

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 19 – Investigations and Enquiries

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 19 (“Investigations and Enquiries”) (clauses 826 to 882) 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:

Bills Committee: Bills Committee on Companies Bill

CB: Companies Bill

CO: Companies Ordinance (Cap 32)

CSA: Committee Stage Amendment

C(WUMP)O: Companies (Winding Up and Miscellaneous Provisions) upon commencement of CB

FS: Financial Secretary

LegCo: Legislative Council

Registrar: Registrar of Companies

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
General amendments across CB			
1	Add “for registration” as appropriate	In CB, documents delivered to the Registrar for registration are subject to the requirement of the provisions of clauses 29 to 36. These documents will also form part of the Companies Register (clause 26). When a provision requires	<ul style="list-style-type: none"> • Insofar as Part 19 is concerned, we propose to amend clauses 830(1), 843(4), 844(4) and 849(2).

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
		a person to deliver a document, “for registration” will be added if it is intended that the document is one that these provisions apply.	
Other amendments specific to Part 19			
2	Clause 830 Notice of appointment as inspector to be delivered to Registrar	Amend clause 830(2) so that the notice of appointment should be delivered to the Registrar within 15 days from the date of appointment instead of “within a reasonable time”.	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ request at the Bills Committee meeting on 17 February 2012 to specify a timeframe (instead of “within a reasonable time”) in clause 830(2) for the inspector’s delivery of his/her appointment to the Registrar for registration. • Upon review, the Administration proposed a timeframe of 15 days. Please see paragraphs 9 to 11 of the LegCo 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”.
3	Clause 833 Financial Secretary may give directions to terminate or suspend investigation	Amend clause 833(2) to provide that in the case of an appointment of inspector under clause 829(1), FS may terminate the investigation if the Court by order declares that the investigation ought to be terminated.	<ul style="list-style-type: none"> • Under clause 829(1), FS must appoint an inspector to investigate the affairs of a company if the Court by order declares that the company’s affairs ought to be so investigated. • Under clause 833(1)(a), FS may direct the inspector to terminate the investigation. Under clause 833(2), however, if an inspector is appointed under clause 829(1) (i.e. by a Court order), FS would not have the power to terminate the investigation unless and until it appears to FS that a criminal offence has been committed and the matters have been referred to a law enforcement agency. If no offence is detected and referred to a law enforcement agency, there would be no mechanism for FS to direct the inspector to terminate the investigation. This is unreasonable and this CSA is to remedy this.

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
4	Clause 854 Expenses of investigation	(I) Add the word “be” before the word “defrayed” in clause 854(1). (II) Amend clause 854(8)(a) so that the expenses of an investigation will include the “reasonable” expenses incurred for the purposes of the investigation.	<ul style="list-style-type: none"> • This CSA is proposed to correct a grammatical error. • This CSA is proposed in response to Members’ suggestion at the Bills Committee meeting on 17 February 2012 to amend the provision such that the expenses of an investigation should be reasonable. • Please see paragraphs 12 to 13 of the LegCo 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”.
5	Clause 865 Magistrate’s warrants	Delete clause 865(1)(a) and (b) and add a new clause 865(1A) to provide that for the purpose of clause 865(1), the applicant for a search warrant should also specify the following matters in the information to be laid before a Magistrate: (a) the relevant provisions (in Division 2 or Division 3) on which the applicant relies to require the record or document; and (b) the nature of the record or document that the applicant requires.	<ul style="list-style-type: none"> • This CSA is proposed in response to Members’ suggestion at the Bills Committee meeting on 17 February 2011 that more information should be disclosed by the applicant before a search warrant be granted by the Magistrate and that the applicant should specify in his application the specific provisions (instead of just “Division 2” or “Division 3”) the he relies on in requiring the record or document. • Please see paragraphs 14 to 15 of the LegCo 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	Clause 867 Proceedings on	(I) Amend clause 867(6)(b) by substituting “an unregistered company as defined by section	<ul style="list-style-type: none"> • Part IVA of CO governing disqualification of directors or shadow directors of a company will be retained in C(WUMP)O. A company under Part IVA, pursuant to section 168C of CO, means (a) a company formed and registered in Hong

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
	specified materials	<p>326(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (other than a partnership, whether limited or not, or an association)” for “a company” so that a disqualification order may be made against a director / shadow director of an unregistered company which could be wound up in Hong Kong.</p> <p>(II) Add a new clause 867(6)(c) to provide for “a registered non-Hong Kong company”.</p>	<p>Kong; (b) an unregistered company which could be wound up in Hong Kong (other than a partnership, whether limited or not, or an association); and (c) a non-Hong Kong company registered under Part XI of CO.</p> <ul style="list-style-type: none"> • Clause 867(6) provides that FS may apply for a disqualification order under section 168J(2) in C(WUMP)O. Section 168J is under Part IVA. Thus, there is need to align the meaning of company in clause 867(6) with that in section 168C.
7	Clause 868 Preservation of secrecy	Amend “或曾在根據第 3 分部進行的查訊中執行任何職能的人” in the second phrase of clause 868(3)(e) in the Chinese text to “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"> • This CSA is proposed in response to the LegCo Legal Adviser’s observation. • The Legal Adviser noted that in the Chinese text, the second phrase of clause 868(3)(e) is exactly the same as the second phrase of clause 868(3)(d). However, clause 868(3)(d) is meant to cover those persons who perform or have performed any function in the investigation or enquiry under Division 2 or Division 3 of Part 19; while clause 868(3)(e) covers another group of persons who have assisted those persons covered by clause 868(3)(d).

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- (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 registration¹.
- (2) The notice must be delivered to the Registrar within 15 days after the date of a reasonable time after² 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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- (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。