

《公司條例草案》委員會
《公司條例草案》第 15 部—被除名或撤銷註冊而解散
委員會審議階段修正案

下表載述政府當局就《公司條例草案》第 15 部(“被除名或撤銷註冊而解散”)(第 732 至 761 條) 擬議提出的委員會審議階段修正案(修正案)。政府當局在擬訂這些修正案時，考慮了議員、各團體／代表及立法會法律顧問的意見。該些修正案的標示文本按數序排列載於附件，以供參閱。在附件內的中文標示文本只載有僅適用於中文版的修正案。

本列表所採用的縮寫如下：

《公司條例》：《公司條例》(第 32 章)

法案委員會：《公司條例草案》委員會

修正案：委員會審議階段修正案

草案：《公司條例草案》

處長：公司註冊處處長

項目	有關事宜／ 條文	委員會審議階段修正案	備註
1	第 738 條 申請撤銷註冊	(I) 加入第(2)(f)款，將資產包含位於香港的不動產的法人團體的控權公司在撤銷註冊條文的適用範圍中剔除。	<ul style="list-style-type: none"> 委員關注現時第 738(2)(e)條的表述未必可以涵蓋公司間接持有不動產的情況，例如公司持有另一公司的股份，而該另一公司則持有不動產。我們同意委員的關注，建議的修正案會將資產包含位於香港的不動產的法人團體的控權公司在撤銷註冊條文的適用範圍中剔除。請參閱立法會文件編號 CB(1)1184/11-12(04)“政府當局就二零一二年一月十三日及二月三日會議採取關於《公司條例草案》

項目	有關事宜／ 條文	委員會審議階段修正案	備註
		<p>(II) 加入附註提示讀者注意第 861 條。</p> <p>(III) 在中文版本的第(2)(b)款以“沒有”取代“已停止”。</p>	<p>第 15 部的跟進行動”的第 3 段。</p> <ul style="list-style-type: none"> • 正如立法會文件編號 CB(1)1295/11-12(02)“《公司條例草案》中的“附註”和“例子””的附件 F 所解釋，草案第 861 條特別適用於草案第 738 條所指的作為，提示讀者注意草案第 861 條屬適當做法。 • 這是因應立法會法律顧問的意見而建議作出，在草擬上的修改。有關修改釐清我們的原意，即在緊接提出撤銷註冊申請之前的三個月內公司不應有任何營運。
2	第 740 條 已解散公司的 財產歸屬政府	修訂中文版本的第(3)款為“...並且不享有它假若是在其他情況下作為歸屬政府的財產或權力利而可能在其他方面享有的豁免”。	<ul style="list-style-type: none"> • 這是因應立法會法律顧問的意見，為令條文清晰而建議作出在草擬方面的修改。
3	第 742 條 卸棄的效力	在中文版本的第(2)(b)款以“屬必”取代“有需”。	<ul style="list-style-type: none"> • 這是因應立法會法律顧問的意見，為令條文清晰而建議作出在草擬方面的修改。

項目	有關事宜／ 條文	委員會審議階段修正案	備註
4	第 743 條 原訟法庭可作出歸屬命令	(I) 在第(3)款中，在“liability”後加入“mentioned in subsection (1)(b)”及在該款的最後部分加入“in respect of the disclaimer”。 (II) 在第(3)款中加入對有關人士的受託人的提述。	<ul style="list-style-type: none"> 這是因應立法會法律顧問的意見，為令條文清晰而建議作出在草擬方面的修改。 與第(1)款一致，第(3)款應涵蓋負有法律責任的人的受託人。
5	第 746 條 前董事須備存已解散公司的簿冊及文據 6 年	加入第(4)款，訂明若董事合理地倚靠另一人在公司解散後備存公司的簿冊及文據，即屬免責辯護。	<ul style="list-style-type: none"> 因應委員的關注，我們提議加入以下條文：在董事被控以第 746 條所訂罪行的法律程序中，如確立該董事有合理理由相信，而又確實相信，有勝任而可靠的人已獲委以確保第 746(1)條獲遵守的責任，及該人居於能夠執行該責任的位置，即屬免責辯護。請參閱立法會文件編號 CB(1)1184/11-12(04)“政府當局就二零一二年一月十三日及二月三日會議採取關於《公司條例草案》第 15 部的跟進行動”的第 6 段。
6	第 747 條 原訟法庭將已解散公司清盤的權力	刪去除非公司恢復列入公司登記冊，否則法院不可行使將該公司清盤的權力這項規定，並重述《公司條例》第 291(6)及 291AA(13)條。	<ul style="list-style-type: none"> 正如立法會文件編號 CB(1)807/11-12(02)“第 15 部(被除名或撤銷註冊而解散)對照表”的附件所提及，建議刪去有關規定，而有關係文會在即將開展的公司破產法例現代化工作中檢討。修訂後的第 747 條重述《公司條例》第 291(6)及 291AA(13)條。

