

《公司條例草案》委員會
《公司條例草案》第 19 部 — 調查及查訊
委員會審議階段修正案

下表載述政府當局就《公司條例草案》第 19 部(“調查及查訊”)(第 826 至 882 條)擬議提出的委員會審議階段修正案。政府當局在擬訂這些修正案時，考慮了議員、各團體／代表及立法會法律顧問的意見。這些修正案的標示文本按數序排列，現載於 **附件** 以供參閱。在附件內的中文標示文本，只載有僅適用於中文版的修正案。有關附表 10(“過渡性條文及保留條文”)的修正案，我們稍後會一次過向法案委員會匯報。

本列表所採用的縮寫如下：

《公司條例》：《公司條例》(第 32 章)

《公司(清盤及雜項條文)條例》：草案生效後的《公司(清盤及雜項條文)條例》

法案委員會：《公司條例草案》委員會

修正案：委員會審議階段修正案

草案：《公司條例草案》

處長：公司註冊處處長

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
草案各部的一般修訂			
1	視乎情況加入 “登記”一詞	在草案中，交付處長作登記的文件須符合第 29 至 36 條的規定，而該等文件會成為公司登記冊的一部分(第 26 條)。若條文要求交付文件，而上述條文適用於該文件，則須加入“for registration”(登記)一詞。	<ul style="list-style-type: none"> 就第 19 部而言，我們建議修訂第 830(1)、843(4)、844(4)及 849(2)條。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
第 19 部的其他修訂			
2	第 830 條 審查員委任通知須交付處長	修訂第 830(2)條，訂明委任通知須在委任日期起計的 15 日內而非“within a reasonable time”(在一段合理時間內)交付處長。	<ul style="list-style-type: none"> 這項修正案是因應委員的要求而提出的。在二零一二年二月十七日的法案委員會會議上，委員要求政府當局在第 830(2)條中訂明審查員將其委任通知交付處長登記的時限，而非“within a reasonable time”(在一段合理時間內)。 經審視後，政府當局建議把時限定為 15 日。請參閱立法會 CB(1)1277/11-12(04)號文件“政府當局對委員在二零一二年二月十七日會議上提出有關第 19 及 20 部的事宜所作的回應”第 9 至 11 段。
3	第 833 條 財政司司長可指示終止或暫停調查	修訂第 833(2)條，訂明在審查員根據第 829(1)條獲委任的情況下，若原訟法庭藉命令宣布調查應予終止，財政司司長可終止該調查。	<ul style="list-style-type: none"> 根據草案第 829(1)條，若原訟法庭藉命令宣布應調查某公司的事務，財政司司長須委任審查員進行該調查。 根據第 833(1)(a)條，財政司司長可指示審查員終止調查。然而，根據第 833(2)條，如審查員是根據第 829(1)條(即藉原訟法庭的命令)獲委任的，則除非和直至財政司司長覺得有人觸犯刑事罪行及有關事宜已轉介執法機構，否則財政司司長並無權力終止調查。若並無發現刑事罪行及轉介至執法機構，則將沒有機制讓財政司司長指示審查員終止調查。這並不合理，故須以修正案作糾正。
4	第 854 條 調查的開支	(I) 在第 854(1) 條英文本“defrayed”一字前，加入“be”一字。	<ul style="list-style-type: none"> 這項修正案旨在糾正一個文法上的錯誤。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		(II) 修訂第 854(8)(a)條，訂明調查的開支包括為進行調查而招致的“reasonable”(合理)開支。	<ul style="list-style-type: none"> 這項修正案是因應委員的建議而提出的。在二零一二年二月十七日的法案委員會會議上，委員建議修訂條文，訂明調查的開支必須合理。 請參閱立法會 CB(1)1277/11-12(04)號文件“政府當局對委員在二零一二年二月十七日會議上提出有關第 19 及 20 部的事宜所作的回應”第 12 及 13 段。
5	第 865 條 裁判官的手令	<p>刪除第 865(1)(a)及(b)條及加入新訂的第 865(1A)條，以訂明就第 865(1)條的目的而言，搜查令申請人須在向裁判官作出的告發中列明下列事宜：</p> <p>(a) 申請人根據第 2 或第 3 分部哪些相關條文要求取得有關紀錄或文件；以及</p> <p>(b) 申請人要求取得的紀錄或文件的性質。</p>	<ul style="list-style-type: none"> 這項修正案是因應委員的建議而提出的。在二零一二年二月十七日的法案委員會會議上，委員建議申請人應披露更多資料，方獲裁判官發出搜查令，而申請人也應在其申請中列明他是根據哪些條文(而非只是“第 2 分部”或“第 3 分部”)要求取得有關紀錄或文件。 請參閱立法會 CB(1)1277/11-12(04)號文件“政府當局對委員在二零一二年二月十七日會議上提出有關第 19 及 20 部的事宜所作的回應”第 14 及 15 段。
6	第 867 條 關乎指明材料的法律程序	(I) 修訂第 867(6)(b)條，把“company”(公司)一詞改為“an unregistered company as defined by section 326(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (other than a	<ul style="list-style-type: none"> 《公司條例》第 IVA 部規管公司董事或幕後董事資格取消的事宜。該部會在《公司(清盤及雜項條文)條例》中保留。根據《公司條例》第 168C 條，在第 IVA 部中，公司指(a)在香港組成和註冊的公司；(b)能夠在香港清盤的非註冊公司(社團或屬或不屬有限責任合夥的合夥除外)；以及(c)根據《公司條例》第 XI 部註冊的非香港公司。

