有關規定不夠specific。

26

27 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

28

29 There are a number of things we can explore. One idea we were thinking about at  
30 one time was that if you complied with the forms in good faith you had a defence, because

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1 you have done what you can reasonably do. I think looking at gain is probably a bad idea,  
2 with respect. I do not make a gain when I litter the streets, but society suffers. If these  
3 notices are not lodged and the information provided to the market is not accurate, other people  
4 may suffer without you making a corresponding gain. It is like a lot of these regulatory  
5 offences – littering, smoking in shopping malls, whatever. We want you to do what we have  
6 asked you to do, and we have to penalize the not doing of that. I totally accept that it has to  
7 be something that a reasonable man can reasonably attempt to do, and that should be enough.  
8 He should not be penalized just because he gets it wrong or because something goes wrong  
9 somewhere in the postal system. That should not be his problem. What we will do is to go  
10 back and look at some of these concepts to make it clearer that if you reasonably attempt to  
11 comply, you cannot be penalized. I think that is what we are all trying to achieve.

12  
13 ***Deputy Chairman:***

14  
15 Mr Chairman, I basically accept the approach, but that is why this part has to be  
16 very simple, straightforward and non-controversial, because unless you notify, unless you  
17 disclose, it is going to be very complicated to investigate. That is why you have to have  
18 some sanctions for people to disclose. The question really is the sanction. I have in fact  
19 less difficulty with sub-clause (d), because if you look at clause 312 which is on page 58, you  
20 see that what is required there is that if you authorize your agent to do certain things, then  
21 “...he shall secure...the agent notifies him”.

22  
23 So when proving such a thing, you really cannot prove a negative. You are not  
24 required to prove the negative, that he did not do anything to secure his agent to do it. So  
25 then generally if you have failed to do it, then basically they are in phase 1. Then it becomes  
26 a matter of reasonable excuse for you to say why you have failed to do so. I accept that.  
27 As far as subclause (d) is concerned, my only concern is the penalty. So long as it is a matter  
28 of just subsection (i) and (ii), if it is a small offence, a summary conviction, fine level 3 and  
29 imprisonment for 6 months, again I think the Administration will tell us the parity of the  
30 penalty. I think that roughly may be the sort of level, but here the problem is when you go

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1 further into having to be saddled with the costs of investigation. Mr Chairman, as far as up  
2 to page 91 is concerned I am content for the Administration to look again to see the balance,  
3 because if you make it easier for people to comply, then it makes it also easier for you to  
4 enforce this point.

5

6 **主席：**

7

8 證監會剛才表示會再行考慮，那麼我們等待他們作出回覆。余若薇  
9 議員。

10

11 **Hon Audrey EU Yuet-mee, SC, JP:**

12

13 Thank you, Chairman. I was just looking at page 91, subclause (2), the offence  
14 that somebody fails to comply with clause 315(2), and that a notification was not received at  
15 the same time or immediately after one another, and the point the Vice Chairman was making  
16 in relation to page 76, where clause 315(2) is set out. I understand that really the concern is  
17 the sending of the notification and also that it should be sent one after the other. Is it  
18 sufficient if we just change, therefore, subclause (2) to read something like: “A notification  
19 required by this section shall be given in the manner as provided under section 363 to the  
20 listed corporation and the relevant exchange company, one immediately after the other”, or  
21 something like that, so there is no reference to receipt. Then for the same point at page 91  
22 again the offence is simply to the extent that it consists of a failure to comply with the section  
23 in that notification was not sent in the manner, immediately one after the other. Then there is  
24 an offence. There is no reference, in other words, to receipt. Would that answer the point  
25 the Vice Chairman has made?

26

27 **Deputy Chairman:**

28

29 It would be much, much better. This is an offence for not complying with the  
30 regulation.

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**主席：**

副局長，請你們加以考慮。

**財經事務局副局長區璟智女士：**

我們會研究採用“sent”一字與採用“received”的分別有多大。此外，我們也需要研究假如改用“sent”一字，對實際的運作情況有沒有影響。

**副主席：**

這是因為有關人士根本無法提出證明。雖然該人已經把有關文件寄出，但他並不知道郵政署為何沒有收到該份文件，難道屆時需要傳召郵政署署長以研究有關原因？這條文所規定的根本是一些無法做到的事情，請當局再行研究應怎樣做。

**財經事務局副局長區璟智女士：**

有關規定已實行了10年，我不知道根據證監會過往的經驗，市場人士曾否面對同樣的疑問？

**副主席：**

即使有關規定已實行了10年，如果從來沒有引用這條文，那麼便沒有人提出異議。我們現在審議這條文時，確實發覺有問題存在。當局不能夠以過往10年也沒有出現問題作為藉口，因為這並不表示第十一年也不會出現問題。如果出現問題，屆時誰人負責承擔這責任？既然我們今天曾討論有關條文，如果作出修訂是正確的做法，我們便應該這樣做了。



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1 **主席：**

2  
3 關於這部分，我相信當局也有一些類似的cases。當局也可以藉此機  
4 會review最近這些cases的court decisions。

5  
6 **財經事務局副局長區璟智女士：**

7  
8 我們會研究現時有關人士如何send及如何receive有關文件，以及他  
9 們實際上遇到甚麼困難。

10  
11 **主席：**

12  
13 請當局一併作出考慮。我們現在討論page 93的clause 320。

14  
15 **副主席：**

16  
17 主席，我們還沒有討論第92頁。

18  
19 **主席：**

20  
21 OK.

22  
23 **Deputy Chairman:**

24  
25 Mr Chairman, I was also looking at sub-clause (4) and this is the part which says  
26 that if a person is convicted of an offence under this section, "...the Financial Secretary may,  
27 by order, direct that the shares in relation to which the offence was committed, that are  
28 registered on the Hong Kong register, or if the shares...". So subclauses (a) and (b) set out  
29 the sort of shares: "... shall until further notice be subject to the restriction under Division  
30 12", that is on page 188. I think we will go into those.

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1  
2           Then you can see that here sub-clause (5) and sub-clause (6) also refer to those  
3 restrictions. Those are very Draconian. Can the Administration explain subclauses (a) and  
4 (b), if so, why is it necessary?

5  
6 **主席：**

7  
8           副局長。

9  
10 **財經事務局副局長區璟智女士：**

11  
12           有關安排主要屬於保護性質。假如有關人士被裁定干犯這條所訂的  
13 罪行，FS獲賦權作出命令，宣布沒有作出披露的股份轉讓或發行無效。由  
14 於有關人士沒有作出披露，使市場欠缺透明度，其他投資者可能會因此蒙  
15 受損失。SFC的同事們，請問實際上，你們有沒有關於這方面的運作經驗？

16  
17 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

18  
19           It has never done following conviction in the court. I accept your point, but that  
20 does not mean it is a good power. It just means that it has not yet been abused. The reason  
21 it is there is for the very serious case where a strategic stake in a company has been  
22 warehoused, and as a result someone has got either a financial or more often a tactical benefit.  
23 The idea of the freezing order, which is effectively what happens under Division 12, is to  
24 deprive them of some of the tactical advantages they have got by their wrongful concealment.  
25 That is why these orders are very rarely made. From memory one has been made, but it was  
26 not following conviction in the Magistrate's Court, in the World Trade Centre Group case a  
27 few years ago. The shares were frozen, then ultimately under what is going to become  
28 Division 12 they were sold and neutralized, so to speak, and the control stake was broken up,  
29 neutralized, and then the bad guys got the proceeds of sale. This sort of power was used in  
30 those situations. The checks and balances on the Financial Secretary's power is that there is

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1 an automatic right of appeal by any person aggrieved, to the court, who can unwind these  
2 orders.

3  
4 ***Deputy Chairman:***

5  
6 But Mr Chairman, I just suggest this for the Administration's consideration. If  
7 you look at knowing that Division 12 powers of restriction can be quite Draconian, if you just  
8 look at clause 319 it gives people the impression that a very small offence might lead to the  
9 kind of restriction of subclauses (4) and (5), and if you look at subclauses (4) and (5) there is  
10 no particular requirement of due process for the Financial Secretary. It just says that where  
11 a person is convicted of an offence – and this is the sole condition – the Financial Secretary  
12 “may by order direct ...”. It seems to me to be a very direct sort of thing.

13  
14 If a person is convicted then as far as the law is concerned it can follow directly that  
15 the Financial Secretary will do that. You may have very good reasons for providing the  
16 order to be issued so directly, but I would rather you transplant this power to a later section so  
17 that the conviction becomes a condition of the Financial Secretary making that order of  
18 restriction; that is as one of the requirements of his making this order of conviction, rather  
19 than that order being one of the consequences of being convicted, and almost like a  
20 sentencing court, it is a direct consequence. There is no further process, so that what  
21 Mr DICKENS has been describing is not in the clause. I know you cannot put everything  
22 into one clause. I know that you provide the check and balance of unravelling that order by  
23 application to the court.

24  
25 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

26  
27 You would prefer it be picked up and put into the framework of Division 12, so that  
28 this is one of the triggers, so to speak?

29  
30 ***Deputy Chairman:***

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1

2           Something like that.

3

4 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

5

6           We can do that.

7

8 ***Deputy Chairman:***

9

10           Just consider it. I think upon consideration you might come to a view that this is  
11 not as good as the present, but if so, I would like to listen to the results.

