

## 資料文件

### 《財務匯報局條例草案》委員會

#### 條例草案據以為藍本的海外地區法例的文本

## 目的

我們應法案委員會秘書二零零五年七月十一日來函所請，隨文夾附《財務匯報局條例草案》(條例草案)在政策或草擬上據以為藍本的海外地區法例的文本。

## 闡釋

2. 我們制訂建議以成立適合香港情況和需要的財務匯報局時，已研究過一些海外司法管轄區的經驗。就這些海外地區的經驗和成立財務匯報局的現行建議的比較，委員可參閱財經事務委員會在二零零五年五月六日會議上所討論由政府當局發出題為「有關成立財務匯報局的立法建議」的文件(摘錄於**附件 A**)。

3. 不過，整體來說，條例草案並沒有特別據以某一套海外地區的法例為藍本；但條例草案中與財務匯報檢討委員會的查訊工作及欠妥帳目的修訂有關的第 40、43、44、45、49、50、61、62 及 63 條，則以英國《1985 年公司法》的有關係文(摘錄於**附件 B**)為藍本。

財經事務及庫務局  
二零零五年七月

(摘錄自政府當局為 2005 年 5 月 6 日財經事務委員會的會議發出而題為「有關成立財務匯報局的立法建議」的文件)

**「其他司法管轄區的經驗**

14. 在國際層面上，我們研究了三個司法管轄區(即澳洲、英國和美國)的做法。有關結果表列於(下表)。

15. 一如(下表)所載，上述三個司法管轄區在審計／會計方面的規管制度，存在頗大差異。舉例來說，在澳洲和美國，任何人必須向金融規管機構註冊，才可擔任公司核數師，但英國和香港則沒有這類註冊規定。儘管如此，這些地區普遍傾向以更獨立於會計專業的形式，監督核數師及上市公司的財務匯報。

16. 就在我們提出成立財務匯報局的建議而言，關於財務匯報檢討委員會在職能、權力和組成方面的建議，大致上是以英國的相應組織架構為藍本。至於擬設立的審計調查委員會，我們的建議在多方面都與其他三個司法管轄區的相應架構相似，例如它們都是以獨立組織調查核數師的不當行為；但有一點不同的是，我們建議的調查委員會只負責進行調查而不會對核數師採取紀律行動。而一些其他的司法管轄區，它們的審計調查組織會同時有紀律處分的職責。事實上，在二零零三年年底進行首輪公眾諮詢時，此事曾經予以深入討論。當時，大多數意見認為香港的審計調查委員會只應擔當調查角色，紀律處分程序應繼續由有關的專業組織如會計師公會等負責。我們還要指出一點，隨着《2004 年專業會計師(修訂)條例》在去年十一月開始實施以來，會計師公會的紀律處分程序的透明度和非會計專業人士的參予比例已大為提高。現時，會計師公會轄下紀律委員會的主席及過半數成員都為業外人士，而聆訊亦一般需要公開進行。」

## 香港擬成立的財務匯務局相對於其他司法管轄區的類似組織<sup>1</sup>

	香港	英國	澳洲	美國
會計專業的規管制度	<ul style="list-style-type: none"> <li>• 會計專業基本上由香港會計師公會(簡稱會計師公會)實施自我規管。</li> <li>• 任何人必須成為會計師公會的會員，方可獲委任為公司核數師。</li> </ul>	<ul style="list-style-type: none"> <li>• 會計專業基本上由六個認可專業會計組織實施自我規管。</li> <li>• 任何人必須成為認可專業組織的成員，並符合該組織的規則，方可獲委任為公司核數師。</li> </ul>	<ul style="list-style-type: none"> <li>• 有數個會計專業團體。</li> <li>• 為公司審核帳目的會計師一律須在澳洲證券及投資委員會(Australia Securities and Investments Commission) (類似香港的證監會)登記為註冊公司核數師。該委員會可撤銷或暫時吊銷註冊公司核數師的註冊。</li> </ul>	<ul style="list-style-type: none"> <li>• 會計專業由所屬州份規管，而美國會計師公會(American Institute of CPAs)屬全國及自願性的會計專業組織。</li> <li>• 執業會計師事務所須在由證券及交易委員會(Securities and Exchange Commission)委任成立的公眾公司會計監督委員會(Public Company Accounting Oversight Board)，登記成為註冊執業會計事務所，方可為在證券及交易委員會註冊的公司擬備或發出審計報告。</li> </ul>

