

Bills Committee on Companies Bill
Committee Stage Amendments to the Companies Bill
Part 15 – Dissolution by Striking off or Deregistration

The table below sets out the proposed Committee Stage Amendments (CSAs) in relation to Part 15 (“Dissolution by Striking off or Deregistration”) (clauses 732 to 761) of the Companies Bill (CB). 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.

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

LegCo: Legislative Council

Item	Relevant matter/ provision	Proposed Committee Stage Amendment	Remarks
1	Clause 738 Application for deregistration	(I) Add subclause (2)(f) 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. (II) Add a note to draw reader’s attention	<ul style="list-style-type: none"> • 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 this CSA is proposed 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. Please see paragraph 3 of LegCo Paper No. CB(1)1184/11-12(04) <i>Follow-up actions for the meetings held on 13 January and 3 February 2012 in relation to Part 15 of the Companies Bill.</i> • As explained in Annex F to LegCo Paper No. CB(1)1295/11-12(02) “Notes” and

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		to clause 861.	<i>“Examples” in the Companies Bill</i> , clause 861 applies specifically to an act done under clause 738. It is therefore appropriate to draw readers’ attention to clause 861.
		(III) Replace “已停止” with “沒有” in subclause (2)(b) of the Chinese version.	<ul style="list-style-type: none"> This is a drafting change proposed in response to LegCo Legal Adviser’s comment. It clarifies our intention that there should not be any operation of the company at all during the three months period immediately before the application for deregistration.
2	Clause 740 Dissolved company’s property vested in Government	Amend subclause (3) of the Chinese version as “...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而可能 <u>在其他方面</u> 享有的豁免”.	<ul style="list-style-type: none"> This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment.
3	Clause 742 Effect of disclaimer	Replace “有需” with “屬必” in subclause (2)(b) of the Chinese version.	<ul style="list-style-type: none"> This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment.
4	Clause 743 Court may make vesting order	(I) In subclause (3), add “mentioned in subsection (1)(b)” after “liability” and add “in respect of the disclaimer” at the end of subclause.	<ul style="list-style-type: none"> This is a drafting change proposed for clarity in response to LegCo Legal Adviser’s comment.
		(II) Add the reference to a trustee of the person in subclause (3).	<ul style="list-style-type: none"> In line with subclause (1), a trustee of the person subject to a liability should also be covered in subclause (3).
5	Section 746	Add subclause (4) to provide a defence for director where the director reasonably	<ul style="list-style-type: none"> In response to Members’ concern, 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

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	Former director must keep dissolved company's books and papers for 6 years	relied on another person for keeping the company's books and papers after the dissolution of the company.	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. Please see paragraph 6 of LegCo Paper No. CB(1)1184/11-12(04) Follow-up actions for the meetings held on 13 January and 3 February 2012 in relation to Part 15 of the Companies Bill.
6	Section 747 Court's power to wind up dissolved companies	Remove the requirement that the Court's powers to wind up a company is not exercisable unless the company is restored to the Companies Register, and restate sections 291(6)(b) and 291AA(13) of the CO.	<ul style="list-style-type: none"> As mentioned in the Annex to LegCo Paper No. CB(1)807/11-12(02) <i>Comparison Table for Part 15 – Dissolution by Striking off or Deregistration</i>, it is proposed to remove the requirement and the provision will be reviewed in the coming exercise to modernise corporate insolvency law. The amended clause 747 restates sections 291(6)(b) and 291AA(13) of the CO.
7	Section 761 Effect of restoration on bona vacantia property or right	<p>(I) Split subclause (3) into subclauses (3) and (3)(A) and clarify the drafting.</p> <p>(II) Replace “Registrar” with “Government” in subclauses (5) and (6).</p>	<ul style="list-style-type: none"> The intention is to restate section 292A(2)(a) of the CO. The CSA is a drafting change to clarify our intention and is proposed in response to LegCo Legal Adviser's comment. The CSA is proposed for consistency with subclause (1). Under subclause (1), it is the Government, not the Registrar, who is responsible for the disposition of or dealing with bona vacantia property.

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~~ the company's ~~name~~ name has been struck off the Companies Register under section 734 or 735 and ~~that the company~~ the company is dissolved under that section; or
- (b) ~~the company~~ 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