

**228A. 在公司無能力繼續業務的情況下
自動清盤的特別程序**

(1) 公司的董事或(如公司有多於 2 名董事)過半數的董事如已得出意見，認為公司因其負債而不能繼續其業務，可在董事會議上議決以下事項，並向處長交付具指明格式並由其中一名董事簽署的陳述書(“清盤陳述書”)，核證一項具以下意思的決議已獲通過——

- (a) 公司因其負債而不能繼續其業務；
- (b) 該等董事的意見認為需要將公司清盤，並認為基於根據本條例的其他條文開始清盤並非合理地切實可行，故應根據本條開始清盤；及
- (c) 會召集在清盤陳述書交付處長後 28 天內舉行的公司會議及公司債權人會議。

(2) 第(1)款提述的決議及清盤陳述書須指明有何理由支持該款(b)段提及的意見。

(3) 清盤陳述書除非是在它作出的日期後 7 天內交付處長登記，否則就本條例而言並無效力。

(4) 如公司的任何董事簽署清盤陳述書，但並無合理的理由而——

- (a) 得出公司因其負債而不能繼續其業務的意見；或
- (b) 認為基於公司根據本條例的其他條文開始清盤並非合理地切實可行，故應根據本條開始清盤，

該名董事可處罰款及監禁。

(5) 凡向處長交付清盤陳述書——

- (a) 公司的清盤於該陳述書交付時即告開始；
- (b) 董事須立即委任一人為清盤的臨時清盤人；及
- (c) 董事須安排召集在該陳述書交付後 28 天內舉行的公司會議及公司債權人會議。

**228A. Special procedure for voluntary winding up
of company in case of inability to
continue its business**

(1) The directors of a company or, in the case of a company having more than 2 directors, the majority of the directors, may, if they have formed the opinion that the company cannot by reason of its liabilities continue its business, resolve at a meeting of the directors and deliver to the Registrar a statement in the specified form (the “winding-up statement”), signed by one of the directors, certifying that a resolution has been passed to the effect that—

- (a) the company cannot by reason of its liabilities continue its business;
- (b) they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; and
- (c) meetings of the company and of its creditors will be summoned for a date not later than 28 days after the delivery of the winding-up statement to the Registrar.

(2) The resolution referred to in subsection (1) and the winding-up statement shall specify the reasons in support of the consideration mentioned in paragraph (b) of that subsection.

(3) A winding-up statement shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar for registration within 7 days after the date on which it is made.

(4) Any director of a company signing a winding-up statement without having reasonable grounds—

- (a) for the opinion that the company cannot by reason of its liabilities continue its business; or
- (b) to consider that the winding up of the company should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance,

shall be liable to a fine and imprisonment.

(5) Where a winding-up statement is delivered to the Registrar—

- (a) the winding up of the company shall commence at the time of the delivery of that statement;
- (b) the directors shall forthwith appoint a person to be provisional liquidator in the winding up; and
- (c) the directors shall cause meetings of the company and of its creditors to be summoned for a date not later than 28 days after the delivery of that statement.

- (6) 任何董事未有遵從第 (5)(b) 或 (c) 款的規定，可處罰款。
- (7) 凡公司董事未有遵從第 (5)(c) 款的規定，根據第 (5)(b) 款獲委任的臨時清盤人可召集公司會議及公司債權人會議。
- (8) 任何人不得根據第 (5)(b) 款被委任為臨時清盤人，除非——
- 該人已用書面同意該項委任；及
 - 該人是一名律師，或是一名《專業會計師條例》(第 50 章) 所指的專業會計師。
- (9) 在根據第 (5)(b) 款委任臨時清盤人後 14 天內，董事須就以下事項在憲報發出公告——
- 公司藉向處長交付清盤陳述書而開始清盤一事，以及交付日期；及
 - 臨時清盤人的委任及其姓名和地址。
- (10) 根據第 (5)(b) 款獲委任的臨時清盤人，須於他獲委任的日期後 14 天內，將一份具指明格式的關於他獲委任的通知書交付處長登記，該通知書須包括下述詳情——
- 其姓名；
 - 其地址；及
 - 其身分證號碼(如有的話)，如沒有身分證號碼，則為他持有的任何護照的號碼及簽發國家。
- (11) 根據第 (5)(b) 款獲委任為臨時清盤人的人如停任臨時清盤人，須在停任日期後 21 天內——
- 在憲報刊登關於此事的公告；及
 - 將一份具指明格式的關於此事的通知書交付處長登記。
- (12) 根據第 (10) 款交付處長的通知書內的詳情如有任何變更，則臨時清盤人除非之前已根據第 (11) 款向處長發出通知書，否則須在該變更的發生日期後 14 天內，將一份具指明格式的關於該變更的通知書交付處長登記。
- (13) 任何人如未有遵從第 (10)、(11) 或 (12) 款的規定，可處罰款，如屬持續失責，則可處按日計算的失責罰款。