<sup>1</sup> 資料來源：海外相關的法例和有關組織的網站。

	香港	英國	澳洲	美國
會計專業的規管制度 (續前頁)	<ul style="list-style-type: none"> <li>會計師公會訂有會員規則和專業紀律守則。《專業會計師條例》賦權會計師公會理事會委任的調查委員會和紀律委員會就專業會計師的失當行為進行調查和紀律處分程序。</li> </ul>	<ul style="list-style-type: none"> <li>認可專業組織各有本身的會員規則、專業操守守則、以及開除會籍和紀律處分程序。有關規管及紀律處分會員的措施均受到英國財務匯報局 (Financial Reporting Council) 轄下的會計專業監督委員會 (Professional Oversight Board for Accountancy) 監督。</li> </ul>	<ul style="list-style-type: none"> <li>有關專業組織各有會員規則、操守守則、以及開除會籍和紀律處分程序。有關規管及紀律處分會員的措施均受到澳洲財務匯報局 (Financial Reporting Council)<sup>2</sup> 的監督。</li> </ul>	<ul style="list-style-type: none"> <li>雖然遭美國會計師公會開除會籍在某程度上並不光彩，但並不妨礙有關的會計師繼續執業。</li> </ul>
財務匯報局或類似的組織	<ul style="list-style-type: none"> <li>財務匯報局</li> </ul>	<ul style="list-style-type: none"> <li>英國財務匯報局</li> </ul>	<ul style="list-style-type: none"> <li>公司核數師及清盤人紀律委員會 (Companies Auditors and Liquidators Disciplinary Board) (下稱「核委會」)</li> <li>財務匯報委員團 (Financial Reporting Panel) (下稱「財委團」) (將於二零零五年成立)<sup>3</sup></li> </ul>	<ul style="list-style-type: none"> <li>公眾公司會計監督委員會 (Public Company Accounting Oversight Board) (下稱「監委會」)</li> </ul>

<sup>2</sup> 澳洲財務匯報局乃法定組織，專責監管制訂會計準則和核數準則的過程，及監管有關核數師獨立性要求的效驗情況。

<sup>3</sup> 財務匯報委員團是經於 2004 年修訂後的《澳洲證券及投資委員會法》而成立的，以裁決澳洲證券及投資委員會與任何公司就公司財務報告上的會計處理方式所產生的爭拗。據悉，該委員團正於 2005 年成立。

