

Bills Committee on Companies Bill

**Comparison Table for Part 15 –
Dissolution by Striking off or Deregistration**

PURPOSE

To facilitate clause-by-clause examination of Part 15 (Dissolution by Striking off or Deregistration) of the Companies Bill (“CB”), this paper provides a comparison table, at Annex, on the provisions in Part 15 and relevant provisions in the Companies Ordinance (Cap. 32) (“CO”) or the company laws of comparable jurisdictions, where applicable. Transitional and saving arrangements for Part 15 are set out in sections 120 to 123 of Schedule 10.

PART 15 OF THE CB

2. The major proposals and policy issues concerning Part 15 are set out in Annex A to LegCo Paper No. CB(1)2439/10-11(06), which was considered by Members at the meeting of 28 June 2011. Members did not raise any specific issues for the Administration to follow up.

ADVICE SOUGHT

3. Members are invited to note the contents of the paper and provide their views.

**Financial Services and the Treasury Bureau
Companies Registry
6 January 2012**

Comparison Table for Part 15

This table includes provisions in the third (i.e. “Derivation”) column that indicate the corresponding or original section in the Companies Ordinance (CO) of the clause concerned in the CB, where applicable. Where reference has been made to the relevant statutory provision(s) in other jurisdictions, such provision(s) is/ are also cited in that column. We use the term “Existing law” to mean that the clause is restating an existing section in the CO as set out in the “Derivation” column without change in substance, although the actual wording may be different from the existing section as improvements are made to the drafting language and style.

A list of abbreviations used is as follows:–

ACA: Australia Corporations Act 2001

CO: Companies Ordinance (Cap 32)

SCA: Singapore Companies Act

UKCA 2006: United Kingdom Companies Act 2006

Clause	Contents	Derivation	Position in CO	Position in CB
Division 1: Striking Off				
Subdivision 1 :Registrar’s Power to strike off Name of Company not in Operation or Carrying on Business				
732	Registrar may send inquiry letter to company	CO s.291(1), (5) & (8)	(i) Provides a set of procedures to commence striking off action where the Registrar has reasonable cause to believe that a company is defunct. (ii) The Registrar may send an inquiry letter, or publish in the Gazette a notice of striking off if the Registrar is of the opinion that the company’s registered office cannot be ascertained or that the letter is unlikely to be received by the company.	Existing law.
733	Registrar must follow up under certain	CO s.291(2), (3), (5) & (8)	The Registrar to: (i) send a second letter by registered post under certain circumstances; and (ii)	Existing law except that: (i) the Gazette notice is to be published simultaneously with the

Clause	Contents	Derivation	Position in CO	Position in CB
	circumstances		publish in the Gazette and send to the company, a notice with a view to striking the name of the company off the register at the end of 3 months from the date of the notice.	<p>sending of the second letter (instead of a lapse of one month after sending the second letter) so as to streamline and shorten the procedure (clause 733(2)(b)); and</p> <p>(ii) under clause 733(2) (cf s. 291(2) of CO), the Registrar must send the second letter within 30 days (instead of within 14 days) from expiration of one month after the sending of the first letter pursuant to clause 732 (cf s. 291(1) of CO).</p>
734	Registrar may strike off company's name	CO s.291(6) <i>c.f.</i> UKCA 2006 s.1000(4), (5) & (6) and 1002 SCA s.344(4)	The Registrar to publish a second Gazette notice to strike the company's name off the register, with the company dissolved on the publication of the notice.	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
Subdivision 2 : Striking off under Other Circumstances				
735	Registrar's duty to act in case of company being wound up	CO s.291(4), (5), (6) & (8) <i>c.f.</i> UKCA 2006 s.1001 and 1002 SCA s.344(3) & (4)	Provides for similar procedures as set out in the above items for clauses 732, 733 and 734 where the Registrar has reasonable cause to believe that no liquidator/provisional liquidator is acting for a company in liquidation and no returns have been filed for 6 consecutive months except that it is only necessary to send the notice to the company or the liquidator/provisional liquidator once, at the time of publication of the Gazette notice.	Existing law.
736	Court may strike off name of company not appropriate to be wound up	CO s.291A	The Registrar may apply to the court for a company to be struck off the register and dissolved on the ground that having regard to the company's assets or other reasons, it would not be appropriate to wind up the company.	Existing law.

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Division 2 : Deregistration				
737	Interpretation	CO s.291AA(16), 360(5) & Sixteenth Schedule	Provides the list of companies to which deregistration provisions are not applicable.	Existing law except that: (i) the deregistration procedure is extended to guarantee companies in addition to private companies; and (ii) a trust company registered under Part VIII of Trustee Ordinance is added to the list of companies to which deregistration provisions are not applicable (Clause 737(2)(f)).
738	Application for deregistration	CO s.291AA(1) – (6)	Provides that the company, a director or any member may apply to the Registrar for deregistration if - (i) all the members of the company agree to the deregistration; (ii) the company has never commenced business or has	Existing law except that two additional conditions are imposed for deregistration – (i) the company is not a party to any legal proceedings (clause 738(2)(d)); and (ii) the company’s assets do not consist of any immovable property situate in