- (6) A director who fails to comply with subsection (5)(b) or (c) shall be liable to a fine.
- (7) Where the directors of a company fail to comply with subsection (5)(c), the provisional liquidator appointed under subsection (5)(b) may summon meetings of the company and of its creditors.
- (8) No person shall be appointed as a provisional liquidator under subsection (5)(b) unless—
- he has consented in writing to such appointment; and
 - he is a solicitor, or a professional accountant under the Professional Accountants Ordinance (Cap. 50).
- (9) Not later than 14 days after the appointment of a provisional liquidator under subsection (5)(b), the directors shall give notice in the Gazette of—
- the commencement of the winding up of the company by the delivery to the Registrar of the winding-up statement and the date of such delivery; and
 - the appointment of the provisional liquidator and his name and address.
- (10) A provisional liquidator appointed under subsection (5)(b) shall, within 14 days after the date of his appointment, deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars—
- his name;
 - his address; and
 - the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.
- (11) A person appointed as a provisional liquidator under subsection (5)(b) who ceases to act as such shall, within 21 days after the date of his ceasing to act—
- publish in the Gazette a notice of that fact; and
 - deliver to the Registrar for registration a notice of that fact in the specified form.
- (12) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (10), the provisional liquidator shall, within 14 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless he has previously given notice to the Registrar under subsection (11).
- (13) A person who fails to comply with subsection (10), (11) or (12) shall be liable to a fine and, for continued default, to a daily default fine.

(14) 根據第 (5)(b) 款獲委任的臨時清盤人——

- (a) 除在清盤人在較早之前獲委任的情況外，須任職直至根據本條召集的公司債權人會議容許的時間，或如該會議延期，則直至任何延會容許的時間；
- (b) 須保管或控制公司有權享有或看似有權享有的所有財產及據法權產；及
- (c) 有權獲得從公司資金中撥付經審查委員會或(如無審查委員會)債權人釐定的酬金，以及臨時清盤人所恰當招致的開支的補還款項，但他無須就他恰當作出的作為而承擔法律責任，且任何人亦不得就該等作為而對他提出任何民事訴訟或其他法律程序。

(15) 根據第 (5)(b) 款獲委任的臨時清盤人在他獲委任期間所具有的權力及須執行的職責，與債權人自動清盤案中的清盤人所具有者及須執行者相同；而據此，公司董事的所有權力須在該段期間終止，但如為使公司董事能遵從本條規定而有所需要，或臨時清盤人為任何其他目的而認許公司董事權力的延續，則屬例外。

(16) 儘管有第 (15) 款的規定，根據第 (5)(b) 款獲委任的臨時清盤人無權售賣公司有權享有或看似有權享有的任何財產(但在按照第 231 條經營業務的過程中售賣則除外)，除非——

- (a) 該財產屬易毀消性質，或如予以留存則相當可能會變壞；或
- (b) 法院應臨時清盤人的申請而下令售賣該財產。

(17) 就根據本條而開始的每宗清盤而言——

- (a) 第 241 條適用於根據本條召集的公司債權人會議，一如該條適用於根據該條召集的公司債權人會議，但——
 - (i) 該條第 (1) 款中“將有自動清盤決議提出的”等字，須以“公司的”等字代替；
 - (ii) 該條第 (1) 及 (2) 款所分別規定的以郵遞方式送交債權人會議通知書及就債權人會議刊登公告事宜，須於債權人會議的最少 7 天前作出，而該條第 (1) 款關於同時送交通知書的規定，並不適用；及

(14) A provisional liquidator appointed under subsection (5)(b) shall—

- (a) unless a liquidator is sooner appointed, hold office until a meeting of the creditors of the company summoned under this section or, if that meeting is adjourned, any adjourned meeting, may allow;
- (b) take into his custody or under his control all the property and things in action to which the company is or appears to be entitled; and
- (c) be entitled, out of the funds of the company, to such remuneration as the committee of inspection or, if there is no such committee, the creditors, may fix and to reimbursement of expenses properly incurred by him, but he shall not be liable, and no civil action or other proceedings shall lie against him, in respect of acts properly done by him.