項目	有關事宜／ 條文	擬議的 委員會審議階段修正案	備註
		<p>partnership, whether limited or not, or an association”)(譯文：《公司(清盤及雜項條文)條例》(第32章)第326(1)條所界定的非註冊公司(有限責任或非有限責任的合夥或社團除外))，使取消資格令可針對能夠在香港清盤的“非註冊公司”的董事／幕後董事而作出。</p> <p>(II) 加入新訂的第867(6)(c)條，提述“註冊非香港公司”。</p>	<ul style="list-style-type: none"> 第867(6)條訂明，財政司司長可根據《公司(清盤及雜項條文)條例》第168J(2)條，申請作出取消資格令。第168J條是第IVA部的條文，因此，有需要把第867(6)條及《公司條例》第168C條中公司的涵義劃一。
7	第868條 保密	把第868(3)(e)條中文本第二句“或曾在根據第3分部進行的查訊中執行任何職能的人”修訂為“或曾在根據第3分部進行的查訊中 <u>協助任何其他</u> 人執行任何職能的人”。	<ul style="list-style-type: none"> 這項修正案是因應立法會法律顧問的意見而提出的。 法律顧問注意到，第868(3)(e)條中文本的第二句與第868(3)(d)條第二句完全相同。然而，第868(3)(d)條指那些在或曾在根據第19部第2或第3分部進行的調查或查訊中執行任何職能的人，而第868(3)(e)條則指曾協助第868(3)(d)條所指的人的另一組人士。

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《公司條例草案》**830. Notice of appointment as inspector to be delivered to Registrar**

- (1) A person who is appointed as an inspector under section 828 or 829 must deliver a notice of the appointment to the Registrar [for registration](#)¹.
- (2) The notice must be delivered to the Registrar within [15 days after the date of a reasonable time after](#)² the appointment and must be in the specified form.

¹ Item 1 / 第 1 項

² Item 2 / 第 2 項

833. Financial Secretary may give directions to terminate or suspend investigation

- (1) Without limiting section 831, the Financial Secretary may, at any time before the completion of an investigation, direct the inspector—
- (a) to terminate the investigation; or
 - (b) to suspend the investigation for a period as specified by the Financial Secretary.
- (2) If the inspector is appointed under section 829(1), the Financial Secretary must not give directions under subsection (1)(a) unless ~~it appears to the Financial Secretary that~~—
- (a) it appears to the Financial Secretary that—
 - (i) matters have come to light in the course of the investigation which suggest that a criminal offence under the laws of Hong Kong has been committed; and
 - ~~(b)~~
 - (ii) those matters have been referred to a law enforcement agency; ~~or~~
 - (b) the Court by order declares that the company's affairs no longer ought to be investigated.³