	香港	英國	澳洲	美國
組成	<ul style="list-style-type: none"> <li>• 財務匯報局將由不多於 11 名成員組成，包括主席和行政總裁各一名。</li> <li>• 除來自政府當局的當然成員外，所有其他成員均會由行政長官按以下方式委任。</li> <li>• 行政長官會委任三名分別由證監會、港交所和會計師公會提名的人士以個人身分出任成員，並委任四至六名其他成員和行政總裁。</li> </ul>	<ul style="list-style-type: none"> <li>• 英國財務匯報局由多達 30 名成員組成(包括五名董事)，並有一些來自關注企業匯報及管治的其他組織的觀察員。</li> <li>• 英國財務匯報局五名董事(包括主席及副主席)全由貿易工業大臣委任。</li> <li>• 其他成員則由董事委任。</li> </ul>	<ul style="list-style-type: none"> <li>• <b>核委會</b>由 14 名成員組成，包括一名主席和一名副主席。主席和副主席由部長委任；至於其他成員，部長會從兩個會計組織提名的兩組人選中選出六名成員，及另外委任六名成員作為商界代表。</li> <li>• <b>財委團</b>由不少於五名成員(包括主席)組成。</li> <li>• 他們全部由部長委任。</li> </ul>	<ul style="list-style-type: none"> <li>• <b>監委會</b>由五名獨立成員組成，當中專業會計師不多於兩名。</li> <li>• <b>監委會</b>的成員由證券及交易委員會經諮詢聯邦儲備委員會主席和財政部長後委任。</li> </ul>
組織架構	<ul style="list-style-type: none"> <li>• 法定組織</li> <li>• 財務匯報局負責監督審計調查委員會(下稱</li> </ul>	<ul style="list-style-type: none"> <li>• 擔保有限公司</li> <li>• 財務匯報局負責監督以下規管機構：會計專</li> </ul>	<ul style="list-style-type: none"> <li>• <b>核委會</b>和<b>財委團</b>都是根據《澳洲證券及投資委員會法》成立的法定組織。</li> </ul>	<ul style="list-style-type: none"> <li>• 根據《沙賓法案》(Sarbanes-Oxley Act)成立的法定組織。</li> </ul>

	香港	英國	澳洲	美國
組織架構 (續前頁)	「審委會」和財務匯報檢討委員會(下稱「財務檢討委員會」)。	業監督委員會、財務匯報檢討委員會團(Financial Reporting Review Panel) (下稱「財委團」、會計界調查及紀律委員會(Accountancy Investigation and Discipline Board) (下稱「會委會」、審計實務委員會和會計準則委員會 <sup>4</sup> 。		
經費	<ul style="list-style-type: none"> <li>• 經費由證監會、港交所、會計師公會和公司註冊處營運基金共同平均分擔。</li> </ul>	<ul style="list-style-type: none"> <li>• 經費由會計專業、商界和政府共同平均分擔。</li> </ul>	<ul style="list-style-type: none"> <li>• 核委會和財委團的經費都是由政府提供。</li> </ul>	<ul style="list-style-type: none"> <li>• 監委會的經費來自向在證券及交易委員會註冊的公司所徵收的每年會計支援費用。</li> </ul>
審計專業的監督	<ul style="list-style-type: none"> <li>• 審委會由財務匯報局僱員以及該局所聘用的專業顧問、代理人或其他顧問組成。</li> </ul>	<ul style="list-style-type: none"> <li>• 會委會由 8 名成員組成，過半數並非會計師。</li> </ul>	<ul style="list-style-type: none"> <li>• 核委會由 14 名成員組成，包括一名主席及一名副主席。</li> </ul>	<ul style="list-style-type: none"> <li>• 監委會由五名獨立成員組成，當中專業會計師不多於兩名。</li> </ul>

<sup>4</sup> 財務匯報檢討委員會負責致力確保由公眾公司和大型私人公司所提供的財務資料符合《公司法》規定；會計界調查及紀律委員會負責就涉及影響公眾利益的重大事宜向會計專業進行獨立調查及紀律處分；審計實務委員會負責制訂核數準則；會計準則委員會負責制訂會計準則；會計專業監督委員會負責監督審計及會計專業的規管工作。

