

**Bills Committee on Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Bill 2015**

**List of follow-up actions arising from the discussion
at the meeting on 11 January 2016**

Clause 15(7) – section 168IA(7) on the public examination procedure in the winding-up regime

1. Existing section 168IA(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") provides that the Official Receiver ("OR") may apply to the court for a public examination by a report stating that in his opinion a prima facie case exists against any person that would render the person liable to a disqualification order under Part IVA of CWUMPO. The proposed amendments to section 168IA(7) removes the existing right of the person ordered to be publicly examined by the court to be furnished with a copy of OR's report. While the proposed new rule 51A of the Companies (Winding-up) Rules (Clause 137) provides that a person may apply to the court to see all or part of the report for a court order made under the proposed section 286A(1), members have expressed concerns that the right for the person to apply to the court for seeing the report is not explicitly provided for an order made under section 168IA(1), and whether the person concerned may appeal further if the application to see the report is turned down by the court. The Administration is requested to explain the right for the person to apply to the court for seeing the report for an order made under section 168IA(1), the relevant appeal mechanism, and consider specifying the mechanism explicitly in the Bill.

Clause 43 – section 206A on meeting time of the first meeting of the committee of inspection ("COI")

2. The proposed new section 206A(2) of CWUMPO stipulates that the liquidator must summon the first meeting of COI to be held within six weeks from the date of the appointment of the liquidator or the Committee, whichever is the later. The Administration is requested to consider a member's view that the six-week duration should be curtailed to expedite the winding-up procedure.

Clause 45 – section 207A on the letter of authority authorizing a person to represent a member of COI

3. Under the proposed new section 207A(2)(b)(ii) of CWUMPO, the letter of authority authorizing a person to represent a member of COI may be signed by or on behalf of a member of COI, and there is no restriction on the person who may sign the letter of authority on behalf of a member of COI. Members are

concerned about possible abuse of the proposed arrangement. The Administration is requested to consider measures to address members' concern, including imposing restrictions on the person who may sign the letter of authority.

Clause 45 – section 207B on remote attendance at meetings of COI

4. The proposed new section 207B of CWUMPO allows remote attendance of members at meetings of COI. In view that a COI will consist of a maximum of seven members and the importance of COI meetings for creditors, Bills Committee members consider that remote attendance may not serve any practical purpose and there should be stringent requirements for remote attendance to ensure the conduct of COI meetings in a prudent manner. The Administration is requested to consider specifying preconditions, such as providing discretionary power to the chairman of COI, on the use of remote attendance for meetings of COI.

Clause 66 – section 237A on details of a full statement of the position of the company's affairs ("the full statement") for the creditor's meeting

5. Under the proposed new section 237A(1F) and (1G) of CWUMPO, a liquidator must prepare for the creditor's meeting the full statement, which includes, inter alia, the particulars of the company's assets, debts and liabilities. The Administration is requested to consider a member's suggestion that the full statement should also include the company's contingent liabilities, and if so, make corresponding amendments to relevant provisions in the Bill (e.g. the proposed section 241(3A) (Clause 73)).

Issues raised by the Legal Adviser to the Bills Committee

6. The Administration is requested to provide written responses to the issues raised by the Legal Adviser to the Bills Committee in her letter dated 4 January 2016 (LC Paper No. CB(1)383/15-16(04)).

Council Business Division 1
Legislative Council Secretariat
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