項目	有關事宜／ 條文	委員會審議階段修正案	備註
7	第 761 條 恢復註冊對無主財物或權利的效果	<p>(I) 將第(3)款分拆為第(3)及(3)(A)款，並在草擬方面有所釐清。</p> <p>(II) 在第(5)及(6)款以“Government”取代“Registrar”。</p>	<ul style="list-style-type: none"> • 我們的原意是重述《公司條例》第 292A(2)(a)條。這修正案是因應立法會法律顧問的意見而提出，屬草擬上的修改，以釐清我們的原意。 • 這修正案是為與第(1)款一致而提出。根據第(1)款，政府而非處長負責處置或處理無主財物。

財經事務及庫務局
 公司註冊處
 二零一二年四月十三日

738. Application for deregistration

- (1) A company, or a director or member of a company, may apply to the Registrar for deregistration of the company.
- (2) An application must not be made unless, at the time of the application—
 - (a) all the members agree to the deregistration;
 - (b) the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;
 - (c) the company has no outstanding liabilities;
 - (d) the company is not a party to any legal proceedings;~~and~~
 - (e) the company's assets do not consist of any immovable property situate in Hong Kong; ~~and~~
 - (f) if the company is a holding company, none of its subsidiary's assets consist of any immovable property situate in Hong Kong.¹
- (3) An application—
 - (a) must be in the specified form;
 - (b) must be accompanied by the prescribed fee; and
 - (c) must be accompanied by a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being deregistered.
- (4) If the applicant is a company, it must nominate in the application a natural person to be given notice of the deregistration.
- (5) The applicant must give the Registrar any further information that the Registrar may request in connection with an application.
- (6) The Registrar may assume without inquiry that any information given in connection with an application is true unless it is proved to the Registrar's satisfaction, in an objection to the deregistration or otherwise, that the information is false.
- (7) A person who, in connection with an application, knowingly or recklessly gives any information to the Registrar that is false or misleading in a material particular commits an offence and 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.

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 subsection (7) has been done.²

¹ Item 1(I) / 第 1(I)項

² Item 1(II) / 第 1(II)項

738. 申請撤銷註冊

- (1) 公司或其任何董事或成員，均可向處長申請撤銷該公司的註冊。
- (2) 除非在提出申請時 —
 - (a) 所有成員均同意撤銷註冊；
 - (b) 上述公司仍未開始營運或經營業務，或在緊接提出申請之前的 3 個月內已停止沒有³營運或經營業務；
 - (c) 該公司沒有尚未清償的債務；
 - (d) 該公司不是任何法律程序的一方；及
 - (e) 該公司的資產不包含位於香港的不動產，否則不得提出申請。
- (3) 上述申請須 —
 - (a) 符合指明格式；
 - (b) 隨附訂明費用；及
 - (c) 隨附稅務局局長發出的書面通知，述明稅務局局長並不反對撤銷有關公司的註冊。
- (4) 申請人如是公司，則須在申請中提名一名自然人，負責接收撤銷註冊通知書。
- (5) 如處長就申請而向申請人要求進一步資料，則申請人須向處長提供該資料。
- (6) 除非在就撤銷註冊而提出的反對中或在其他情況下，有證明提出致使處長信納就申請而提供的資料是虛假的，否則處長可不經查究而假設該資料屬真實。
- (7) 任何人如在與申請有關連的情況下，明知或罔顧實情地向處長提供在要項上屬虛假或具誤導性的資料，即屬犯罪 —
 - (a) 一經循公訴程序定罪，可處罰款\$300,000 及監禁 2 年；或
 - (b) 一經循簡易程序定罪，可處第 6 級罰款及監禁 6 個月。

³ Item 1(III) / 第 1(III)項

740. 已解散公司的財產歸屬政府

- (1) 如某公司根據本部或《公司(清盤及雜項條文)條例》(第 32 章)第 226A、227、239 或 248 條解散，則在緊接解散前歸屬該公司或以信託形式為該公司持有的所有財產及權利，即屬無主財物並歸屬政府。
- (2) 第(1)款的效力，須受上述公司可能根據以下條文恢復列入公司登記冊一事所規限 —
 - (a) 第 4 分部；或
 - (b) 《公司(清盤及雜項條文)條例》(第 32 章)第 290 條。
- (3) 如任何財產或權利根據第(1)款歸屬政府，則該財產或權利仍然受法律施加於該財產或權利的法律責任所規限，並且不享有它假若是在其他情況下作為歸屬政府的財產或權利而可能在其他方面⁴享有的豁免。
- (4) 儘管有第(3)款的規定，政府只需在有關財產或權利可正當地用於履行上述法律責任的範圍內，利用該財產或權利履行該法律責任。
- (5) 在本條中 —
 - (a) 提述歸屬某公司或以信託形式為某公司持有的財產或權利，包括批租土地財產，但不包括該公司以信託形式為任何其他人持有的財產或權利；及
 - (b) 提述法律施加於某財產或權利的法律責任，包括符合以下說明的法律責任 —
 - (i) 屬對該財產或權利的押記或申索權；及
 - (ii) 是根據課徵差餉、稅項或其他費用的條例而產生的。

