

Auditors working papers

Foreign comparisons

- Clause 165 of the Bill gives the SFC the power to obtain the working papers of the auditors of a listed company or one of its group companies if certain thresholds are met (documents are auditors' working papers, are relevant to the subject of the inquiry and relate to the affairs of the listed company or one of its group companies).
- Comparable regulators in each of the US, UK, Canada (Ontario province) and Australia may each when investigating a matter within their jurisdiction obtain documents from auditors. In each case with similar or fewer restrictions than under clause 165. None of these regulators have to apply to court first.
- There is no regulator with a role similar to that of the SFC under clause 165 in the US, UK and Canada. Each of the regulators in question is a securities and in some cases a futures regulator too. However, when investigating securities or futures matters, each of these regulators may obtain documents from auditors. The only question is whether the documents are relevant to the investigation.
- The most direct counterpart to the SFC under clause 165 is the Australian regulator (the ASIC), which regulates listed and unlisted companies and may investigate any type of crime relating to a company's affairs. Under its powers, the ASIC may obtain documents from auditors.
- In Hong Kong, the ICAC may obtain documents from auditors without having to apply to court first, as long as the auditor is not a suspect. Auditors will not be suspects under clause 165 inquiries except in the most extreme circumstances and much of the conduct the subject of clause 165 inquiries will be civil, not criminal.

Auditors working papers Local and international comparison

Jurisdiction	Get auditors working papers?	Court application necessary?	Type of agency
<i>Hong Kong</i>			
<i>Bill</i> ¹	Yes	No	Securities, futures and limited listed company inquiry role
<i>ICAC</i> ²	Yes	Only if suspect	Corruption
<i>US</i> ³	Yes	No	Securities
<i>UK</i>			
<i>Present law</i> ⁴	Yes	No	Companies and serious fraud
<i>New Bill</i> ⁵	Yes	No	All aspects of financial markets
<i>Canada (Ontario)</i> ^{6,7}	Yes	No	Securities and futures
<i>Australia</i> ⁸	Yes	No	Companies and all investment products

¹ Clause 165

² Section 13 Prevention of Bribery Ordinance

³ Section 19(b) Securities Act and section 21(b) Exchange Act

⁴ Sections 431-434 Companies Act 1985 and section 2 Criminal Justice Act 1987

⁵ Clauses 135-145 Financial Services and Markets Bill

⁶ Each Canadian province has its own securities and futures laws and regulator which are broadly similar. Ontario is the largest province and its laws are representative of those of other provinces.

⁷ Sections 11-13 Securities Act

⁸ Sections 19, 29 and 33 ASIC Act