	香港	英國	澳洲	美國
審計專業的監督 (續前頁)	<ul style="list-style-type: none"> <li>• <b>審委會</b>負責就上市實體的核數師涉嫌失當行為進行調查。</li> <li>• 在調查期間，<b>審委會</b>可要求有關人士提供資料、解釋及協助。</li> <li>• <b>審委會</b>會向財務匯報局提交調查報告，以便後者決定應否把個案轉介其他規管當局或專業組織。</li> <li>• <b>審委會</b>的職能並不包括紀律處分。</li> </ul>	<ul style="list-style-type: none"> <li>• <b>會委會</b>負責調查涉及或似乎涉及影響公眾利益的重大事宜，以決定有關的會計師是否有任何失當行為。</li> <li>• <b>會委會</b>有權向有關的會計師索取資料及文件，並要求他們向有關的審裁處作供。</li> <li>• 如調查所得顯示有關的會計師應接受紀律處分，<b>會委會</b>將委任一個紀律審裁處，以聆訊有關個案。</li> <li>• <b>會委會</b>可施加制裁，例如譴責、罰款及暫時吊銷牌照等。各認可專業組織必須承認該委員會所作出的裁定。</li> </ul>	<ul style="list-style-type: none"> <li>• <b>核委會</b>負責裁定某人是否未能充分及適當地執行核數師的職責，或澳洲法例規定註冊公司核數師所必須執行的任何職能，或該人在其他方面是否不適宜繼續獲註冊為核數師等。</li> <li>• <b>核委會</b>不會直接進行調查，而是由澳洲證券及投資委員會負責。</li> <li>• <b>核委會</b>須給予有關人士出席聆訊及作出陳詞的機會。</li> <li>• <b>核委會</b>可譴責有關人士、撤銷或在指定期間暫時吊銷某人作為核數師的註冊；或要求某人承諾從事或不從事某種指明行為。</li> </ul>	<ul style="list-style-type: none"> <li>• <b>監委會</b>負責監督公眾公司的核數師。委員會的權力包括調查核數事務所是否遵守《沙賓法案》條文、<b>監委會</b>和證券及交易委員會所定規則，及進行紀律處分程序。</li> <li>• 在調查期間，<b>監委會</b>可要求有關人士作供及提交任何文件。</li> <li>• <b>監委會</b>須給予有關人士在紀律程序中抗辯的機會。</li> <li>• <b>監委會</b>可施加制裁，例如暫時吊銷／撤銷註冊、罰款、譴責等。該會亦可把調查個案轉介證券及交易委員會或任何其他規管機構。</li> </ul>

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監督企業匯報的質素	<ul style="list-style-type: none"> <li>財務匯報檢討委員會(下稱「財委團」)是由行政長官所委任不少於20名,在財務匯報、審計、銀行、金融服務及商業等各方面具備專才的人士組成。</li> <li>就查訊個別個案而成立的<b>財務檢討委員會</b>,會由從<b>財委團</b>中選出的至少五名成員組成。</li> <li><b>財委團</b>會就上市實體的帳目及財務報表涉嫌未有遵從有關的法律及會計規定進行查訊。</li> </ul>	<ul style="list-style-type: none"> <li>目前,<b>財委團</b>是由財務匯報局所委任的24名成員組成。</li> <li>查訊工作由<b>財委團</b>成員所組成的小組進行;該小組一般有五名成員。</li> <li>該小組會研究公眾公司和大型私人公司的帳目是否符合《1985年公司法》和適用的會計準則的規定<sup>5</sup>。</li> </ul>	<ul style="list-style-type: none"> <li><b>財委團</b>由不少於五名成員組成。</li> <li>就審議個案而成立的專責小組會由從<b>財委團</b>中選出的三名成員組成。</li> <li>專責小組會研究財務報告是否符合有關的財務匯報規定,及如未符合規定,財務報告須如何修改,以確保遵照有關規定。專責小組亦須作出有關報告。</li> </ul>	<ul style="list-style-type: none"> <li>不適用。上市公司的企業匯報仍然由證券及交易委員會負責監督。</li> </ul>

<sup>5</sup> 此外,財務匯報檢討委員會亦根據《2005年監督帳目及報告(指明組織)令》獲委任,審核某些上市證券發行人所提交的報告,是否符合《上市規則》的會計規定;如委員會認為合適的話,可向金融事務管理局通知他們對這些報告所作出的任何結論。



