

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 20 – Miscellaneous

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 20 (“Miscellaneous”) (clauses 883 to 899) of the Companies Bill. In preparing the CSAs, the Administration has taken account of, *inter alia*, the views of Members, deputations and the Legislative Council Legal Adviser. Marked-up copy of the proposed CSAs in numerical order is at Annex for reference. The marked-up Chinese provisions in the Annex only contain CSAs solely applicable to the Chinese text. CSAs to Schedule 10 (“Transitional and Saving Provisions”) will be reported to the Bills Committee later in one go.

A list of abbreviations used in this table is as follows:

CB: Companies Bill

CSA: Committee Stage Amendment

FS: Financial Secretary

LegCo: Legislative Council

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Delete the relevant provisions to effect abolition of capital duty	FS announced in his 2012-13 Budget Speech on 1 February 2012 to abolish capital duty levied on local companies. CSAs have to be introduced to effect the proposal under CB.	<ul style="list-style-type: none"> • Insofar as Part 20 is concerned, we propose to remove clause 897(3) and (4). • Clause 897(3) and (4) empowers FS to prescribe fees by reference to the amount of the share capital of a company. • For reference, clauses 62(1)(c) and 126(1)(b) of Part 3, clauses 137(3), 144(2), 166(3) of Part 4, clause 265 of Part 5 and sections 17(2), 27 and 28(2) of Schedule 10 will also be removed to effect abolition of capital duty under CB.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
2	Amend the Notes in CB as appropriate	CB currently contains 37 Notes. Upon review, we consider that some Notes have to be deleted or amended while some new Notes should be added.	<ul style="list-style-type: none"> Detailed proposals are set out in the LegCo Paper No. CB(1)1295/11-12(02) “Notes” and “Examples” in the Companies Bill” discussed on 10 April 2012. Members endorsed the proposal relating to Part 20, i.e. adding a Note under clause 883(1) to draw readers’ attention to clause 861 as clause 861 applies specifically to an act done under clause 883.
Other amendments specific to Part 20			
3	Clause 885 Court may order inspection or production of documents if offence suspected	Replace “books or papers” wherever appearing in clause 885 with “record” or “document” as defined in clause 826.	<ul style="list-style-type: none"> This CSA is proposed in response to LegCo Legal Adviser’s suggestion to align the term in Part 20 with similar terminology in Part 19.
4	Clause 887 Registrar may give notice to suspected offender about not instituting proceedings under certain conditions	Amend “藉提述第(5)或(6)款載有該通知的條款” in clause 887(1)(b) in the Chinese text to “視乎有關罪行符合第(5)款抑或第(6)款描述而載有該款的內容”.	<ul style="list-style-type: none"> The CSA is proposed in response to LegCo Legal Adviser’s suggestion to improve clarity of the provision in the Chinese text.
5	Clause 889 Application of	(I) Remove the reference to magistrate in clause 889(1) and the definition of	<ul style="list-style-type: none"> This CSA is proposed in response to LegCo Legal Adviser’s observation. The Legal Adviser noted that “court” has been defined in clause 2(1) of CB and

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	fines	“court” in clause 889(4).	includes a magistrate.
		(II) Remove clause 889(1)(b) which empowers the court to order that the fine be applied in or towards rewarding the person on whose information, or at whose suit, the fine is recovered.	<ul style="list-style-type: none"> • This CSA is proposed in response to a Member’s concern at the meeting on 17 February 2012 that it might not be appropriate to reward a person on whose information or at whose suit a fine is recovered. • Please see paragraphs 21 to 24 of the LC Paper No. CB(1)1277/11-12(04) “Administration’s response to issues raised by members at the meeting on 17 February 2012 in relation to Part 19 and Part 20”.
6	Schedule 7 Offences in respect of which proceedings not instituted under certain conditions	<ul style="list-style-type: none"> • Include the offence under clause 69(2) in respect of clause 69(1) for failure to deliver the written consent to act as director on the list of compoundable offences. 	<ul style="list-style-type: none"> • The offence under clause 69(2) is a straightforward and minor regulatory offence committed by companies that is easily detectable by the Registrar from objective reliable evidence. Upon review, we consider that it meets the criteria for a compoundable offence. • The general principles for determining which offences should be compoundable offences are set out in paragraph 12 to 16 of Annex A to the LC Paper No. CB(1)2636/10-11(03) “Administration’s paper on Part 20 and Part 21 of the Companies Bill”.

**Financial Services and the Treasury Bureau
Companies Registry
13 April 2012**

Companies Bill
《公司條例草案》**883. Offence for false statement**

- (1) A person commits an offence if, in any return, report, financial statements, certificate or other document, required by or for the purposes of any provision of this Ordinance, the person knowingly or recklessly makes a statement that is misleading, false or deceptive in any material particular.

Note—

Please see also section 861 which empowers the Registrar to require the production of records or documents, and the provision of information or explanation in respect of the records or documents, for the purpose of enquiring into whether any act that would constitute an offence under this subsection has been done.¹

- (2) A person who commits an offence under subsection (1) is liable—
- (a) on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) This section does not affect the operation of—
- (a) Part V of the Crimes Ordinance (Cap. 200); or
 - (b) section 19, 20 or 21 of the Theft Ordinance (Cap. 210).