(15) A provisional liquidator appointed under subsection (5)(b) shall, for the period of his appointment, have the like powers and be subject to the like duties as a liquidator in a creditors' voluntary winding up, and, accordingly, all the powers of the directors shall cease during that period except so far as may be necessary for the purpose of enabling the directors to comply with this section or where the provisional liquidator sanctions the continuance thereof for any other purpose.

(16) Notwithstanding subsection (15), a provisional liquidator appointed under subsection (5)(b) shall not have power to sell any property to which the company is or appears to be entitled, except where such sale is made in the course of carrying on business in accordance with section 231, unless—

- (a) the property is of a perishable nature or likely to deteriorate if kept; or
- (b) the court, on the application of the provisional liquidator, orders the sale of the property.

(17) In relation to every winding up commenced under this section—

- (a) section 241 shall apply to a meeting of the creditors of the company summoned under this section as it applies to a meeting of the creditors of a company summoned under that section except that—
 - (i) for the words “at which the resolution for voluntary winding up is to be proposed” in subsection (1) of that section there shall be substituted the words “of the company”;
 - (ii) the sending of the notices by post and the advertisement of the meeting of creditors required by subsections (1) and (2) of that section respectively shall occur at least 7 days before the meeting of creditors, and the requirement in subsection (1) of that section as to simultaneous sending of notices shall not apply; and

(iii) 該條第 (5) 款須予略去；

(b) 除 (a) 段另有規定外，第 241 至 248 條適用，一如該等條文就債權人自動清盤而適用。

(18) 如屬只有一名董事的私人公司，該唯一董事可——

(a) 通過第 (1) 款提述的決議，並簽署載於會議紀錄簿冊內有關決議的紀錄；及

(b) 作出第 (1) 款規定的清盤陳述書。

(19) 就《2003 年公司 (修訂) 條例》(2003 年第 28 號) 第 83 條生效 * 前已根據本條例第 228A 條作出的法定聲明而言，在緊接該生效前有效的本條例第 228A 條的條文須繼續有效，猶如該條例第 83 條未曾制定一樣。

(由 2003 年第 28 號第 83 條代替)

229. 自動清盤決議的通知

(1) 當公司已通過自動清盤決議時，須於決議通過後 14 天內，藉在憲報刊登公告而發出有關該決議的通知。(由 1949 年第 1 號第 16 條修訂；由 1955 年第 15 號第 6 條修訂)

(2) 如因沒有遵從本條的規定而構成失責，公司及公司的每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款，而就本款而言，公司的清盤人須當作是公司的高級人員。(由 1990 年第 7 號第 2 條修訂)

[比照 1929 c. 23 s. 226 U.K.]

230. 自動清盤的開始

除第 228A(5)(a) 條另有訂定外，自動清盤須當作在自動清盤決議通過之時開始。

(由 1993 年第 75 號第 15 條修訂；由 2003 年第 28 號第 84 條修訂)

[比照 1929 c. 23 s. 227 U.K.]

(iii) subsection (5) of that section shall be omitted;

(b) subject to paragraph (a), sections 241 to 248 shall apply as they apply in relation to a creditors' voluntary winding up.

(18) In the case of a private company having only one director, the sole director may—

(a) pass the resolution referred to in subsection (1) and sign the record of it in the minute book; and

(b) make the winding-up statement required under subsection (1).

(19) In relation to a statutory declaration made under section 228A of this Ordinance before the commencement* of section 83 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of section 228A of this Ordinance in force immediately before that commencement shall continue to have effect as if section 83 of that Ordinance had not been enacted.

(Replaced 28 of 2003 s. 83)

229. Notice of resolution to wind up voluntarily

(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette. (Amended 1 of 1949 s. 16; 15 of 1955 s. 6)

(2) If default is made in complying with this section, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine, and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company. (Amended 7 of 1990 s. 2; L.N. 587 of 1995)

[cf. 1929 c. 23 s. 226 U.K.]

230. Commencement of voluntary winding up

Except as provided in section 228A(5)(a), a voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

(Amended 75 of 1993 s. 15; 28 of 2003 s. 84)

[cf. 1929 c. 23 s. 227 U.K.]

* 生效日期：2004 年 2 月 13 日。

* Commencement date: 13 February 2004.