12

13 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

14

15           Yes. I think it can probably be done.

16

17 ***Deputy Chairman:***

18

19           Thank you.

20

21 ***主席：***

22

23           Okay。現在討論page 93第320條。關於這條文，政府請我們今天作  
24 一個決定，現由政府解釋一下。

25

26 ***財經事務局副局長區環智女士：***

27

28           在上次討論這部分時，議員曾就這條文提出一些問題。讓我先行簡  
29 單介紹有關背景，說明為何會有這項權力。這並非一項新訂的權力，有關  
30 安排已推行了10多年。以往亦有公司曾使用這項權力，但次數不多。一些

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1 公司的股東基於某些原因，不希望表露作為控權人士的真正身份。他們便  
2 利用多間nominee companies，即代名人公司替他們持有股份，並透過多名  
3 中介人替他們進行買賣。在這情況下，就個別的代名人公司而言，可能並  
4 沒有超過須具報的水平，所以無需作出披露。出現上述情況的其中一個可  
5 能性，是由於有關股東不希望根據《公司收購及合併守則》的要求提出  
6 general offer，也就是說，不希望向所有股東提出全面收購。為了協助上市  
7 公司尋找實際上誰是該等公司的控權人士，我們訂定第320條，容許上市公  
8 司尋找擁有其股份的權益的人士的真正身份。

9  
10 根據證監會的資料，以往有6宗類似的調查，其中5宗由交易所建議  
11 有關上市公司進行的；另一宗則由有關上市公司的小股東建議進行的。進  
12 行調查的主要目的，是希望增加透明度，以清楚瞭解有關上市公司的股東  
13 的真正身份。據我記憶所及，上次討論這部分時，有議員指出，在協助上  
14 市公司進行這類調查時，當中不一定只涉及實際的控股人士，其代名人公  
15 司也可能牽涉在內，而有關的代名人公司本身可能是股票經紀。這些人士  
16 在協助上市公司進行調查時，都需要支付一定的成本。上市公司是否應該  
17 向他們發還有關費用呢？換句話說，上市公司的股東應否向協助調查的有  
18 關公司或人士發還有關費用？另有一些議員認為，當有關公司或人士答應  
19 出任代名人時，他們在提供這項服務時，應預計到可能會招致這方面的成  
20 本。當局曾研究國際間的做法。這條文其實是源自英國，但英國也沒有關  
21 於向協助調查的公司發還費用的安排。新加坡及澳洲亦訂有這方面的條  
22 文，但新加坡並無有關費用可獲發還的條文；澳洲則有條文容許規管機構  
23 制定附屬法例，訂明如何把有關費用發還。

24  
25 然而，我們又無法參考澳洲這方面的法例，因為澳洲尚未制定這些  
26 附屬法例。有關這方面的情況就是這樣。在上次討論這部分時，議員對於  
27 進行這些調查的費用應由上市公司的其他股東支付，還是由協助上市公司  
28 進行調查的nominee companies支付的問題有不同意見。由於有些人士希望  
29 隱藏自己作為股東的身份，所以才需要進行這類調查。

30

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1 **主席：**

2  
3 胡經昌議員。

4  
5 **胡經昌議員：**

6  
7 主席，我提出這問題的原因，是由於以往曾出現以下的情況：當時  
8 業界有很多人收到某上市公司所發出的信件，要求他們在3天內提供以往  
9 3年的資料。業界認為，他們是做生意的，該上市公司突然要求他們在3天  
10 內提供資料，這基本上是很大的難題。第一，有些資料不一定存放在公司。  
11 由於公司的面積細小，有關資料可能存放在別處。因此，業界需要利用人  
12 手處理該等資料。其實，業界並非不願意提供協助，只不過根據以往的經  
13 驗，有關的信件並無解釋為何上市公司提出這樣的要求。此外，信中亦訂  
14 明，假如業界沒有提供這些資料，即屬違法，可被判處監禁。業界認為，  
15 這條文的規定很不公平。我們並非不願意提供協助，只不過上市公司並不  
16 是法定組織，其性質與證監會及財經事務局有別，該等機構有法定權力進  
17 行調查。假如上市公司有充分理由進行這類調查，並要求業界提供資料，  
18 這並沒有任何問題。我們所擔心的是，在制定這條文後，上市公司可能會  
19 濫用有關安排。舉例來說，當某上市公司認為有別的公司希望提出敵意收  
20 購，於是要求業界提供資料，向我們發出這些信件，在這情況下，我們真  
21 的不知道應怎樣做，因為我們認為並無理由替該上市公司進行這種事情。  
22 業界所關注的包括：雖然直至現時為止，這項安排並無出現問題，以往也  
23 沒有上市公司濫用這條文，但無人能夠保證這條文日後不會被濫用。此外，  
24 對協助調查的業界來說，這涉及成本的問題，因為需要人手準備有關資料。  
25 政府表示可考慮提出CSA，由證監會訂立規則，訂明業界可如何收回成本。  
26 我認為，這做法是正面的。不過，我們希望知道證監會實際上如何釐定可  
27 收回的費用。委員會在上次討論這部分時也曾提到，假如有關經紀並無根  
28 據notification提供資料，便可能會遭受懲罰。有關條文訂明，違反該項規定  
29 的罰則包括監禁，業界對此深表關注，認為本身只是協助上市公司，為何  
30 反而會面對被監禁呢？此外，對於上市公司所訂的期限是否合理，業界表

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1 示值得商榷。

2  
3 **主席：**

4  
5 政府詢問委員會是否支持當局在委員會審議階段提出修正案，容許  
6 證監會可訂立規則，訂明如何收回有關費用。胡經昌議員，你作為業界人  
7 士，當然支持這項建議。其他同事，你們對這建議有甚麼意見？Margaret.

8  
9 **副主席：**

10  
11 主席，我對這方面並沒有強烈的要求。事實上，我感到有點猶豫。  
12 我並不反對給予上市法團這項權力，也就是說，當上市公司要求有關公司  
13 /人士協助調查時，該等公司/人士便應該協助調查。然而，上市公司是  
14 否應該向協助調查的公司/人士支付有關費用？倘若需要支付有關費用，  
15 金額是多少呢？我認為，假如上市公司須向協助調查的公司/人士支付費  
16 用，那麼證監會所訂立的規則，應如何讓協助調查的公司/人士收取費用？  
17 倘若把有關費用訂得太高，會使這條文難以執行；假如把費用訂得太低，  
18 相對於協助調查的公司/人士所需支付的開支而言，這對他們的實際幫助  
19 不大。我已仔細參閱條文的內容，從這角度來說，假如並沒有訂定關於費  
20 用可獲發還的條文，這會否造成不公平的情況呢？我本人並不認為這顯然  
21 會造成不公平的情況。我也希望聽一聽各位的意見。

22  
23 **主席：**

24  
25 Sophie.

26  
27 **梁劉柔芬議員：**

28  
29 我同意副主席的意見。此外，根據業界代表胡經昌議員所說，是否  
30 發還有關費用其實較為次要，最重要的問題是假如協助調查的公司/人士

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1 無法在指定期限內(例如在3天內)按上市公司的要求提供有關資料，他們可  
2 循甚麼途徑要求上市公司給予寬限呢？我認為這對業界的disruption可能更  
3 大，發還費用的問題其實較為次要。從事各個行業的公司／人士在若干程  
4 度上，均有obligation提供資料。問題的關鍵在於索取資料的要求是否  
5 reasonable？這是更重要的問題。上市公司就提供資料所訂定的時限是否更  
6 重要的問題呢？假如協助調查的公司／人士正如火如荼進行上市的工作，  
7 而上市公司卻要求該公司／人士即時協助調查，妨礙了該公司／人士本身  
8 正進行的工作，我認為委員會更需要考慮這方面的問題。

9

10 **主席：**

11

12 胡經昌議員。

13

14 **胡經昌議員：**

15

16 這並非在上市的時候進行的。

17

18 **梁劉柔芬議員：**

19

20 我明白，我只是列舉例子而已。

21

22 **胡經昌議員：**

23

24 剛才其實提到兩個issues。第一，有關費用是否應該獲發還？第二，  
25 上市公司就索取資料所訂定的期限。

26

27 **主席：**

28

29 我們先討論應否發還有關費用的問題。

30



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1 **胡經昌議員：**

2  
3 對於由證監會訂明所須繳付的費用，我並沒有意見。

4  
5 **主席：**

6  
7 你是有意見的，你支持這做法。

8  
9 **胡經昌議員：**

10  
11 我的意思是，對於由證監會訂明所須繳付的費用的做法，我並沒有  
12 意見。我認為這是較公平的做法。假如由每間公司各自訂定有關費用，可  
13 能會出現很大的問題。只要有了這方面的基礎，我相信證監會不會把有關  
14 費用訂得太高或太低。然而，由於所涉的費用各有不同，假如由每間公司  
15 各自釐定所須繳付的費用，這亦存在困難。我認為，即使訂定這方面的規  
16 定，也不會對上市公司構成任何障礙。如上市公司認為有需要，仍可進行  
17 這類調查。我相信必定有機制的，以稅務局為例，該局也訂有這方面的機  
18 制。

19  
20 **主席：**

21  
22 其他同事，你們是否希望就這方面表達意見？

23  
24 **余若薇議員：**

25  
26 我希望知道有關費用是多少。當然，我明白並不能夠提供一個很準  
27 確的數字，但至少說明大概所需的費用，讓我們參考。

28  
29 **財經事務局副局長區璟智女士：**

30

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1 這問題需要交由業界作答。

2  
3 **主席：**

4  
5 業界人士。

6  
7 **胡經昌議員：**

8  
9 當上市公司要求證券行提供資料時，其實證券行也不知道所涉及的  
10 費用是多少，但他們會有一個概念。假如證券行把有關資料存放在公司的  
11 抽屜內，便可以在很短時間內準備有關資料。假如證券行需要派人前往貨  
12 倉重新翻查有關資料，所涉的費用便會較高。由於每宗個案的情況不同，  
13 所以我不能夠準確說出每間公司準備有關資料所需的費用。

14  
15 **主席：**

16  
17 曾鈺成議員，你是否希望提出意見？

18  
19 **曾鈺成議員：**

20  
21 胡經昌議員，你建議發還有關費用，其主要作用是補償提供資料的  
22 人士所需付出的時間和精力，抑或是防止你所擔心出現濫用的問題？

23  
24 **胡經昌議員：**

25  
26 讓提供資料的人士收回成本。至於上市公司會否濫用這條文，假如  
27 所訂的費用過低，亦可能會出現濫用的情況。我現時其實並非針對濫用的  
28 問題，只是證券行在協助調查時，需要支付一定的成本。

29  
30 **曾鈺成議員：**

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1  
2 那麼便牽涉到計算的問題，對嗎？也就是說，如何作出補償才算合  
3 理呢？

4  
5 **胡經昌議員：**

6  
7 實際上，這會有一個確實的數字。有關公司／人士可以提出證據，  
8 以證明因應有關要求所進行的工作。由於證監會充分掌握有關業界人士的  
9 薪金的資料，該會也可訂明計算可獲發還費用的方案。這其實是協助調查  
10 的公司／人士所需付出的cost。

11  
12 **主席：**

13  
14 有沒有其他意見？

15  
16 **副主席：**

17  
18 我認為委員會不大支持這項建議。胡經昌議員，你認為真有此需要  
19 嗎？

20  
21 **主席：**

22  
23 花多點effort說服我們吧。

24  
25 **副主席：**

26  
27 各位從胡經昌議員的答覆中也可知道箇中的困難。關於成本方面，  
28 由於有很多不同的情況，如果按每人所需進行的工作而收取有關費用，這  
29 也未必容易做到。假如該公司／人士需要付出很多時間準備有關資料，並  
30 收取昂貴的費用，有關收費會否過高呢？屆時如果需要就有關費用討價還

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1 價，那麼是否需要委任有關人士負責仲裁？既然業界也未能確實說出所需  
2 的成本是多少，假如由證監會作出硬性規定，又未必能夠做到收回成本  
3 的概念。我認為，這項建議在實際執行上有困難。

4  
5 **主席：**

6  
7 既然這方面的討論無法在一、兩分鐘內完成，不如我們先休息一  
8 會。現在是上午10時35分，我們休息10分鐘。胡議員，你可利用這段時間  
9 進行場外游說。請各位在上午10時45分返回會議廳。

10  
11 (上午10時35分會議暫停)

12 (上午10時45分會議恢復)