843. Interim report to be made by inspector etc.

- (1) An inspector—
 - (a) must, if directed by the Financial Secretary, prepare an interim report on the investigation; and
 - (b) may at any time prepare an interim report on the investigation if the inspector considers it appropriate to do so.
- (2) If an inspector is directed under section 833(1)(a) to terminate an investigation, any direction previously given by the Financial Secretary referred to in subsection (1)(a) ceases to have effect.
- (3) An interim report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.
- (4) An inspector must, within a reasonable time after the delivery of an interim report to the Financial Secretary, deliver to the Registrar [for registration](#)⁴ a notice of that fact in the specified form.
- (5) Irrespective of whether an interim report has been or will be prepared, an inspector—
 - (a) may, at any time in the course of the investigation, inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the investigation; and
 - (b) must inform the Financial Secretary of any matter that comes to the inspector's knowledge as a result of the

⁴ Item 1 / 第 1 項

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investigation, if directed to do so by the Financial Secretary.

844. Final report to be made by inspector etc.

- (1) An inspector must, on the completion of the investigation, prepare a final report on the investigation.
- (2) An inspector who is directed under section 833(1)(a) to terminate an investigation must still prepare a final report on the investigation if directed to do so—
 - (a) where the inspector is appointed under section 828(1) or (2) or 829(2), by the Financial Secretary; or
 - (b) where the inspector is appointed under section 829(1), by the Court.
- (3) A final report must be delivered to the Financial Secretary within the time directed by the Financial Secretary or, in the absence of directions, within a reasonable time after it is prepared.
- (4) An inspector must, within a reasonable time after the delivery of a final report to the Financial Secretary, deliver to the Registrar [for registration](#)⁵ a notice of that fact in the specified form.

⁵ Item 1 / 第 1 項

849. Publication of inspector's report

- (1) The Financial Secretary may publish, either in whole or in part, any interim report or final report delivered to the Financial Secretary under this Division.
- (2) The Financial Secretary must deliver to the Registrar [for registration](#)⁶ a copy of any interim report or final report, or any part of an interim report or final report, that is published under subsection (1) as soon as practicable after it is published.
- (3) In this section—
publish (發表) includes distribute, make available and disseminate.

⁶ Item 1 / 第 1 項

854. Expenses of investigation

- (1) The expenses of an investigation are to be⁷ defrayed in the first instance out of the general revenue but the persons mentioned in subsection (2) are liable to repay the expenses to the Government to the extent mentioned in that subsection.
- (2) Those persons and the extent of their liability are as follows—
- (a) if, on a prosecution for an offence instituted as a result of the investigation, a person is convicted of the offence by the court, the person is liable to repay the expenses to the Government to the extent ordered by the court;
 - (b) if the inspector who conducted the investigation was appointed under section 828 or 829(1), any body corporate dealt with by the interim report or final report is liable to repay the expenses to the Government to the extent directed by the Financial Secretary;
 - (c) if the inspector who conducted the investigation was appointed under section 828 on application by a company or members of a company, the company or any of those members who made the application are liable to repay the expenses to the Government to the extent directed by the Financial Secretary.
- (3) When making an order or giving directions under a paragraph of subsection (2), the court or the Financial Secretary (as the case may be) may order or direct that 2 or more persons liable under that paragraph are to be jointly liable or jointly and severally liable for any of the expenses ordered or directed to be repaid to the Government.
- (4) On making an order on the extent of a person's liability under paragraph (a) of subsection (2), the court may further order

⁷ Item 4(I)/第 4(I)項

that the person is also liable to indemnify another person against any liability to which that other person may be subject under paragraph (b) or (c) of that subsection.