	香港	英國	澳洲	美國
監督企業匯報的 質素 (續前頁)	<ul style="list-style-type: none"> <li>• 財務檢討委員會將具備索取文件、資料和要求有關方面作出解釋的權力。</li>   <li>• 財務檢討委員會可要求有關方面自願修正帳目。</li>   <li>• 如有關方面未有自願作出修正，財務檢討委員會可向法院申請強制令，強制作出修正。</li> </ul>	<ul style="list-style-type: none"> <li>• 財委會可要求公司董事解釋表面上偏離會計規定的情況。</li>   <li>• 財委會可要求有關方面自願修正帳目。</li>   <li>• 如有關方面未有自願作出修正，財委會可向法院申請強制令，強制作出修正。</li> </ul>	<ul style="list-style-type: none"> <li>• 專責小組可透過發出傳票，要求澳洲證券及投資委員會人員、有關公司的人員、核數師和涉案的任何其他人作供、回答問題和交出文件。</li>   <li>• 法院或事實審裁處在決定財務報告是否符合有關的財務匯報規定時，可考慮專責小組的報告。</li> </ul>	

**UK Companies Act 1985 (只備英文本)**

Current through 21 March 2005

**245 Voluntary revision of annual accounts or directors' report<sup>1</sup>**

(1) If it appears to the directors of a company that any annual accounts or summary financial statement of the company, or any directors' report, operating and financial review or directors' remuneration report, did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), they may prepare revised accounts or a revised statement, report or review.

(2) Where copies of the previous accounts, report or review have been laid before the company in general meeting or delivered to the registrar, the revisions shall be confined to--

(a) the correction of those respects in which the previous accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and

(b) the making of any necessary consequential alterations.

(3) The Secretary of State may make provision by regulations as to the application of the provisions of this Act in relation to revised annual accounts or a revised summary financial statement or a revised directors' report, a revised operating and financial review or a revised directors' remuneration report.

(4) The regulations may, in particular--

(a) make different provision according to whether the previous accounts, statement, report or review are replaced or are supplemented by a document indicating the corrections to be made;

(b) make provision with respect to the functions of the company's auditors or reporting accountant in relation to the revised accounts, statement, report or review;

(c) require the directors to take such steps as may be specified in the regulations where the previous accounts, report or review have been--

(i) sent out to members and others under section 238(1),

(ii) laid before the company in general meeting, or

(iii) delivered to the registrar,

or where a summary financial statement containing information derived from the previous accounts, report or review has been sent to members under section 251;

(d) apply the provisions of this Act (including those creating criminal offences) subject to such additions, exceptions and modifications as are specified in the regulations.

(5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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<sup>1</sup> 條例草案第 61 至 63 條以英國《1985 年公司法》第 245 條為藍本。

## **245A Secretary of State's notice in respect of annual accounts<sup>2</sup>**

**(1)** Where--

(a) copies of a company's annual accounts, directors' report or operating and financial review have been sent out under section 238, or

(b) a copy of a company's annual accounts, directors' report or operating and financial review has been laid before the company in general meeting or delivered to the registrar, and it appears to the Secretary of State that there is, or may be, a question whether the accounts, report or review comply with the requirements of this Act, he may give notice to the directors of the company indicating the respects in which it appears to him that such a question arises or may arise.

**(2)** The notice shall specify a period of not less than one month for the directors to give him an explanation of the accounts, report or review or prepare revised accounts or a revised report or review.

**(3)** If at the end of the specified period, or such longer period as he may allow, it appears to the Secretary of State that the directors have not--

(a) given a satisfactory explanation of the accounts, report or review, or

(b) revised the accounts, report or review so as to comply with the requirements of this Act, he may if he thinks fit apply to the court.