13  
14 **主席：**

15  
16 請業界代表胡經昌議員繼續提問。

17  
18 **胡經昌議員：**

19  
20 主席，我們可否先請政府解釋當局的構思？假如當局提出CSA，有  
21 關內容會是如何呢？各位剛才已提出很多不同的意見。有些委員表示支  
22 持，另一些委員則表示反對。根據海外的經驗，一些國家打算發還有關費  
23 用，另一些並沒有關於費用可獲發還的條文。其實，現時並沒有統一的處  
24 理方法。

25  
26 **財經事務局副局長區環智女士：**

27  
28 我們實在無法借鑒海外的經驗，雖然澳洲的主體法例載有這項條  
29 文，但規管機構多年來，一直也沒有制定這方面的附屬法例。不過，我相  
30 信現在解釋應怎樣做，實屬言之過早。即使我們制定這方面的附屬法例，

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1 賦予證監會這方面的權力，當局必須事先諮詢受影響各方的意見。受影響  
2 各方不單是指提供代名人服務的經紀，也包括上市公司，因為假如向協助  
3 調查的經紀發還費用，付款人將會是上市公司。

4  
5 **主席：**

6  
7 雖然我剛才並無提出意見，但我也曾考慮這問題，認為有關做法既  
8 有好處，也有缺點。如果賦權證監會訂明所須繳付的費用，除非有關費用  
9 能夠根據簡單的公式計算出來，否則業界與上市公司就所需支付的金額這  
10 問題上，也需要經過很長時間的磋商。屆時所出現的問題是，經紀會先要  
11 求上市公司議定有關的費用，經雙方同意後，才準備有關資料。

12  
13 **胡經昌議員：**

14  
15 主席，實際上並不會按每宗個案逐一議定收費。

16  
17 **主席：**

18  
19 我明白這一點。第一，政府表示無法借鑒海外的經驗。第二，在考  
20 慮這問題時，需要就兩方面作出平衡。我相信，證監會所採取的做法，大  
21 概會是訂定一個合適的收費上限，而不是訂定下限。假如經紀只需從抽屜  
22 取出有關資料，每張可能會收取0.2元；假如需要前往貨倉取回有關資料，  
23 收費可能是每張200元。我認為，證監會將會訂明有關費用的上限，而不是  
24 收費下限，當中始終有一個議價空間。

25  
26 **胡經昌議員：**

27  
28 主席，其實可以採取簡單的計算方法。由於上市公司最多可以索取  
29 過往3年的資料，那麼可以規定索取3年前的資料的上市公司需支付較高的  
30 費用。如果上市公司索取在過往一年內的資料，有關費用便會較便宜。關

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1 於收費方面，第一，我們可以時間作為標準。第二，我們可根據頁數，例  
2 如就第1至100頁收取某個費用。我認為可以從這些層面訂定收費，而不是  
3 按個別個案計算費用。

4

5 我相信各位也瞭解到，提供這些資料對經紀來說，涉及一定的成  
6 本。當然，規模龐大的公司與規模細小的公司的情況又有所不同。規模龐  
7 大的公司可能分工較仔細，需要經多重人手準備有關資料，因此所收取的  
8 費用可能根據不同的標準計算；規模較小的公司可能需要員工放下手上的  
9 工作，特地為上市公司準備有關資料，有關收費亦有不同。因此，我認為  
10 如果根據上市公司索取哪段期間的資料及有關資料的頁數計算，我相信各  
11 位可以接受這做法。

12

13 **主席：**

14

15 在聽取你的意見後，以及考慮到副主席剛才表示有關做法作用不  
16 大，我建議接納你提出的部分提議。假如規定上市公司在索取舊紀錄時，  
17 才須繳付費用，各位認為這做法是否可行？舉例來說，假如上市公司索取  
18 過往一年的資料，經紀便有責任免費提供該等資料，不得收取費用。其實，  
19 我相信準備較近期紀錄所涉的成本應不會很高；至於舊紀錄，例如已製成  
20 archive的文件，準備這些資料所涉的成本較高。情況並不是這樣？

21

22 **Deputy Chairman:**

23

24 Mr Chairman, just look at it from a matter of principle. We are here talking about  
25 the obligation of a listed corporation in keeping a certain degree of transparency. My  
26 question is: in providing by law the areas in which a listed corporation is obliged to answer  
27 inquiries, what is the criterion you adopt? Are these the things you consider a listed  
28 corporation should be duty-bound to provide all the time? Or is it something extra? If  
29 you can look at it as something that is part of the obligation of a listed corporation, then at the  
30 time of incorporation you should consider that this is part of your operation expenses, so that

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1 anything which is extraordinary, which is over and above what normally can be expected,  
2 should be absorbed in the costs of the corporation itself. So the question is really where it is  
3 reasonable to require for you to lay down by law, as a requirement that at least the corporation  
4 should get involved. How do you differentiate what the corporation has to answer and what  
5 the corporation does not have an obligation to answer?

6  
7 **主席：**

8  
9 副局長？

10  
11 **財經事務局副局長區璟智女士：**

12  
13 這條文並非硬性規定上市公司進行調查，而是上市公司可選擇這樣  
14 做。如果上市公司認為難以找出誰是該公司的真正控股人士，這條文賦權  
15 上市公司可決定是否進行調查。現在需要考慮的問題是，協助上市公司尋  
16 找真相的有關人士，包括胡議員較早前提到提供代名人服務的人士，是否  
17 應該有副主席剛才所提到的責任呢？作為市場的一分子，當他們提供代名  
18 人服務時，就是我剛才所提到一些大股東不希望作出披露，又或基於某些  
19 原因不希望遵守《公司收購及合併守則》的某些要求，為了無須作出披露，  
20 該等股東便透過代名人持有股份，以便把控股權分散。這些代名人是否有  
21 責任協助上市公司進行調查，以找出真相？這就是問題的癥結。

22  
23 **主席：**

24  
25 關於是否應該收費這問題，各位同事有不同的意見。胡經昌議員，  
26 你可以繼續努力游說其他委員。

27  
28 **胡經昌議員：**

29  
30 正如我剛才也問到，當局會如何訂定有關的收費方案？政府表示現

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1 時未能給予答覆，因為並無以往經驗可以借鑒。如果委員會真的希望政府  
2 這樣做的話，當局是否應該動動腦筋，想出一個可行的方案？假如當局提  
3 出的方案是很簡單的，而各位也認為可以接受，便可以循這途徑處理，我  
4 們可不可以這樣做？

5

6 **副主席：**

7

8 不，我認為政府希望由委員會決定原則上是否希望這樣做。若委員  
9 會希望這樣做，無論是簡單與否，政府亦需要盡力去做。現時的問題是，  
10 委員會原則上是否認為應該有這樣的要求？

11

12 **胡經昌議員：**

13

14 主席，我真的希望會這樣做。

15

16 **主席：**

17

18 你的意見十分明確。不過，其他同事似乎亦有不同意見。吳亮星議  
19 員，你是否希望表達意見？

20

21 **吳亮星議員：**

22

23 我暫時不希望表達意見。

24

25 **財經事務局副局長區璟智女士：**

26

27 主席，坦白地說，假如各位議員對此並無強烈的要求，而今天委員  
28 會並沒有提出強烈的理由說明為何需要這樣做，政府便不會再作考慮。

29

30 **主席：**



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30

胡經昌議員，若你要成功，便要強烈游說其他同事支持你的要求。

**胡經昌議員：**

明白。

**主席：**

OK。關於第93及94頁，各位有沒有問題？那麼第95頁呢？關於你就刑事罰則提出的第二個問題，我希望知道有關條文是哪一條？

**胡經昌議員：**

第325條。

**主席：**

第325條，好的。那麼我們盡快討論到那一條。關於第95、96及97頁，各位有沒有問題？現在討論第98頁第321條 —— Duty to notify relevant exchange company, Commission and Monetary Authority of information given under section 320。各位有沒有問題？那麼第99頁呢？

**Deputy Chairman:**

Mr Chairman, that really has the criminal provision under clause 322(1): “A listed corporation may be required to exercise its power under section 320”, and then if you turn over the page you see sub-clause (4) and (5), particularly (5) where it says: “If default is made in complying with subsection (4) the listed company concerned, and every officer of it who is in default, commits an offence”. So this is your offence section, and it seems to me that sub-

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1 clause (4) is again a strict liability.

2

3 **主席：**

4

5 This is only the level of fine。胡經昌議員，你剛才說……

6

7 **胡經昌議員：**

8

9 不，這是關乎上市公司的officers。

10

11 **Deputy Chairman:**

12

13 I have a question, Mr Chairman. This really depends on clause 320 which is on  
14 page 93. You see, that is what my mind was so locked on. The listed corporation may  
15 carry out an investigation, so in all these powers and obligations to carry out investigation, if  
16 the corporation is requisitioned to do so and it does not do so, the corporation commits an  
17 offence. That I understand, but it also says “...every officer of it who is in default commits  
18 an offence”. I am not sure how that works. Who are these “every officers”? If there is  
19 more than one, how do I make sure that I do not have to pay for the default of some other  
20 person.

21

22 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

23

24 If I refer you to the general definition section in clause 299, sub-clause (5)...

25

26 **Deputy Chairman:**

27

28 Can you give me the page ?

29

30 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

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1  
2           Sorry, page 15. Sub-clause (5): there is there a definition of what we mean by  
3 “every officer of it” who is in default in relation to any particular fine or penalty.

4  
5 ***Deputy Chairman:***

6  
7           Right. I do not know if I have understood this section correctly, but is it right that  
8 you first give the listed corporation the power to investigate?

9  
10 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

11  
12           That is right.

13  
14 ***Deputy Chairman:***

15  
16           Then you put an obligation on him, whenever there is a requisition to inquire, that  
17 he will inquire. The penalty, the criminal sanction, arises when there is a proper requisition  
18 for inquiry, and the listed corporation refuses to carry out the inquiry.

19  
20 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

21  
22           That is right.

23  
24 ***Deputy Chairman:***

25  
26           So that is a question of who is the person who refuses to do so. Your “every  
27 officer in default”: this is where you define who may be charged within the listed corporation,  
28 of having breached sub-clause (5). Is it quite clear that everyone who may be charged would  
29 know that he is liable to be charged? From page 15, I am not sure that in a specific case a  
30 particular officer would know. You have to either authorize the refusal to carry out the

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1 requisition, or that you know there is such a requisition, and you permit it not to.

2  
3 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

4  
5 The language built into this is neither an authorization nor commission.

6  
7 **Deputy Chairman:**

8  
9 Yes. So the first thing that would get me into trouble is the threshold that I would  
10 know about such a requisition.

11  
12 **Deputy Chairman:**

13  
14 Right, and then I have to know that it was refused, and I have to know that this  
15 refusal is not rightful.

16  
17 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

18  
19 And it has to be within the scope of your authority. You have to either authorize  
20 or permit it, so junior officers are not caught.