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			<p>ceased to carry on business for more than 3 months immediately before the application;</p> <p>(iii) the company has no outstanding liabilities; and</p> <p>(iv) the Commissioner for Inland Revenue has no objection.</p>	Hong Kong (clause 738(2)(e)).
		CO s.291AA(14)	A person who knowingly or recklessly gives any information to the Registrar which is false or misleading in a material particular is liable to a level 6 fine (\$100,000) and to 6 months imprisonment.	Existing law except a person who commits an offence is also liable on conviction on indictment to a fine of \$300,000 and to imprisonment for 2 years to align with the offence for false statement under clause 883 (clause 738(7)(a)).
739	Registrar may deregister company	CO s.291AA(7)-(11)	The Registrar to publish in the Gazette a notice of the proposed deregistration. If no objection is received within a 3-month period, the Registrar may deregister the company by publishing another	Existing law.

Clause	Contents	Derivation	Position in CO	Position in CB
			notice. The company is dissolved on deregistration.	
Division 3 : Property of Dissolved Company and Other Miscellaneous Matters				
740	Dissolved company's property vested in Government	CO s.292(1) & (2) <i>c.f.</i> ACA s.601AE(3) & (4)	Provides that on the dissolution of a company, the company's property and rights (including property held on trust for the company) vests in the Government as bona vacantia.	Existing law except that : (i) the bona vacantia property does not have the benefit of any Government exemption; (clause 740(3)) and (ii) the Government is only obliged to satisfy liabilities imposed on the property out of the property itself (clause 740(4)).
741	Disclaimer of dissolved company's property	CO s.290C	Provides for the Registrar's powers to disclaim the Government's title to any property or right other than immovable property. The Registrar must sign a notice of disclaimer within 12 months from the date on which the vesting of the	Existing law except that the timeframe for the Registrar to sign a notice of disclaimer is extended from 12 months to 3 years (clause 741(2)).

Clause	Contents	Derivation	Position in CO	Position in CB
			property came to the Registrar's notice or within 3 months after the Registrar's receipt of an application for disclaimer.	
742	Effect of disclaimer	CO s.290D	Provides that if the Registrar disclaims the Government's title to any right or property, the property or right is to be regarded as not having been vested in the Government as bona vacantia.	Existing law.
743	Court may make vesting order	<i>c.f.</i> UKCA 2006 s.1017		New provision to provide that the court may make an order for the vesting of the disclaimed property or right or its delivery on the terms it thinks fit. A vesting order automatically transfers the property without the need for a conveyance or assignment.
744	Liabilities of directors etc. of	CO s.291(6)(a) &	Provides that notwithstanding the dissolution of the company, the	Existing law except that the reference to "managing officer" in s.291(6)(a) of CO

Clause	Contents	Derivation	Position in CO	Position in CB
	dissolved company continue	s.291AA(12)	liability of directors, managing officers and members continue and may be enforced.	is replaced with “manager”.
745	Registrar may act as dissolved company’s or liquidator’s representatives	CO s.291B	Provides that the Registrar may act as representative of a dissolved company for administrative matters. A document signed by the Registrar has the same effect as if the company had executed the document.	Existing law except that s. 291B(3) is omitted as immunity is given to the Registrar under clause 58(1) of Part 2.
746	Former director must keep dissolved company’s books and papers for 6 years	CO s.292(3)-(5)	Provides that a person who was a director of a company immediately before its dissolution must ensure that all the books and papers of the company are kept for not less than 5 years after the dissolution. A person who fails to comply is liable to a level 3 fine (\$10,000).	Existing law except that the length of time to keep books and papers is extended from 5 years to 6 years after dissolution of a company (clause 746(1)).
747	Court’s power to wind up dissolved companies	CO s.291(6)(b) and s.291AA(13)	Provides that notwithstanding the dissolution, the company may still be wound up by the court.	Existing law. (CSAs would be proposed to remove the requirement that the court power’s to wind up a company is not exercisable unless the company is restored to the Companies Register. The

Clause	Contents	Derivation	Position in CO	Position in CB
				provisions will be reviewed in the coming exercise to modernize corporate insolvency law.)
Division 4 Restoration to Companies Register				
Subdivision 1 : Administrative Restoration by Registrar				
748	Application to Registrar for restoration of company	<i>c.f.</i> UKCA 2006 ss.1024 and 1026		New provision to enable the Registrar to restore a defunct company which has been struck off by the Registrar or a company that has been struck off by the Registrar in the case of it being wound up but with outstanding matters unattended to. An application for restoration must be made by a director or member of the company and within 20 years after the date of the dissolution.
749	Conditions for granting application	<i>c.f.</i> UKCA 2006 s.1025		New provision to set out three conditions for approving administrative restoration: (i) the company must be in operation or carrying on business at the time