**(4)** The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.

## **245B Application to court in respect of defective accounts<sup>3</sup>**

**(1)** An application may be made to the court--

(a) by the Secretary of State, after having complied with section 245A, or

(b) by a person authorised by the Secretary of State for the purposes of this section, for a declaration or declarator that the annual accounts of a company do not comply, or a directors' report or operating and financial review does not comply, with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report or review.

**(2)** Notice of the application, together with a general statement of the matters at issue in the proceedings, shall be given by the applicant to the registrar for registration.

**(3)** If the court orders the preparation of revised accounts, it may give directions with respect to--

(a) the auditing of the accounts,

(b) the revision of any directors' report, directors' remuneration report or summary financial statement, and

(c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous accounts, and such other matters as the court thinks fit.

**(3A)** If the court orders the preparation of a revised directors' report or a revised operating and financial review it may give directions with respect to--

(a) the review of the directors' report or operating and financial review by the auditors,

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<sup>2</sup> 條例草案第 49 條以英國《1985 年公司法》第 245A 條為藍本。

<sup>3</sup> 條例草案第 50 條以英國《1985 年公司法》第 245B 條為藍本。

- (b) the revision of any directors' report, directors' remuneration report, operating and financial review or summary financial statement,
- (c) the taking of steps by the directors to bring the making of the order to the notice of persons likely to rely on the previous report or review, and
- (d) such other matters as the court thinks fit.

(4) If the court finds that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation) it may order that all or part of--

- (a) the costs (or in Scotland expenses) of and incidental to the application, and
  - (b) any reasonable expenses incurred by the company in connection with or in consequence of the preparation of revised accounts or a revised report or review,
- shall be borne by such of the directors as were party to the approval of the defective accounts, report or review.

For this purpose every director of the company at the time of the approval of the accounts, report or review shall be taken to have been a party to the approval unless he shows that he took all reasonable steps to prevent that approval.

(5) Where the court makes an order under subsection (4) it shall have regard to whether the directors party to the approval of the defective accounts, report or review knew or ought to have known that the accounts, report or review did not comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation), and it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(6) On the conclusion of proceedings on an application under this section, the applicant shall give to the registrar for registration an office copy of the court order or, as the case may be, notice that the application has failed or been withdrawn.

(7) The provisions of this section apply equally to revised annual accounts, revised directors' reports and revised operating and financial reviews, in which case they have effect as if the references to revised accounts, reports or reviews were references to further revised accounts, reports or reviews.

#### **245F Power of authorised persons to require documents, information and explanations<sup>4</sup>**

(1) This section applies where it appears to a person who is authorised under section 245C of this Act that there is, or may be, a question whether the a company's annual accounts, directors' report or operating and financial review comply with the requirements of this Act (or, where applicable, of Article 4 of the IAS Regulation).

(2) The authorised person may require any of the persons mentioned in subsection (3) to produce any document, or to provide him with any information or explanations, that he may reasonably require for the purpose of--

- (a) discovering whether there are grounds for an application to the court under section 245B; or
- (b) determining whether or not to make such an application.

(3) Those persons are--

- (a) the company;
- (b) any officer, employee, or auditor of the company;
- (c) any persons who fell within paragraph (b) at a time to which the document or information required by the authorised person relates.

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<sup>4</sup> 條例草案第 40、43、44 及 45 條以英國《1985 年公司法》第 245F 條為藍本。

(4) If a person fails to comply with a requirement under subsection (2), the authorised person may apply to the court for an order under subsection (5).

(5) If on such an application the court decides that the person has failed to comply with the requirement under subsection (2), it may order the person to take such steps as it directs for securing that the documents are produced or the information or explanations are provided.

(6) A statement made by a person in response to a requirement under subsection (2) or an order under subsection (5) may not be used in evidence against him in any criminal proceedings.

(7) Nothing in this section compels any person to disclose documents or information in respect of which in an action in the High Court a claim to legal professional privilege, or in an action in the Court of Session a claim to confidentiality of communications, could be maintained.

(8) In this section "document" includes information recorded in any form.