- (5) If the inspector who conducted the investigation was appointed under section 828 or 829(1), the interim report or final report of the investigation may, if the inspector thinks fit, include a recommendation as to the extent to which the expenses of the investigation should be repaid by a person referred to in paragraph (a), (b) or (c) of subsection (2).
- (6) An inspector must include a recommendation mentioned in subsection (5) in the interim report or final report of the investigation if so directed by the Financial Secretary.
- (7) The recommendation of an inspector under subsection (5) or (6)—
 - (a) in relation to a person referred to in paragraph (a) of subsection (2)—
 - (i) must not be disclosed to the court until after the person has been convicted; and
 - (ii) does not bind the court; and
 - (b) in relation to a person referred to in paragraph (b) or (c) of subsection (2), does not bind the Financial Secretary.
- (8) For the purposes of this section, the expenses of an investigation include—
 - (a) reasonable⁸ expenses incidental to the investigation; and
 - (b) such reasonable sums for general staff costs and overhead expenses of the Government, and for the cost of insurance for the inspector, as are determined by the Financial Secretary.

⁸ Item 4(II)／第 4(II)項

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《公司條例草案》

- (9) An amount that is repayable to the Government under subsection (2) is recoverable as a civil debt due to the Government.

865. Magistrate's warrants

- (1) If a magistrate is satisfied on information on oath ~~laid by—~~
~~(a) in relation to an investigation under Division 2, an inspector;~~
~~or~~
~~(b) in relation to an enquiry under Division 3, the Financial Secretary or a delegate of the Financial Secretary;~~⁹

that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under the Division, the magistrate may issue a warrant in respect of the premises.

~~(1A) For the purposes of subsection (1), the information—~~

~~(a) must set out—~~

~~(i) the nature of the record or document that is, or is likely to be, on the premises; and~~

~~(ii) the provision of Division 2 or 3 under which the record or document may be required to be produced; and~~

~~(b) must be laid by—~~

~~(i) in relation to an investigation under Division 2, an inspector; or~~

~~(ii) in relation to an enquiry under Division 3, the Financial Secretary or a delegate of the Financial Secretary.~~¹⁰

- (2) A warrant issued under subsection (1) authorizes a person specified in it, and such other persons as may be necessary to assist in its execution, to—

⁹ Item 5 / 第 5 項

¹⁰ Item 5 / 第 5 項

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- (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning with the date of the warrant; and
 - (b) search for, seize and remove, any record or document that the person so specified has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).
- (3) If an authorized person has reasonable grounds to believe that another person on the premises is employed or engaged to provide a service in connection with a business that is or has been conducted on the premises, the authorized person may require that other person to produce for examination any record or document that—
- (a) is in the possession of that other person; and
 - (b) the authorized person has reasonable grounds to believe may be required to be produced under Division 2 or 3 (as the case may be).
- (4) An authorized person may, in relation to any record or document required to be produced under subsection (3)—
- (a) prohibit any person found on the premises from—
 - (i) removing the record or document from the premises;
 - (ii) erasing anything from, adding anything to, or otherwise altering anything in, the record or document; or
 - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; and
 - (b) take any other steps that appear to the authorized person to be necessary for—
 - (i) preserving the record or document; or

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- (ii) preventing interference with the record or document.
- (5) Any record or document removed by an authorized person may be retained for—
- (a) a period not exceeding 6 months beginning with the day of its removal; or
 - (b) if the record or document is or may be required for the purposes of any criminal proceedings, or any proceedings under this Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), such longer period as may be necessary for the purposes of those proceedings.
- (6) If an authorized person removes any record or document under this section, the person—
- (a) must as soon as practicable after the removal give a receipt for the record or document; and
 - (b) may permit any other person who, but for the removal, would be entitled to inspect the record or document, at all reasonable times—
 - (i) to inspect it; and
 - (ii) to make copies or otherwise record details of it.
- (7) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has, by virtue of this section, come into the possession of an inspector, the Financial Secretary or a delegate of the Financial Secretary, as it applies to property that has come into the possession of the police.
- (8) A person commits an offence if the person—
- (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (3) or (4); or

- (b) obstructs an authorized person in the exercise of a power conferred by subsection (2), (3) or (4).
- (9) A person who commits an offence under subsection (8) is liable—
- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (10) In this section—
- authorized person* (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the acts set out in paragraphs (a) and (b) of subsection (2).