21  
22 **Deputy Chairman:**

23  
24 Okay. Thank you.

25  
26 **主席：**

27  
28 現在討論第323條 —— Listed corporation to report to members。各  
29 位有沒有問題？那麼page 101呢？

30

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1 ***Deputy Chairman:***

2  
3 Right. Now, Mr Chairman, if you look at clause 323, I have put a marker here and  
4 we will look at the criminal sanction when we come to clause 102, but here under sub-clause  
5 (2) again there is a requirement to prepare the report within 10 business days. There is, I  
6 think for example, in sub-clause (4) a requirement of time within 10 business days, and sub-  
7 clause (6) requiring it within 3 business days. So by the time you arrive at page 102 sub-  
8 clause (9), you commit an offence by not complying with those time limitations also. We are  
9 seeing roughly the same situation. My question again is: would it be proportionate? Is the  
10 penalty proportionate for mere default of time? because that is strict. If it so happens that  
11 you did not do it within 10 days, but you did it on the 11<sup>th</sup> day, there is again no reasonable  
12 excuse, I think. You would at once have committed an offence.

13  
14 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

15  
16 All I can say is that the company in this situation is in an extraordinary situation.  
17 It has been requisitioned by members holding 10 per cent of the capital. It has been thrown  
18 into an extraordinary situation. It is not a day-to-day requirement. This is something  
19 unusual, very unusual, which has happened in the life of the company. Basically what that  
20 10 per cent of the company's members are saying is: "We think there is something going on  
21 that the directors aren't doing enough about, and that is why they're being requisitioned", and  
22 the idea from then on is to keep the company moving.

23  
24 It is true that it is a strict liability offence in the sense that it is complete, subject to  
25 showing knowledge, willfulness and an authorization or commission. It is complete on the  
26 11<sup>th</sup> day, but we feel that is necessary because you have a conflict between two parties here.  
27 Ten per cent of the shareholders want to know something, the directors now know it. "Can  
28 they please write it down quickly, in 10 days, and please tell us about it 3 days later so that we  
29 can read the report".

30

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1           If it is the 11<sup>th</sup> day, first there is prosecutorial discretion and there is something for  
2 the magistrate to take into account. If it is the 25<sup>th</sup> day or the 26<sup>th</sup> day, or maybe even the 11<sup>th</sup>  
3 day, the object of the requisition may in practice have been defeated. Suppose, for example,  
4 they are trying to find out who the true controllers of the company are, before a general  
5 meeting or before an extraordinary general meeting to approve, for example, a connected  
6 transaction. In those circumstances, if the company is not prompt in discharging its duties  
7 under the requisition, the requisitionists will not know the balance of forces at the general  
8 meeting, or will not know that it is unascertainable, because one of the things the report can  
9 say is: “We did everything and didn’t find anything out”. They will not know the situation.  
10 So it is not a day-to-day obligation. It is an obligation that arises when there is a serious  
11 dispute between a company and shareholders owning 10 per cent.

12  
13 ***Deputy Chairman:***

14  
15           You think that this is an acute situation.

16  
17 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

18  
19           It puts them on notice that things are getting serious.

20  
21 ***Deputy Chairman:***

22  
23           So you are already put on notice. It is not as if something would slip by.

24  
25 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

26  
27           No.

28  
29 ***Deputy Chairman:***

30

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1           And in the circumstances you think that this should not be difficult to comply with,  
2 because it is a matter of the report having been prepared when you notify people that it has  
3 been?

4  
5 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

6  
7           Look at the balance of forces here. The requisitionists have 10 per cent of the  
8 capital and maybe not much else. The company has the staff, the secretarial support, the  
9 access to the lawyers, the access to the company's treasury, and if we do not throw the duties  
10 pretty firmly on the company, nothing will get done that suits the requisitionists. That is the  
11 thought behind this reasonably strict provision – but I think it is justifiably strict, given that  
12 the company has been put on notice.

13  
14 **主席：**

15  
16           這也不是一個前提。

17  
18 ***Deputy Chairman:***

19  
20           It is a matter of proportion, and I think what the Administration is saying is that it is  
21 proportionate. I tend to accept that as far as this clause is concerned.

22  
23 **主席：**

24  
25           OK，現在討論第324條，page 103。

26  
27 ***Deputy Chairman:***

28  
29           Mr Chairman, how about here, in subclause (4), “end of business day”? Is it also  
30 quite easy to comply with, and proportionate? Why do you think so?

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1

2 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

3

4 I believe so. The report should be made available. You have already got it, so  
5 now all you have to do is make it available at your registered office, which is no more than  
6 telling people it is there and letting people look at it.

7

8 **主席：**

9

10 我並不反對現有的做法。不過，政府也需要考慮將來是否繼續沿用  
11 這做法，把有關報告存放在 listed corporation's registered office，這是十分  
12 傳統的做法。這部分關乎披露資料，現時最 effective 披露資料的方法就是在  
13 網上作出披露。事實上，使用這種方式會更容易達到作出披露的目的。不  
14 過，在現階段，我不打算在這問題上糾纏。這條文規定把有關報告存放在  
15 某個地方，假如當中的內容受到廣泛關注，這做法也許是可行的，因為將  
16 會有很多記者在該處守候，以便就有關報告的內容作出報道。我認為，如  
17 果把有關報告公諸於世，這做法會更加有效。

18

19 現在討論第325條。胡經昌議員。

20

21 **胡經昌議員：**

22

23 主席，正如我剛才提到，根據這條文，干犯有關罪行需負上刑事責  
24 任。Subclause (4)訂明，任何人如 fails to comply with a notification under  
25 section 320，便屬犯罪。第320條就是我們剛才所討論的條文。

26

27 **主席：**

28

29 根據之前的條文所訂的罰則，大部分並沒有訂定刑事法律責任。為  
30 何當局需要針對這種情況訂定刑事法律責任，簡而言之，即可判處監禁？



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1 該條文訂明，“on summary conviction to a fine at level 3 and to imprisonment  
2 for 6 months”。

3  
4 **胡經昌議員：**

5  
6 第105頁。

7  
8 **主席：**

9  
10 該條文亦訂明，“一經循公訴程序定罪，可處第6級罰款及監禁2  
11 年”。

12  
13 **財經事務局副局長區璟智女士：**

14  
15 其實這部分某些條文亦訂有刑事法律責任。假如違反本部的具報要  
16 求或披露要求，也需負上刑事法律責任，只不過刑罰可能有所不同。上市  
17 公司如根據第320條進行調查，並需要其他人士的協助，上市公司如何能夠  
18 令有關調查得以進行？假如其他人士不提供協助，上市公司便無法完成調  
19 查。所以，有關罰則必須起懲罰或阻嚇作用，使其他人士會協助上市公司  
20 進行調查。當然，正如議員剛才亦提到，我們需要考慮的最重要一點是，  
21 該條文有否訂明所提出的要求是合理的？因此，第96頁第320(4)條特別訂  
22 明，有關的要求，即胡議員剛才提到的部分，必須是合理的。

23  
24 **胡經昌議員：**

25  
26 主席，由於該條文採用“such reasonable time”的字眼，以剛才上市  
27 公司要求經紀在3天內提供資料為例，假如經紀無法在3天內提供資料，根  
28 據第(4)款，該經紀似乎已經fail to comply有關規定。

29  
30 **財經事務局副局長區璟智女士：**

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1  
2 如果有關時限並不合理，該條文的規定便不算不獲遵守。Mark，請  
3 你就這方面解釋有關情況。

4  
5 **主席：**

6  
7 假如上市公司要求經紀在3天內提供過往3年的資料，屆時如果有關  
8 經紀向法庭解釋，表示有關資料已存放在貨倉內，開倉也需時兩天，請問  
9 這算不算能夠解釋有關情況？

10  
11 **胡經昌議員：**

12  
13 主席，副局長剛才提到在第96頁的條文，該條文提到需要“.....given  
14 within such reasonable time”。第325(4)條訂明，除第(5)及(6)款另有規定  
15 外.....各位可參閱第(5)及(6)款的規定.....關於第(5)款，我不懂怎樣譯那個  
16 字.....瑣碎或是甚麼的.....

17  
18 **財經事務局副局長區環智女士：**

19  
20 該條文訂明，如有關要求是無理取鬧或瑣屑無聊，便不算犯罪。這  
21 是對協助調查的人士所提供的一種保障。據我理解，證監會以往從未有根  
22 據這條文提出檢控，也沒有人向證監會提出投訴。或者我請Mark向各位講  
23 解實際的情況。

24  
25 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

26  
27 Let us take it in steps. If the time specified in the notification that the broker gets  
28 is not a reasonable time, the notification itself is void. This clause has been interpreted in  
29 England, and that is the effect of subclause (4) of section 320 on page 96. If the time is  
30 unreasonable, the notice does not have to be complied with. It is void. You do not have to

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1 prove the defence. The notice is just void. Therefore no offence is constituted in the first  
2 place.

3  
4 That is the first bit of that. The second bit is if you then fail or you make a false or  
5 misleading statement. You can get out by proving that the requirement was frivolous or  
6 vexatious. That is a different thing from saying the time is unreasonable. It is saying the  
7 requirement was frivolous or vexatious. In fact it all happens at a stage before that, because  
8 before you can be prosecuted we have to work out that the notice was valid, which means that  
9 the corporation addressed it to a person who the corporation knows or has reasonable cause to  
10 believe, we have to work out that the time period was reasonable, we have to work out that  
11 there is a failure, and then you can draw to our attention or the court's attention any reason  
12 why you think the requirement was frivolous or vexatious. So there are a number of steps  
13 before you get to a successful prosecution, and if the time is not reasonable, the notice is, in  
14 layman's term, no good. It does not achieve anything.

15  
16 **胡經昌議員：**

17  
18 主席，該條款規定，有關人士必須證明符合這些要求是瑣屑無聊或  
19 無理取鬧。有關經紀怎樣能夠證明呢？上市公司的一般做法是致函有關經  
20 紀行，要求索取某些資料。舉例而言，上市公司會在信中表示，根據《證  
21 券及期貨條例》第320條，經紀行需要提供資料。經紀如何知道上市公司的  
22 要求是否瑣屑無聊或無理取鬧？你們可能從沒有參閱過這些notifications的  
23 內容，但業界曾讓我參考這些notifications，內容一如我剛才所說那麼簡單，  
24 亦即根據某條例某條文，有關經紀行需要提供以往3年的資料，並囑咐該經  
25 紀行在3天內提供有關資料，否則便會負上刑事法律責任。對收件人來說，  
26 怎樣界定有關要求是否reasonable呢？

27  
28 **主席：**

29  
30 讓我替胡經昌議員提出一個問題。假如法例訂明上市公司在要求他

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1 人提供資料時，必須說明索取有關資料的理由，這做法有沒有困難呢？

2  
3 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

4  
5 Okay. There are two levels of reason that you can give. One is implicit in the  
6 notice, which is: “I want to find out who the beneficial owners are”. That is what the  
7 notice does. The other is the motive for the reason, if I can put it that way. “Why do you  
8 want to find out who the beneficial owners are?” Frankly, that is not something that this law  
9 here, or in Australia, the UK or Singapore, has ever concerned itself with. It assumes that  
10 the members of a company and the company itself have a right to know who the beneficial  
11 owners are. That is part of being a listed company. People have a right to hide themselves  
12 behind nominees if they want to, but they are liable to be unmasked if the members or the  
13 company decides they should be unmasked. That is a value judgment that goes back as long  
14 as these provisions.

