

Bills Committee on Companies Bill

Follow-up actions for the meetings held on 13 January and 3 February 2012 in relation to Part 15 of the Companies Bill

Purpose

This paper sets out the Administration's response to the issues raised by Members at the Bills Committee meetings on 13 January and 3 February 2012 relating to Part 15 (Dissolution by Striking Off or Deregistration) of the Companies Bill ("CB").

Administration's response

Statistics on companies struck off

2. In response to Members' queries, the numbers of companies struck off under section 291(6) of the Companies Ordinance in 2009, 2010 and 2011 are 18 381, 19 964 and 27 571 respectively. The increase in the number of companies struck off in 2011 is mainly attributable to the stepping up of enforcement efforts by the Companies Registry in striking off defunct companies.

Clause 738 (Application for deregistration)

3. Members were concerned that the current formulation of clause 738(2)(e) might not be able to cover the situation where the company held immovable property indirectly, for example by holding shares in another company which held the immovable property. We share Members' concern and would introduce a committee stage amendment ("CSA") to exclude a holding company of another body corporate with assets consisting of immovable property situated in Hong Kong from the application of the deregistration provisions.

Clause 744 (Liabilities of directors etc. of dissolved company continue)

4. There was a concern whether the provision should specify that the liabilities referred to those owed to a third party. In this regard, clause 744 provides for matters currently in sections 291(6) and 291AA(12) of the Companies Ordinance (“CO”). The liability envisaged under clause 744 covers both criminal and civil liabilities (including those liabilities owed to the company before dissolution¹ and to other third parties) which were incurred by a director, manager and member before dissolution of a company. They should not be allowed to avoid such liabilities after dissolution of the company. Similar provision can be found in sections 1000(7) and 1003(6) of the United Kingdom Companies Act 2006 and section 344(3) of the Singapore Companies Act.

5. In the light of the above, it is considered not necessary to amend clause 744.

Clause 746 (former director must keep dissolved company’s books and papers for 6 years)

6. Members suggested that a defence should be added for a director who had reasonable excuses for not being able to keep the company’s books and papers after the dissolution of the company, for example, in cases where the books and papers were kept by other directors. In this regard, we propose to add in the provision that, in any proceedings against a director for an offence under clause 746, it is a defence to establish that the director had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that the requirements under clause 746(1) were complied with and was in a position to discharge that duty. A similar defence also appears in clauses 375, 380 and 430.

¹ If liabilities are owed to the company before dissolution, application may be made to the Registrar of Companies under 748 (for company being struck off by the Registrar under CB or CO) or to the court under 753 (for company being struck off by the Registrar/ the court or deregistered under CB or CO) to restore the company for bringing proceedings against the relevant person.

**Financial Services and the Treasury Bureau
Companies Registry
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