867. Proceedings on specified materials

- (1) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a body corporate which may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) should be wound up, the Financial Secretary may present a petition for it to be wound up.
- (2) On a petition by the Financial Secretary under subsection (1), the Court may make a winding up order if the Court thinks it just and equitable for the body corporate to be wound up.
- (3) If it appears to the Financial Secretary from any specified materials that—
 - (a) a company's or non-Hong Kong company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members; or
 - (b) an actual or proposed act or omission of a company or non-Hong Kong company (including one done or made on its behalf) is or would be so prejudicial,the Financial Secretary may, whether or not a petition has been presented under subsection (1), present to the Court a petition for an order to be made under section 714(1)(b) or (2).
- (4) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—
 - (a) has engaged, is engaging or is proposing to engage in any conduct specified in section 717(1)(a); or
 - (b) before the commencement date of section 717, had engaged, was engaging or was proposing to engage in

any conduct specified in section 717(2)(a), and the engagement or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 718(2).

(5) If it appears to the Financial Secretary from any specified materials that, in relation to a company or non-Hong Kong company, a person—

(a) has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing specified in section 717(1)(b); or

(b) before the commencement date of section 717, had refused or failed, was refusing or failing, or was proposing to refuse or fail, to do an act or thing that the person was required by the predecessor Ordinance and is required by this Ordinance to do, and the refusal, failure or proposal still subsists,

the Financial Secretary may apply to the Court for the remedies under section 718(2).

(6) If it appears to the Financial Secretary from any specified materials that it is expedient in the public interest that a disqualification order be made under section 168J(2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) against any person who is or has been a director or shadow director of—

(a) a company as defined by section 2(1); ~~or~~

(b) [an unregistered company as defined by section 326\(1\) of the Companies \(Winding Up and Miscellaneous Provisions\) Ordinance \(Cap. 32\) \(other than a](#)

partnership, whether limited or not, or an association) a company¹¹, wherever incorporated, that—

- (i) is carrying on business in Hong Kong, or has carried on business in Hong Kong; and
- (ii) may be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(c) a registered non-Hong Kong company¹²,

the Financial Secretary may apply to the Court for such an order to be made against that person.

(7) In this section—

specified materials (指明材料) means—

- (a) any report made on, or any record, document or information obtained in, an investigation under Division 2 by an inspector or a delegate of an inspector ; or
- (b) any record, document or information obtained in an enquiry under Division 3 by the Financial Secretary or a delegate of the Financial Secretary.

¹¹ Item 6(I)／第 6(I)項

¹² Item 6(II)／第 6(II)項

868. 保密

- (1) 除非是在執行本條例或《公司(清盤及雜項條文)條例》(第 32 章)所指的任何職能的過程中，或是為施行本條例或該條例的條文，否則第(3)款指明的人 —
 - (a) 不得准許任何人接觸關乎該人在第 2 分部所指的調查中或在第 3 分部所指的查訊中(或在與該調查或查訊有其他關連的情況下)獲悉的任何人的事務的事宜；及
 - (b) 不得將任何該等事宜，傳達予該事宜所關乎的人以外的任何人。
- (2) 第(1)款的效力，須受第 869(1)及(2)條規限。
- (3) 為施行第(1)款而指明的人為 —
 - (a) 公職人員；
 - (b) 審查員、其獲轉授人、財政司司長的獲轉授人、或該審查員、該獲轉授人的僱員、代理人、專家顧問或專業顧問；
 - (c) 為根據第 2 分部進行調查或為根據第 3 分部進行查訊而僱用或委任的僱員、代理人、專家顧問、專業顧問；
 - (d) 在或曾在根據第 2 分部進行的調查中執行任何職能的人，或在或曾在根據第 3 分部進行的查訊中執行任何職能的人；
 - (e) 曾在根據第 2 分部進行的調查中協助任何其他人執行任何職能的人，或在或曾在根據第 3 分部進行的查訊中協助任何其他人¹³執行任何職能的人；及
 - (f) 根據第 846 或 848 條 —

¹³ Item 7 / 第 7 項

- (i) 獲送交關於該調查的報告草稿或其部分或報告的人；及
- (ii) 被要求將該報告草稿或其部分或該報告保密的人。