15  
16 **Deputy Chairman:**

17  
18 Mr Chairman, here I would like to give some support to Mr WU, because here it is  
19 possible – it is a real possibility – that there may be frivolous or vexatious requirements. I  
20 am very relieved to hear that if it is unreasonable the notice does not even bite, so then you  
21 can safely ignore it. Likewise, if it is frivolous or vexatious then you should also initially be  
22 able to ignore it. Here the balance is that with a strict liability arising from sub-clause (4),  
23 when you have failed to comply with the notification, you would have to marshal the  
24 evidence under subclause (5) to prove that this is frivolous and vexatious. You may not just  
25 ignore it. I think if you put this part somehow loaded in front, bring it forward to subclause  
26 (4), to the effect that - I do not suggest you to do that - you show that unless it is frivolous or  
27 vexatious, then failure to comply will constitute an offence. In that case it will be for the  
28 prosecution.

29  
30 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

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1  
2           It might be better to give reasonable excuse for these provisions, but we will  
3 examine them.

4  
5 ***Deputy Chairman:***

6  
7           See how you can do that.

8  
9 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

10  
11           We will examine them. It might be better to look at it from the broker's viewpoint  
12 rather than the companies. The company is deemed to have pretty much an absolute right,  
13 but we can allow for the broker's circumstances.

14  
15 ***Deputy Chairman:***

16  
17           Because the persons who are required to give information may be quite a wide  
18 range, so please consider that.

19  
20 ***主席：***

21  
22           胡經昌議員。

23  
24 ***胡經昌議員：***

25  
26           主席，我同意至少應給予免責辯護。假如政府答應再作考慮，我認  
27 為可在當局得出結果後再行討論。

28  
29 ***主席：***

30

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1           OK, 委員會等待政府給予答覆。現在討論第326條 —— Inspection of  
2 reports。關於第106頁，各位有沒有問題？

3  
4           現在討論第6分部 —— Keeping of register。關於第327條 ——  
5 Register of interests in shares and short positions，各位有沒有問題？關於第  
6 107頁，各位有沒有問題？那麼第108頁呢？

7  
8           關於第109頁，各位有沒有問題？那麼第110頁呢？顧先生。

9  
10 **Mr KAU Kin-wah, Assistant Legal Adviser:**

11  
12           Thank you, Mr Chairman. I just wish the Administration could clarify whether  
13 “keep a register” includes the power to amend the register.

14  
15 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

16  
17           There is provision for the usual information from the Registrar. I was just looking  
18 for the relevant clause. It looks like clause 329 on page 112.

19  
20 **Chairman:**

21  
22           “Removal of entries from register”?

23  
24 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

25  
26           Correct.

27  
28 **主席：**

29  
30           對，第329條 —— Removal of entries from register。

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***Mr KAU Kin-wah, Assistant Legal Adviser:***

Yes. I think that is for particular specified circumstances, and does not constitute a general power to amend in case of any error, if I understood it correctly.

***Mr Mark DICKENS, Member of the Commission and Executive Director:***

There is no general power to amend. This register, because it is a register of beneficial ownership, means that basically you put in the entries and you cannot remove them – that is what clause 330 says – unless you can fall within clause 329. So what is the register roll is what you have found out, and it has to be kept in that form. Most companies keep it, incidentally, just by indexing the notices they get. They just keep the notices. It is administrative convenience.

***Chairman:***

So what you have to do is to remove, and then you add again, then you can amend it?

***Mr Mark DICKENS, Member of the Commission and Executive Director:***

Yes.

***Chairman:***

There is no general power to amend.

***Mr Mark DICKENS, Member of the Commission and Executive Director:***

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1           There is no general power to amend, because what you are registering is  
2 information other people gave you about their interests. It is not information that the  
3 company possesses of its own knowledge.

4  
5 **Mr KAU Kin-wah, Assistant Legal Adviser:**

6  
7           What about in the course of registration? What if clerical errors are being made?  
8

9 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

10  
11           It depends what you mean by “clerical error”. If you mis-transcribe the original  
12 data that you were given in the notice, then you have not registered that notice yet. So you  
13 can correct that error, but what you cannot do is amend the register as to meaning. Does that  
14 make any sense? That is common sense. If I report a million shares and you write down  
15 “100,000”, you have not yet registered my million. So you get to do that.

16  
17 **主席：**

18  
19           OK。現在討論第329條 —— Removal of entries from register。關於  
20 page 113，各位有沒有問題？那麼第114頁呢？

21  
22           現在討論第115頁第331條 —— Inspection of register。各位有沒有  
23 問題？那麼第116頁呢？

24  
25           現在討論第7分部 —— Disclosure of interests and short positions of  
26 directors and chief executives。關於第332條，各位有沒有問題？那麼page 117  
27 呢？顧先生。

28  
29 **Mr KAU Kin-wah, Assistant Legal Adviser:**

30



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1           Sorry. I think it is just a drafting point in clause 332(1)(d), the second line: “The  
2 associated corporation” is not followed by “of the listed corporation”.

3  
4 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

5  
6           I think the point is correct. Since we put in the words “of the listed corporation”  
7 in the other paragraphs, we should add it after “associated corporations” in subclause (d).

8  
9 **Deputy Chairman:**

10  
11           Mr Chairman, if we are being fine, “...the grant to him by another corporation,  
12 being associated corporation...”: does the associated corporation refer to him?

13  
14 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

15  
16           We are going to say “of the listed corporation”.

17  
18 **Deputy Chairman:**

19  
20           Okay. It is just that “granted to him, being an associated corporation...” - okay.

21  
22 **主席：**

23  
24           關於page 117, any questions?那麼page 118呢？

25  
26           現在討論page 119，各位有沒有問題？那麼page 120呢？關於page  
27 121，各位有沒有問題？那麼page 122呢？關於page 123 where Audrey is very  
28 interested in，各位有沒有問題？

29  
30           現在討論page 124，各位有沒有問題？那麼page 125呢？關於page

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1 126，各位有沒有問題？那麼page 127呢？

2  
3 現在討論page 128，各位有沒有問題？那麼page 129呢？關於page  
4 130，各位有沒有問題？那麼page 131呢？

5  
6 關於page 132，各位有沒有問題？那麼page 133呢？關於page 134，  
7 各位有沒有問題？那麼page 135呢？現在討論page 136，各位有沒有問題？  
8 那麼page 137呢？

9  
10 關於page 138，各位有沒有問題？那麼page 139呢？關於page 140，  
11 各位有沒有問題？那麼page 141呢？

12  
13 現在討論Division 9 — Requirements for giving notification by  
14 director and chief executive。關於page 141，各位有沒有問題？那麼page 142  
15 呢？關於page 143，各位有沒有問題？關於這部分，政府會否考慮我們剛才  
16 提出的意見？雖然對CEO的規定應較為嚴格，但政府是否認為需要訂定  
17 reasonable excuse呢？

18  
19 **財經事務局副局長區璟智女士：**

20  
21 我們會一併作出考慮。

22  
23 **主席：**

24  
25 OK。關於第145頁，各位有沒有問題？那麼第146頁呢？關於第147  
26 頁，各位有沒有問題？那麼第148頁呢？

27  
28 現在討論第149頁，各位有沒有問題？那麼第150頁呢？關於第151  
29 頁，各位有沒有問題？那麼第152頁呢？關於第153頁，各位有沒有問題？  
30 那麼第154頁呢？

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1  
2 現在討論page 155，各位有沒有問題？那麼第156頁呢？關於第157  
3 頁，各位有沒有問題？那麼第158頁呢？關於第159頁，各位有沒有問題？  
4 那麼第160頁呢？

5  
6 **Deputy Chairman:**

7  
8 Mr Chairman, clause 342 is the criminal provision. As you have said earlier, these  
9 people are no heavier duty. But even so, may we ask the Administration to take the same  
10 comments into considerations and see if any adjustment needs to be made.

11  
12 **主席：**

13  
14 Yes, I would appreciate if the Government can have a second thought.  
15 關於第342條，各位是否希望就page 161提出問題？現在討論第162頁第10  
16 分部 —— Keeping of register of directors' and chief executives' interests and  
17 short positions。關於clause 343，各位有沒有問題？那麼page 163呢？關於  
18 第164頁，各位有沒有問題？那麼第165頁呢？

19  
20 現在討論第166頁，各位有沒有問題？那麼第167頁呢？關於第168  
21 頁，各位有沒有問題？那麼第169頁呢？關於第170頁，各位有沒有問題？  
22 那麼第171頁呢？

23  
24 **Deputy Chairman:**

25  
26 Mr Chairman, clause 347 gives the Financial Secretary the power to appoint  
27 inspectors to investigate. Sub-clause (1) says: "If it appears to the Financial Secretary that  
28 there are reasonable grounds to do so..." Reasonable grounds for what purpose? Or is it  
29 general? It seems quite wide.

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1 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

2  
3 It goes on, if you jump all the subclauses, “for the purpose of determining the true  
4 persons who are or have been financially interested in the success or failure...”. In other  
5 words, who are the real controllers or who can influence its policies.

6  
7 **Deputy Chairman:**

8  
9 I am sorry. Which part?

10  
11 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

12  
13 Clause 347(1), if you skip (a), (b), (c) and (d), talks about “for the purpose...”

14  
15 **Deputy Chairman:**

16  
17 I am sorry. Yes. Thank you very much. “... for the purpose of determining the  
18 true persons...” So the reasonable grounds ...

19  
20 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

21  
22 Relate to that.

23  
24 **Deputy Chairman:**

25  
26 Right. Can you consider – I know this may not be new – bringing it closer? It  
27 says: “If he has reasonable grounds to do so, he may appoint certain people to investigate  
28 for a certain purpose”. So the purpose relates to the investigation, but not reasonable  
29 grounds.

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1 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

2  
3 The reasonable grounds that he normally has – leave aside the requisition  
4 situation – are reasonable suspicion, really. Normally what he will have is something that  
5 gives him reasonable suspicion.

6  
7 **Deputy Chairman:**

8  
9 Of what?

10  
11 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

12  
13 That there may not be full disclosure; that in effect the true persons are not known.  
14 Maybe we could do something along those lines.

15  
16 **主席 :**

17  
18 關於第171頁，各位有沒有問題？顧先生。

19  
20 **Mr KAU Kin-wah, Assistant Legal Adviser:**

21  
22 Thank you, CHAIRMAN. May I come back to the previous Division which is  
23 relating to the registers?