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				<p>its name was struck off;</p> <p>(ii) if the company has any immovable property situated in Hong Kong which has become vested in the Government as bona vacantia, the Government has no objection to the restoration; and</p> <p>(iii) the applicant must bring up to date the company's records kept by the Registrar.</p>
750	Registrar's decision on application	<i>c.f.</i> UKCA 2006 s.1027		New provision to require the Registrar to notify the applicant of the decision on an application. The Registrar must register the notification and publish in the Gazette a notice of the restoration if the application is granted.
751	Registrar may restore company deregistered by	CO s.291AB(1)	Provides that if the Registrar is satisfied that a company was deregistered as a result of her	Existing law except with clarification that a mistake due to wrong or false information given by the applicant to the

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	mistake		mistake, the Registrar may reinstate the company on the register by publishing a notice in the Gazette.	Registrar is not to be regarded as a mistake of the Registrar (clause 751(2)).
752	Effect of restoration	<i>c.f.</i> UKCA 2006 s.1028		New provision to provide that a restored company is to be regarded as having continued in existence as if it had not been dissolved. Any person may apply to the court for directions or orders within 3 years after the date of the restoration.
Subdivision 2 : Restoration by Order of Court				
753	Application to court for restoration	CO ss.291(7), 291A(2) and 291AB(2)	Provides that a company which has been struck off or deregistered may apply to the court for restoration/reinstatement respectively.	Existing law except that respective procedures for restoration or reinstatement of companies dissolved by striking off or deregistration be merged into one restoration procedure by court order.
754	When application must be made	CO ss291(7), 291A(2) and 291AB(2)	Provides that an application to the court for restoration/reinstatement must be made within 20 years from	Existing law plus new provisions:- (i) allowing restoration to be made at any time for bringing proceedings

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		<i>c.f.</i> UKCA 2006 s.1030(1), (5) & (6)	the date of dissolution due to striking off or deregistration.	<p>against the company for damages for personal injury (clause 754(2)); and</p> <p>(ii) for an application to be made within 28 days after notification of refusal by the Registrar for administrative restoration if the period of 20 years has ended (clause 754(3) & (4).</p>
755	Court's decision on application	CO. ss.291(7), 291A(2) and 291AB(2) & (4) <i>c.f.</i> UKCA 2006 ss.1030(2) & (3)	Provides for the circumstances where the court may grant an order for restoration, in particular, where it is just that the company be restored/ reinstated to the register.	Existing law plus new provisions that: <p>(i) expressly add a ground for restoration in the case of a company that has been deregistered, namely where any requirement in clause 738(2) was not met (clause 755(3)(b)(i)); and</p> <p>(ii) specify that the court is not to grant an application where the legal proceedings for damages for personal injury is time barred (clause 755(4)).</p>

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756	Effect of restoration	CO ss.291(7), 291A(2) and 291AB(3) & (5) <i>c.f.</i> UKCA 2006 s.1032(4)	Provides that if a company is restored/reinstated to the register, it is to be regarded as having continued in existence as if it had not been dissolved. The court may give directions and make orders as appropriate.	Existing law plus new provisions on the terms of the directions for:- (i) updating the company's records; (ii) payment of the Registrar's costs in connection with the proceedings for restoration; and (iii) payment of the Government's costs, expenses and liabilities when dealing with the bona vacantia property (if any).
Subdivision 3 : Supplementary Provisions				
757	Company's name on restoration	CB clauses 102, 103 and 105		(i) New provisions to align with the change of company's name provisions under Part 3 of the CB. (ii) A company which is restored under its former name is required to change its name within 28 days after restoration if the name has already been used by another
758	Company must change prohibited name			
759	Registrar may direct company to			

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	change same or similar name			company or is otherwise prohibited from use under the CB (clause 758(1) & (2)).
760	Registrar may change company name in case of failure to comply with direction			<p>(iii) If the company does not change its name, the company and every responsible person will be liable to a fine at level 3 (\$10,000) and a daily default fine of \$300 (clause 758(6));</p> <p>(iv) The Registrar may direct a company to change the name where the name is considered to be the same as or too like another name in the Registrar's index of company names. Failure to comply with the direction is an offence with the maximum fine at level 6 (\$100,000) and a daily default fine of \$2,000 (clause 759);</p> <p>(v) The Registrar is empowered to replace a company's name with its company registration number if a company fails to comply with the</p>

Clause	Contents	Derivation	Position in CO	Position in CB
				Registrar's direction to change name (clause 760).
761	Effect of restoration on bona vacantia property or right	CO s.292A <i>c.f.</i> UKCA 2006 s.1034(3) ACA s.601AH(5)	Provides that the Registrar may dispose of any property vested in the Government as bona vacantia. If the company is restored, the Registrar must pay to the company the amount of the consideration received for the property, or the value of the property if there was no consideration for the disposition.	Existing law plus new provisions to: (i) provide for the revesting of the property in the restored company subject to any liability, interest or right attached to the property before the reconstituted company (clause 761(4)); and (ii) permit the deduction of the Registrar's reasonable costs from the amount payable to the company (clause 761(6)).
Schedule 10 : Transitional and Saving Provisions				
120 - 123	Transitional and Saving Arrangements for Part 15			New provisions to provide transitional and saving arrangements in the following areas – (i) Disclaimer of property vested in Government under predecessor

Clause	Contents	Derivation	Position in CO	Position in CB
				Ordinance (ii) Striking off (iii) Restoration (iv) Bona vacantia