⁴ Item 2 / 第 2 項

742. 卸棄的效力

- (1) 如處長根據第 741 條卸棄政府對任何財產或權利的所有權，則該財產或權利須視為沒有根據第 740(1)條歸屬政府。
- (2) 卸棄行動 —
 - (a) 將有關公司在遭卸棄財產或權利中所享有的權利及權益及所負有的法律責任，或就該財產或權利而享有的權利及權益及負有的法律責任，自卸棄日期起予以終結；及
 - (b) 並不影響任何其他人的權利或法律責任，但為解除有關公司的法律責任而**有需屬必**⁵要者則屬例外。

⁵ Item 3 / 第 3 項

743. Court may make vesting order

- (1) On application by a person who—
 - (a) claims an interest in any property or right disclaimed under section 741; or
 - (b) is subject to a liability in respect of such property or right that is not discharged by the disclaimer,

the Court may make an order for the vesting of the property or right in, or its delivery to, a person entitled to it, or a person subject to the liability mentioned in paragraph (b), or a trustee for a person so entitled or subject.
- (2) An order may be made on the terms that the Court thinks fit.
- (3) An order for the vesting of a property or right in, or its delivery to, a person subject to a liability mentioned in subsection (1)(b)⁶, or a trustee for the person,⁷ may only be made if it appears to the Court that it would be just to do so for the purpose of compensating the person in respect of the disclaimer⁶.
- (4) On the making of an order for the vesting of a property or right in, or its delivery to, a person, the property or right is vested in the person without conveyance, assignment or transfer.

⁶ Item 4(I) / 第4(I)項

⁷ Item 4(II) / 第4(II)項

746. Former director must keep dissolved company's books and papers for 6 years

- (1) If a company is dissolved under this Part or section 226A, 227, 239 or 248 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), every person who was a director of the company immediately before the dissolution must ensure that the company's books and papers are kept for at least 6 years after the date of the dissolution.
- (2) Subsection (1) does not apply to the books and papers that are otherwise required to be kept by another person under this Ordinance or any other Ordinance.
- (3) A person who contravenes subsection (1) commits an offence and is liable to a fine at level 3.
- (4) If a person is charged with an offence under subsection (3), it is a defence to establish that the person had reasonable grounds to believe, and did believe, that a competent and reliable person—
 - (a) was charged with the duty of ensuring that subsection (1) was complied with; and
 - (b) was in a position to discharge that duty.⁸

747. Court's power to wind up dissolved companies

(1) The Court's powers under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) to wind up a company ~~specified in subsection (2) is not exercisable unless the company is restored to the Companies Register under Division 4, are not affected by the fact that—~~

~~(2) The company is—~~

- (a) the company's ~~one whose~~ name has been struck off the Companies Register under section 734 or 735 and ~~that the company~~ is dissolved under that section; or
- (b) the company ~~one that~~⁹ has been deregistered, and is dissolved, under section 739.

761. Effect of restoration on bona vacantia property or right

- (1) The Government may dispose of or otherwise deal with any property or right vested in it under section 740(1), or an interest in the property or right, in the same manner as it may dispose of or otherwise deal with any other property or right vested in it as bona vacantia, even though the company may be restored to the Companies Register under this Division or section 290 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).
- (2) Subsections (3), ~~(3A)~~, (4) and (5) apply if the company is restored to the Companies Register.
- (3) The restoration does not affect the disposition or dealing.—
~~(a) affect the disposition or dealing; or~~
~~(3A) Subsection (3) does not limit the effect of the restoration in relation to any other property or right previously vested in or held on trust for the company.~~
~~(b) limit the effect of the restoration in relation to any other property or right previously vested in or held on trust for the company.¹⁰~~
- (4) If any property, right or interest is still vested in the Government at the time of the restoration, it reverts in the company subject to any liability, interest or claim that was attached to the property, right or interest immediately before the reversion.
- (5) Subject to subsection (6), the Government Registrar¹¹ must pay to the company—
 - (a) if the Government Registrar¹¹ received any consideration for the property, right or interest disposed of or otherwise dealt with, an amount equal to—
 - (i) the amount of the consideration; or
 - (ii) the value of the consideration as at the date of the disposition or dealing; or
 - (b) if no consideration was received, an amount equal to the value of the property, right or interest disposed of or otherwise dealt with as at the date of the disposition or dealing.
- (6) There may be deducted from the amount payable under subsection (5) the Government Registrar¹¹'s reasonable costs in connection with the disposition or dealing to the extent that the costs have not been paid to the Government Registrar¹¹ as a condition of a restoration under section 750 or pursuant to a direction under section 756.

¹⁰ Item 7(I) / 第7(I)項

¹¹ Item 7(II) / 第7(II)項