24  
25 **Chairman:**

26  
27 Which page?

28  
29 **Mr KAU Kin-wah, Assistant Legal Adviser:**

30

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1 I am not referring to a particular page. I just wish to ascertain from the  
2 Administration whether they would prescribe the forms of the register due to the fact that the  
3 matter has been raised during discussion.

4  
5 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

6  
7 There is a great deal about what the register has to do in these provisions, as to what  
8 has to be in it, that it has to be indexed, that it has to be chronologically kept, and later on in  
9 the provisions I believe you get to the proposition that it is allowed to be kept electronically,  
10 provided it is rendered into a legible form. Further than that, we would rather not go, to tell  
11 the truth, so that the companies have the maximum flexibility within those propositions, to  
12 keep it any way they like, providing it is legible, it is alphabetical and it is chronological.

13  
14 ***Chairman:***

15  
16 No further questions?

17  
18 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

19  
20 Actually it is up to the members, because I think our concern is the register, because  
21 it could be voluminous, and the entries of a particular person may not be on the same page. I  
22 do not know whether that is difficult.

23  
24 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

25  
26 There will be an index. They have to keep an index where you can look up, for  
27 example, LI KA SHING, and find all the entries that relate to it. That is in the existing  
28 provisions.

29  
30 **主席：**

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1  
2 關於 page 172，各位有沒有問題？

3  
4 ***Deputy Chairman:***

5  
6 Mr Chairman, I have a question about sub-clause (3). Here the Financial  
7 Secretary may start this investigation upon application, and so you have an applicant, and an  
8 application is made to the Financial Secretary by members of the listed company, and so on.  
9 If we go forward to page 183 we see that these people may be required to pay some of the  
10 expenses of the investigation. I think this is a point which has been raised at an earlier stage.  
11 There was quite a lot of debate on that. Mr Chairman, in fact going back to page 172, you  
12 can see that if you go to the applications, and the Financial Secretary then appointing people,  
13 and then the Financial Secretary may require an applicant to give security “in such amount as  
14 he may specify for payment of costs of the investigation”. So this is a first inkling that the  
15 applicant may be required to pay the costs of the investigation.

16  
17 Then of course by the time you go to clause 354 on page 182, particularly on page  
18 183 sub-clause (1)(e), then you see that he may be required to pay. The question we raised  
19 at an earlier point is whether this person has any control of the investigation or the expenses,  
20 and is there any upper limit? Because you make an application, I remember that Audrey is  
21 very unfortunately not here at this point, but I think the point she raised was that after all, if  
22 there is anything which is improper here, the Financial Secretary ought to have, as someone  
23 who enforces this whole regulatory system, some interest in enforcing anyway.

24  
25 The applicant who brings a matter to his attention may be saddled with a bill which  
26 is quite large, for an investigation over which he had no control. If you instruct lawyers to  
27 prosecute your own interests, then your lawyer eventually tells you “Look, this is going to  
28 cost you a lot of money. If you want to continue to do so, you’re going to have to pay up.  
29 You have to put money on account”. Here there is no such process, so where is the balance?  
30 How is he protected? Is there an upper limit, or is it entirely a matter of discretion? I think

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1 that was the debate, but I do not think it has been reflected in these provisions.

2  
3 **主席：**

4  
5 政府會否作出解釋？

6  
7 **財經事務局副局長區璟智女士：**

8  
9 我們以往似乎沒有商量過此事。

10  
11 **主席：**

12  
13 對，並沒有商量過這部分。

14  
15 **Deputy Chairman:**

16  
17 Should we leave you to do it then?

18  
19 **財經事務局副局長區璟智女士：**

20  
21 我們在這方面的實際運作經驗不多，多年來，只有一宗個案。在該  
22 個案中，所涉及的是小股東。他們要進行調查，的確存在困難。當局考慮  
23 到有關事宜可能對投資大眾也有影響，所以決定協助他們進行調查。

24  
25 另一方面，當有關人士要求進行調查時，當局其實也難以拒絕，除  
26 非有關要求是一些無理取鬧的要求。假如有關要求從表面來看是合理的，  
27 財政司司長便需要答應進行調查。因此，當局需要作出平衡。假如所提出  
28 的要求大多是無理取鬧的，在這情況下，應如何處理呢？所以我們訂定制  
29 衡措施。由於搜集所得的資料對當事人日後也有幫助，所以當事人亦需承  
30 擔責任。現時的做法是要求當事人繳交按金，所涉及的金額不大。日後當調



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1 查完成後，根據我們的政策，也沒有規定有關的當事人必須支付全部開支  
2 或支付任何開支，這主要視乎對公眾利益有沒有影響。

3  
4 **副主席：**

5  
6 政府不應那麼計較，經常想着如何收回有關開支。

7  
8 **財經事務局副局長區璟智女士：**

9  
10 由於所動用的款項全是納稅人的金錢，假如有很多股東提出這方面  
11 的要求，那麼我們應怎樣作出平衡？我剛才也提到，政府在這方面的實際  
12 運作經驗實在很少，多年來，只有一宗同類個案。該個案促使我們考慮到  
13 有關問題，就是為何要納稅人替該批小股東支付開支呢？從該宗個案的經  
14 驗，我們建議訂定有關的條文，容許當局可要求申請人償還有關開支，但  
15 政府不一定會這樣做。

16  
17 **副主席：**

18  
19 我只是希望讓小股東也有預算。根據第347條的規定，有關人士需  
20 要向財政司司長提出申請。至於財政司司長是否接受有關要求，顯然由財  
21 政司司長考慮及決定。財政司司長在考慮有關申請及作決定時，必然也會  
22 考慮到為何他們不自行進行調查？假如財政司司長決定應申請人的要求進  
23 行調查，必定是基於充分的理由才這樣做，其中包括財政司司長認為有關  
24 事宜涉及公眾利益。此外，如果小股東希望進行調查，但本身並無能力這  
25 樣做，那麼這條例草案有何作用呢？屆時會否出現以下的情況：上市公司  
26 擺出一副滿不在乎的樣子，並向小股東表示，如他們有能力的話，可對該  
27 上市公司進行調查。假如小股東真的沒有能力這樣做，這條例草案豈非形  
28 同虛設？這對法律並無好處，因為這是公共政策的一部分。既然當局可以  
29 平衡多方面的情況才作出決定，那麼便不應出現申請人對調查所需的開支  
30 全無預算的情況。這是我主要希望提出的意見。

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1  
2 至於當局認為，假如情況合理，而申請人實際上也從調查中得到實  
3 惠，所以他們需要承擔部分開支，這也相當合理。假如並不是財政司司長  
4 應他們的要求進行調查，而是他們自行進行有關調查，他們也需要付出一  
5 些代價。不過，我希望當小股東參閱這部分的條文時，他們有方法預算所  
6 需支付的費用。也就是說，他們知道需要支付一筆費用，但該筆費用不會  
7 超過某上限，或在該條文訂明他們在哪個階段可知道所需支付的費用等  
8 等。在政策方面，當局亦需要考慮，小股東所需支付的費用，是否只應該  
9 是一筆nominal的費用呢？當局並無理由一方面要求申請人支付有關開支，  
10 但另一方面申請人對當局進行的調查卻全無控制權。當局是否願意讓申請  
11 人對其進行的調查有控制權呢？如果答案是否定的話，當局便應考慮作出  
12 平衡。

13  
14 **財經事務局副局長區璟智女士：**

15  
16 我們會再作研究。

17  
18 **主席：**

19  
20 關於這方面，我認為支付有關開支並不是最重要的問題。

21  
22 **副主席：**

23  
24 這是重要的，因為申請人可能需要支付一筆相當龐大的費用。

25  
26 **主席：**

27  
28 我明白，但我們的觀點可能各有不同。我認為，事先聲明所需的費  
29 用是多少，這是重要的。該條文採用“may”一字，亦即財政司司長可酌情決  
30 定是否收回有關費用。財政司司長可以公眾利益或投資者的利益為理由，

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1 豁免申請人支付有關費用。不過，如果當局向申請人收回有關費用，便應  
2 事先聲明所需支付的費用。

3  
4 **財經事務局副局長區璟智女士：**

5  
6 甄女士最近處理一宗類似的申請，但我們現時不能把有關公司的名  
7 稱公開。在有關過程中，我們也有向當事人詳細解釋成本等方面的事宜。  
8 在日後的運作上，我們可以做到這一點。

9  
10 **財經事務局首席助理局長甄美薇女士：**

11  
12 在該個案中，我們也有向提出申請的小股東解釋收費的理由，他們  
13 亦接納我們的解釋。正如主席剛才提到，作為一項收費而言，有關金額的  
14 數目並非太大。至於日後進行調查的費用，我們暫時仍未向小股東交代有  
15 關情況。

16  
17 **主席：**

18  
19 當局可否在條文中明確列明所需的費用，這會否是較容易的做法？

20  
21 **財經事務局副局長區璟智女士：**

22  
23 是否有關金額不得超過根據之前的條文所收取的按金？

24  
25 **主席：**

26  
27 對，讓申請人可自行作決定。也就是說，政府本身並不希望進行調  
28 查，不過假如申請人希望政府進行調查的話，政府也可以應申請人的要求  
29 進行調查，但申請人需要支付某個金額的款項。換言之，當局讓申請人知  
30 道調查有關個案所需支付的費用。當調查工作完成時，申請人所需支付的

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1 確實金額不會超過有關數目。

2  
3 **財經事務局首席助理局長甄美薇女士：**

4  
5 所涉及的複雜問題是，當財政司司長委任調查員時，他也未必知道  
6 該項調查的複雜程度及需時多久完成。當然，我們會有一個約數，這是一  
7 個預測或預計的數字。因此，假如要我們給予一個確實的數字，可能會有  
8 困難。

9  
10 **財經事務局副局長區璟智女士：**

11  
12 讓我與各位分享有關的經驗。現有的法例其實並沒有訂定page 183  
13 第354條第(e)款的安排。現時純粹是透過收取按金的做法，以顯示當事人是  
14 真心真意希望當局替他們進行有關調查。我們其實也擔心申請人會中途放  
15 棄，屆時我們應怎算好呢？此外，我們所考慮到的另一問題是，為何要其  
16 他納稅人承擔有關調查的全部費用？當局在最近處理上述個案後，藉此機  
17 會進行檢討。

18  
19 我們認為應分為兩部分。第一，按金的款額不應太高，以免令有關  
20 人士不願意進行調查。然而，我們會告訴有關人士，既然他們提出申請，  
21 而當局又決定替他們進行調查，那麼他們必須通力合作，協助進行有關調  
22 查。當調查完成後，財政司司長可能會向他們討回有關費用。根據現時的  
23 寫法，財政司司長可酌情決定討回多少費用。正如副主席剛才提到，某些  
24 個案可能涉及公眾利益，因此我們也沒有理由要求申請人承擔所有費用。

25  
26 **主席：**

27  
28 我明白。我所憂慮的是，申請人已支付按金，但有關款額是一個較  
29 少的數目。當調查完成後，政府要求申請人支付龐大的調查費用。

30

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1 **財經事務局副局長區璟智女士：**

2  
3 也就是說，你希望當局先事知會有關人士所涉的費用。

4  
5 **副主席：**

6  
7 當局以往似乎認為，事前收取按金便已足夠，那麼當局是否應該再  
8 行研究需否訂定第354條第(e)款？至於調查費用是否應該由納稅人支付，第  
9 一，我相信這類個案並不常見，即使納稅人需要攤分有關費用，數目也是  
10 有限。第二，這類個案的確牽涉納稅人的利益。假如當局不希望刪除第(e)  
11 款，當局至少應考慮訂定收費指南或收費上限。如果政府打算訂定收費指  
12 南或收費上限，便應該把有關資料列入法例內，讓小股東參考有關條文時，  
13 知道本身需要考慮此事。既使他們需要支付費用，也應該事先有預算。

14  
15 **財經事務局副局長區璟智女士：**

16  
17 我們可採取的另一做法是，當有關人士提出申請時，我們會知會有  
18 關人士根據第(e)款的規定，就個別個案而言，有關的調查費用大概會是  
19 多少。根據我們對公司進行調查的經驗，發現所涉及的調查成本各有不同，  
20 很難一概而論。

21  
22 **主席：**

23  
24 我們希望當局能夠事先說明所需的費用，讓申請人事先知道所需負  
25 擔的成本。Sophie.