¹ Item 2/第 2 項

885. Court may order inspection or production of documents if offence suspected

- (1) The Court may, on application by the Secretary for Justice, make an order under subsection (2) or (3) if it is satisfied that—
- (a) there is reasonable cause to believe that any person has, while an officer of a company, committed an offence in connection with the management of the company's affairs; and
 - (b) evidence of the commission of the offence is to be found in—
 - (i) any record or document~~books or papers~~² of, or under the control of, the company; or
 - (ii) any record or document~~books or papers~~³ of a person carrying on a banking business, which relate to the company's affairs.
- (2) The Court may, in the case of a record or document~~books or papers~~⁴ mentioned in subsection (1)(b)(i), make an order—
- (a) authorizing a person named in the order to inspect the record or document~~books or papers, or any of them,~~⁵ for the purpose of investigating and obtaining evidence of the offence; or
 - (b) requiring the company secretary of the company, or any other officer of the company named in the order, to

² Item 3 / 第 3 項

³ Item 3 / 第 3 項

⁴ Item 3 / 第 3 項

⁵ Item 3 / 第 3 項

produce the record or document~~books or papers, or any of them,~~⁶ to a person, and at a place, named in the order.

- (3) The Court may, in the case of a record or document~~books or papers,~~⁷ mentioned in subsection (1)(b)(ii), make an order authorizing a person named in the order to inspect the record or document~~books or papers, or any of them,~~⁸ for the purpose of investigating and obtaining evidence of the offence.

- (4) In this section—

document (文件) has the meaning given by section 826(1);

record (紀錄) has the meaning given by section 826(1).⁹

⁶ Item 3 / 第 3 項

⁷ Item 3 / 第 3 項

⁸ Item 3 / 第 3 項

⁹ Item 3 / 第 3 項

887. 處長可向涉嫌違例者發出通知，提出在某些條件下可不起訴

- (1) 處長如有理由相信某人犯了附表 7 指明的罪行，則可向該人發出符合以下說明的書面通知 —
 - (a) 指稱該人犯了附表指明的罪行，並載有該罪行的詳情；
 - (b) 藉提述第(5)或(6)款載有該通知的條款視乎有關罪行符合第(5)款抑或第(6)款描述而載有該款的內容¹⁰；
 - (c) 為該款的目的指明限期及款額；及
 - (d) 載有處長認為合適的任何其他資料。
- (2) 上述通知只可在針對有關罪行的法律程序展開之前發出。
- (3) 處長可藉另一書面通知，延展第(1)(c)款指明的限期。此項權力可在該限期內行使，亦可在該限期終結後行使。
- (4) 第(1)款所指的通知，不可在該通知指明的限期或在根據第(3)款延展的限期內被撤回。
- (5) 凡有關罪行屬由沒有作出某作為或事情所構成的罪行 —
 - (a) 如有關的人在第(1)款所指的通知指明的限期或在根據第(3)款延展的限期內，向處長繳付該通知指明的款額並作出該作為或事情，則不會就該罪行而針對該人提起法律程序；或
 - (b) 如有關的人在第(1)款所指的通知指明的限期或在根據第(3)款延展的限期內，沒有向處長繳付該通知指明的款額或沒有作出該作為或事情，則可就該罪行而針對該人提起法律程序。
- (6) 凡有關罪行不屬由沒有作出某作為或事情所構成的罪行 —

¹⁰ Item 4 / 第 4 項

- (a) 如有關的人在第(1)款所指的通知指明的限期或在根據第(3)款延展的限期內，向處長繳付該通知指明的款額，則不會就該罪行而針對該人提起法律程序；或
 - (b) 如有關的人在第(1)款所指的通知指明的限期或在根據第(3)款延展的限期內，沒有向處長繳付該通知指明的款額，則可就該罪行而針對該人提起法律程序。
- (7) 繳付根據第(1)款向某人發出的通知所指明的款額，不得視為該人承認該人須就該通知指稱該人所犯的罪行負上任何法律責任。

889. Application of fines

(1) When imposing a fine under this Ordinance, the court ~~or~~ ~~magistrate~~¹¹ may direct that the whole or any part of the fine is to be applied ~~—~~

~~—(a) in or towards payment of the costs of the proceedings; or~~

~~(b) in or towards rewarding the person on whose information, or at whose suit, the fine is recovered¹².~~

(2) Subject to a direction under subsection (1), a fine under this Ordinance must be paid into the general revenue.

(3) Subsection (2) has effect despite anything in any other Ordinance.

~~(4) In this section~~

~~*court* (法院) means the Court or the District Court.¹³~~

¹¹ Item 5(I) / 第 5(I) 項

¹² Item 5(II) / 第 5(II) 項

¹³ Item 5(I) / 第 5(I) 項

897. Power to make regulations

- (1) The Financial Secretary may make regulations for any matter required or permitted to be prescribed under this Ordinance.
- (2) Subsection (1) does not apply if the Chief Executive in Council or the Financial Secretary is empowered under another Part to make regulations for the matter.

~~(3) Without limiting subsection (1), the Financial Secretary may prescribe fees for the purposes of sections 62(1)(c), 126(1)(b), 137(3) and 166(3).¹⁴~~

~~(4) A fee under subsection (3) may be prescribed by reference to the amount of the proposed share capital or an increase in a company's issued share capital.¹⁵~~

¹⁴ Item 1 / 第 1 項

¹⁵ Item 1 / 第 1 項

Schedule 7

[ss. 887 & 899]

Offences in respect of which Proceedings not Instituted under Certain Conditions

1A. An offence under section 69(2)¹⁶

1. An offence under section 119(3)
2. An offence under section 119(4)
3. An offence under section 653(6)
4. An offence under section 776(3)
5. An offence under section 777(3)

¹⁶ Item 6 / 第 6 項