26  
27 **梁劉柔芬議員：**

28  
29 主席，我希望跟進你剛才提出的意見。我也理解小股東有這方面的  
30 憂慮。如果你提出的建議再take it further，會否可以採取以下的做法：政

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1 府可以設立一個pool，並告知小股東預計的費用是多少。如果有關費用超出  
2 預計的金額，當局可從pool中拿取多出的費用，而不能夠向小股東索取。假  
3 如有關費用較預計的金額少，當局可將多付的金額放入pool內。

4  
5 **主席：**

6  
7 我的想法很簡單，最重要的一點是，當applicant提出申請時，假如  
8 財政司司長認為申請人有充分理由要求進行調查，或所涉情況事關重大，  
9 財政司司長可以向申請人作出豁免，使申請人無需支付任何費用；假如財  
10 政司司長認為並無充分理由進行有關調查，並希望收回調查費用，而申請  
11 人認為即使需要支付調查費用，也希望進行調查，當局在這情況下，則有  
12 需要讓申請人知道所需承擔的成本是多少，讓申請人自行作出決定。

13  
14 任何人在決定是否作出某件事情時，也需要考慮成本的問題。我認  
15 為當局應事先告知申請人所需的費用。至於日後向申請人收取的金額是否  
16 一定不得超過原先所說的數目，這是可以商量的。我認為，最理想的做法  
17 是，當申請人要求進行調查時，政府告訴申請人進行有關調查所需收取的  
18 費用，讓申請人自行決定是否進行有關調查。

19  
20 **梁劉柔芬議員：**

21  
22 主席，當中所涉及的實際困難是，即使政府表示需要收取數十萬元  
23 作為調查費用，但屆時實際的調查費用若超出這數目時，應怎樣處理呢？  
24 何況實際的調查費用可能真的不止數十萬元，屆時應怎樣做呢？難道中途  
25 放棄嗎？如果是這樣的話，條文的規定便沒有實際阻嚇作用。

26  
27 **主席：**

28  
29 吳靄儀議員的提議似乎更加徹底，她認為政府不應向申請人收回調  
30 查費用，有關款項由當局獨力承擔。

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1

2 **副主席：**

3

4

這是因為根據原有的條文，當局只要求申請人提供security。

5

6

**主席：**

7

8

我的意見是，收取費用其實有幾個作用，包括防止出現濫用的情況。然而，政府需要說明所需的費用是多少。假如政府其後發覺調查工作相當複雜，坦白地說，屆時當局可以承擔部分調查費用。

9

10

11

12 **財經事務局首席助理局長甄美薇女士：**

13

14

條例草案第354條亦提到進行調查的費用，有關條文在第182頁。

15

16

**財經事務局副局長區璟智女士：**

17

18

根據第354(5)條，有關的調查費用未必由申請人支付。如果在調查中發覺某些股東隱瞞身份，違反這條文的規定，他們一旦被裁定有罪，則需支付有關費用。

19

20

21

**副主席：**

22

23

我們稍後討論該條文時，再探討有關情況。我也希望就該條款提出問題。

24

25

26

**主席：**

27

28

委員會稍後才研究該條文。現在繼續討論第174頁第348條 ——  
Investigation of contraventions of sections 332 to 340。

29

30

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1

2 ***Deputy Chairman:***

3

4 Mr Chairman, again this is a question which has to be looked at together with page  
5 182, where you come to offences and you come to penalties. Here if you look forward to  
6 clause 354(1) it allows expenses of, and incidental to, an investigation by an inspector – “shall  
7 be defrayed in the first instance out of general revenue, but the following persons shall to the  
8 following extent be liable to repay such expenses to the government”. In other words, you  
9 draw the expenses out of general revenue, but you may recover it from various people. The  
10 first category is a person who is convicted by a court on a prosecution instituted as a result of  
11 the investigation. In other words, if you are convicted of an offence, you are talking about  
12 offences under sections 332 to 340, some of which can be quite minor. A person who is  
13 convicted would of course have a sentence imposed upon him by the court for the conviction,  
14 but on top of it he has to pay.

15

16 Again, we are using investigation expenses as part of penalty, and it seems that this  
17 is extra-criminal. In other words, in the criminal courts you receive your sentence, but the  
18 Financial Secretary can make you pay a sum which may be quite disproportionate. Is there  
19 any kind of indication of the extent, any upper limit or any proportionality? Again, there  
20 may be an imbalance here. This is the question I raise about clause 348, because the  
21 Financial Secretary can have such powers.

22

23 ***Chairman:***

24

25 Yes.

26

27 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

28

29 I think the person who is convicted by a court of a prosecution instituted as a result  
30 of investigation, he is only liable for the expenses to such extent as may be ordered by the



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1 court.

2

3 ***Deputy Chairman:***

4

5 Yes.

6

7 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

8

9 So it is not the intention of this clause to impose on him, in addition to the sentence  
10 given by the court, a burden to shoulder the expenses. It is only if the court orders him to be  
11 liable to a certain extent.

12

13 ***Deputy Chairman:***

14

15 Yes. Thank you. However, I understand the situation to be this: the first step is  
16 that you are convicted of the offence. The court will then pass a sentence on you, arising  
17 from the offence, because you have a clause in the relevant section about maximum level 3, or  
18 imprisonment for 6 months and so on. The reimbursement, the payment, of the costs of the  
19 investigation is additional.

20

21 ***Ms Betty CHOI, Acting Senior Assistant Law Draftsman:***

22

23 It says "if the court so orders".

24

25 ***Deputy Chairman:***

26

27 That may be so. You have the sentence which is in accordance with your penalty  
28 provision. On top of it, there is an order of payment of costs of investigation, by the court.  
29 That exceeds, takes it outside, the penalty clause. How does one look at this? The court  
30 has no capacity to evaluate the investigation, the costs of the investigation, of the Financial

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1 Secretary. He just takes it as read. If the Financial Secretary says “It has cost us a million  
2 dollars to investigate this”, it is not for the court to inquire into how and why you have spent a  
3 million dollars, and so on and so forth.

4  
5 This person, however, again when he is convicted – I think I am making a similar  
6 point to that of the restrictions, as Mr DICKENS would remember – in addition to the penalty  
7 clause you have in fact something a great deal more burdensome, which is part of the  
8 investigation costs. If it had taken a million dollars to investigate the offence you have  
9 committed, and the Financial Secretary asks for 10 per cent of it, this makes it quite serious.

10  
11 I am not sure first of all if it in fact becomes part of the sentencing. If you do it  
12 summarily, whether the magistrate can make this sort of order I think is not in the  
13 Magistrates’ Ordinance. At the moment, a defendant is faced with two consequences if he is  
14 convicted of an offence. He is faced with the penalty provided by statute or common law, he  
15 is faced with costs. This is the thing. Can you investigate first as to the basis in law, and  
16 secondly as a matter of justice, whether it is right, that he has to pay some part of the  
17 investigation, whether justice requires that there be some sort of upper limit.

18  
19 The Financial Secretary may direct a listed corporation to pay to such an extent, but  
20 where this sort of thing is concerned, probably you want to put in some sort of safeguard so  
21 that people can have some prior notice of what it is likely to be, so they have some sort of say.  
22 If they think the Financial Secretary is asking for too much money, do they have any kind of  
23 system for making representations?

24  
25 **主席：**

26  
27 現在討論第175頁，各位有沒有問題？那麼第176頁呢？現在討論第  
28 350條 —— Production of records and evidence to inspectors。關於這條文，  
29 Hong Kong Society of Accountants提出了一些comment。

30

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1 現在討論第177頁，各位有沒有問題？那麼第178頁呢？

2  
3 現在討論第179頁第351條 —— Delegation of powers by  
4 inspectors。關於這條文，各位有沒有問題？

5  
6 現在討論有關obstruction of inspectors的條文，各位有沒有問題？那  
7 麼第180頁呢？

8  
9 **Deputy Chairman:**

10  
11 Mr Chairman, I think I am not sure – I have not looked at this carefully again, but  
12 “obstruction” ranges about that you have other offences of obstruction and you are looking at  
13 that. Perhaps you put that also into the computers to see. Thank you.

14  
15 **主席：**

16  
17 關於第181頁，各位有沒有問題？那麼第182頁呢？Margaret已提出  
18 她的意見。

19  
20 現在討論第183頁，各位有沒有問題？那麼第184頁呢？

21  
22 **Deputy Chairman:**

23  
24 Mr Chairman, please hold on.

25  
26 **主席：**

27  
28 這條文關乎power to impose restrictions on shares, etc. in connection  
29 with investigation。你剛才曾提及這條文。

30

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1 **副主席：**

2  
3 No, 我所指的是第354(5)條。該條文訂明, “.....liability to repay the  
4 Government imposed by subsection (1) (a) shall, subject to the satisfaction of  
5 the right of the Government to repayment, be a liability also to indemnify all  
6 persons against liability under subsection (1)(b), (c), (d) and (e). Can you  
7 explain to me in sort of plain language since I could not understand, what does  
8 it mean?  
9

10 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

11  
12 Yes, Deputy Chairman. The intention of sub-clause (5) is to make it clear that any  
13 person who is convicted of an offence under subsection (1)(a), obviously he has got the  
14 obligation to repay Government first, subject to the satisfaction of the right of the  
15 Government to repayment.  
16

17 **Deputy Chairman:**

18  
19 I see. Okay. So, is it right that under clause 354, the Financial Secretary can  
20 recover part of the cost of the investigation more sort of people including applicant's listed  
21 corporation and so and so forth on the subclause (1).  
22

23 **主席：**

24  
25 現在討論第185頁, clause 355。  
26

27 **Deputy Chairman:**

28  
29 Yes, Mr Chairman. I raised my point earlier about restrictions under Division 12.  
30

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1 **Chairman:**

2  
3 Mark DICKENS has promised to incorporate.

4  
5 **Deputy Chairman:**

6  
7 Yes, right. I am grateful about that. But he had made a different point, a  
8 procedural point. Later on we will see that there are basically two roots to unravel this  
9 restriction order either through the Court that you go back to the Financial Secretary. But  
10 here it seems that the order can only be made by the Financial Secretary or is directly made by  
11 the Financial Secretary who does not have to go through any court process, is that correct?

12  
13 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

14  
15 Yes. The investigation is getting nowhere that he can make those orders.

16  
17 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

18  
19 It seems that, frankly it is an investigative tour as well as the collective one.

20  
21 **Deputy Chairman:**

22  
23 Right, so here, if that be the case, then we go to subclause (2) on the top of page  
24 185, it seems that the Financial Secretary just makes the order directly, before he makes the  
25 order or after he makes it, does anyone has the right to be heard? Because if you look at the  
26 restriction order, making certain transactions void, it may well be the interest of quite a few  
27 people would be affected. I do not know whether it will be legible.

28  
29 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

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1           So I would imagine that it would be of natural justice as it has to be done because it  
2 is affecting someone's property.

3  
4 ***Deputy Chairman:***

5  
6           Although generally you take it for granted, I mean there is a general principle that  
7 any executive particular discretionary part must be exercised fairly and reasonably subject to  
8 natural justice and all that.

9  
10 **主席：**

11  
12           OK，現在討論第356條。

13  
14 ***Deputy Chairman:***

15  
16           Mr Chairman, I made the same point about reasonable grounds, whether the  
17 reasonable grounds could be made explicit here.

18  
19 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

20  
21           Yes. We could.

22  
23 **主席：**

24  
25           現在討論第186頁，各位有沒有問題？那麼第187頁呢？法律顧問。

26  
27 ***Mr KAU Kin-wah, Assistant Legal Adviser:***

28  
29           The next page.

30

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1 **主席：**

2  
3 The next page? OK.

4  
5 關於第187頁，各位有沒有問題？

6  
7 **Deputy Chairman:**

8  
9 Mr Chairman, I am slightly concerned about the subclause (4) where a person who  
10 fails to give information required of him under, commit an offence, because it is disjunctive.  
11 Failure to give information required in itself constitute an offence. Can Administration  
12 explain why it is necessary to make it like this? Because it may fail to give information for  
13 variety reasons. What sorts of information are we talking about here?

14  
15 **財經事務局副局長區璟智女士：**

16  
17 我們會考慮加入“無合理辯解”等字眼。

18  
19 **副主席：**

20  
21 請當局加以考慮。

22  
23 **主席：**

24  
25 現在討論第188頁，各位有沒有問題？法律顧問。

26  
27 **助理法律顧問顧建華先生：**

28  
29 多謝主席。第357條即現有條例第43條。現行法例載有關於法律專  
30 業保密權的提述，但第357條並沒有該項提述。當局可否告訴我們有何特別

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1 理由這樣做呢？

2

3 **Mr Anthony WOOD, Senior Counsel, Securities and Futures Commission:**

4

5 It is absent in the Bill here somewhat confusingly because as a general provision in  
6 Part XVI, which I am just trying to find, about legal professional privilege, which says that  
7 legal professional privilege prevails under all circumstances in the Bill.

8

9 **主席：**

10

11 現在討論第358條，各位有沒有問題？那麼page 189呢？

12

13 **Deputy Chairman:**

14

15 Mr Chairman, on clause 359, this again is a criminal provision. Under subclause  
16 (1)(a)(i), you see that is a requirement of knowledge. But under subclause (ii), there is not.  
17 What is the reason for this discrepancy? And also, in fact if you look at subclause (1)(b), if  
18 this person, this is the situation when you have a restriction order, preventing you from doing  
19 a number of things about these shares, and the person who having an interest in any shares or  
20 equity derivative was entitled to any right to be issued with other shares or under other equity  
21 derivatives in right of them. Enters into any agreement which is void, so the very entry itself  
22 is an offence, even though he may not know about it.

23

24 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

25

26 Clause 359(1)(a)(i) “any shares or equity derivatives which, to his knowledge...”  
27 everything that follows after “which” describes the shares or equity derivatives, so we have  
28 been lazy in (ii) by not repeating those descriptive words yet again, but simply say “any right  
29 to be issued with any such shares...”

30



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1 **主席：**

2

3 關於第191頁，各位有沒有問題？

4

5 現在討論第360條 —— Relaxation and removal of restrictions。

6

7 **Deputy Chairman:**

8

9 OK. Here, you talk about relaxation and removal by two routes. So far as the  
10 application to court is concerned, I think, generally speaking, you have provided the  
11 procedures quite clearly. But what about the procedures when the application is made to the  
12 Financial Secretary? What process does one follow?

13

14 **主席：**

15

16 你是否就page 193的clause 360(6)提出問題？

17

18 **副主席：**

19

20 是，這條文關乎the application made to the court。I am concerned about  
21 two things: one is that going back to page 191. You will see that you have used the passive  
22 voice here that “application...may be made”. You did not say who is entitled to make an  
23 application, so this is the point you need to clarify because later on, you said “if the applicant  
24 makes the application to the Court...then the Financial Secretary has the right to be heard.”  
25 I think that is reasonable because the Court has to know why the order was made in the first  
26 place. But this goes under the general principles that a person who is affected should be  
27 heard before the Court makes an order and relaxation or removal, so unless I know who the  
28 applicant is and who are the interested parties, I do not know who else should be heard, now  
29 when the question is not before the Court, but before the Financial Secretary, then surely the  
30 same principle would apply.

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1

2 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

3

4           The principle to natural justice would require that the Financial Secretary give a  
5 right to be heard to anyone who would be affected by the removal of restrictions.

6

7 ***Deputy Chairman:***

8

9           Yes. That's right.

10

11 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

12

13           I think that it is a common ground that natural justice would have to be given.

14

15 ***Deputy Chairman:***

16

17           In the circumstances of each application?

18

19 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

20

21           Yes.

22

23 ***主席：***

24

25           我也希望提出意見。關於這條文，政府的政策目的其實是希望為受  
26 restrictions的人士提供上訴渠道，對嗎？既然如此，當局可否採取更直接的  
27 做法，把條文分為兩部分：第一部分訂明財政司司長在甚麼情況下可以  
28 remove restrictions；第二部分訂定正式的渠道，說明有關人士在甚麼情況  
29 及條件下可向法庭提出上訴。假如在條例草案另行訂定一段有關 appeal  
30 procedure的條文，這是否較好的做法呢？

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1

2 **財經事務局副局長區璟智女士：**

3

4 由於有關的原則也是一樣，所以我們只簡單訂明適用於財政司司長  
5 及原訟法庭。此外，原訟法庭可根據一些條文頒發某些指令或制衡，這未  
6 必一定由FS作出的。

7

8 **主席：**

9

10 假如政府要remove restrictions，其實無人能夠阻止當局這樣做，對  
11 嗎？

12

13 **副主席：**

14

15 不，在impose restrictions時，由於有關人士的利益受到影響，所以  
16 這必須是公平的。關於利益受到影響的問題，其實有正反兩方面。假如對  
17 有關人士施加restriction order符合某人的interests，在當局決定remove該  
18 restriction order時，這便與該人的interests有關。

19

20 **主席：**

21

22 OK。

23

24 **副主席：**

25

26 也就是說，這是相對的。

27

28 **主席：**

29

30 除副主席提出的意見外，我希望政府再行考慮可否為該等人士訂明

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1 有關的 appeal procedure 。

2  
3 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

4  
5 If it is a sort of appeal for the person affected by the order, but it is why they did  
6 amend, I can make the order against the broker's shares and he is the only person who we do  
7 not know about will also be affected by that order.

8  
9 **Deputy Chairman:**

10  
11 That is what you want him to do, I think.

12  
13 **Mr Mark DICKENS, Member of the Commission and Executive Director:**

14  
15 Yes, that what I want him to do.

16  
17 **Ms Betty CHOI, Acting Senior Assistant Law Draftsman:**

18  
19 Can I just point out something for clarification? In clause 360(2), we actually  
20 spelled out the people who are entitled to apply for the order, if the restrictions in the first  
21 place was made by the Court, then the application may be made by any person aggrieved by  
22 the corporation concerned. If the order was made by the FS, the application for the removal  
23 of the restrictions may be made by any person who aggrieved, so, we did set out.

24  
25 **Chairman:**

26  
27 Okay, thank you.

28  
29 關於第195頁第361條，各位有沒有問題？那麼第196頁呢？關於第  
30 197頁，各位有沒有問題？

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1  
2 現在討論第198頁第13分部 —— Miscellaneous。關於第362條 ——  
3 Liability of members for offences by corporations，各位有沒有問題？

4  
5 現在討論第363條 —— Method of giving notification and delivering  
6 report，各位有沒有問題？那麼第199頁呢？關於第200頁，各位有沒有問  
7 題？

8  
9 現在討論第201頁。第201頁的條文就是法律顧問剛才問到有關登記  
10 冊的形式的條文。關於第201頁，各位有沒有問題？那麼第202頁呢？

11  
12 現在討論第365條 —— Regulations by Chief Executive in Council。  
13 關於這條文，各位有沒有問題？那麼第365A —— Rules by Commission呢？

14  
15 ***Deputy Chairman:***

16  
17 Mr Chairman, I am anticipating page 204 that sub-process of consultation for  
18 making rules. I think we have made a comment at an earlier stage about how the  
19 consultation should be done. Could we make the same comment here so that the  
20 Administration may be asked to consider the same thing?

21  
22 ***Chairman:***

23  
24 I think the Administration would do so.

25  
26 ***Mr Mark DICKENS, Member of the Commission and Executive Director:***

27  
28 It is meant to be the same person.

29  
30 ***主席：***

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We achieve quite a lot this morning. 如果各位並無其他問題提出的話，今天的會議到此為止。關於這部分的中文本，如各位同意的話，我們留待日後才討論，因為委員會在數天前才收到這部分的中文本。委員會有兩項建議，希望徵詢政府的意見。我們希望在10月24日才舉行下次會議，一併討論第XIV、XV及XVI部的中文本。請問政府是否反對這樣做？我建議把下星期一的會議取消，並在10月24日研究仍未討論的各個部分的中文本。至於10月26日的會議，委員會則會討論第XVII部及Schedule 9。

多謝各位！

m3343