

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

**Response to Matters Raised by Members at the Meeting on 11 January 2016**

This paper sets out the Government's response to the matters, as listed in the letter from the Clerk to the Bills Committee dated 12 January 2016, raised by Members in relation to the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 ("the Bill") at the meeting on 11 January 2016.

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

2. As explained in our earlier reply to the Assistant Legal Advisor of the Legislative Council ("ALA") (CB(1)383/15-16(03)), the new rule 51A(2) of the Companies (Winding-up) Rules (Cap. 32H) ("CWUR") (Clause 137 of the Bill) (which by virtue of the amended rule 57A (Clause 143 of the Bill) applies to the proceedings under the amended section 168IA of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") (Clause 15 of the Bill)) provides that a person who is the subject of a public examination may apply to the court to see all or part of the report made in support of an application for an order of public examination. If an application under the new rule 51A(2) to see the report is rejected by the court, the applicant may appeal against the court's decision pursuant to the existing appeal mechanism laid down under section 14 of the High Court Ordinance (Cap. 4) and the Rules of the High Court (Cap. 4A), as applicable to winding-up proceedings by virtue of rule 210 of the CWUR. Therefore we do not think it is necessary to explicitly specify the appeal mechanism in the CWUMPO.

Clause 43 – section 206A on meeting time of the first meeting of the committee of inspection

3. At present, there is no requirement in the CWUMPO on the time limit within which the first meeting of the committee of inspection ("COI") must be held. To ensure that the first meeting of the COI is to be held in a timely manner, the new section 206A(2) (Clause 43 of the Bill) provides that the liquidator must summon a first meeting of the COI to be held within six weeks from the date of the appointment of the liquidator or from the date of the appointment of the COI, whichever is the later. The Government consulted the public on this legislative proposal in 2013 and all respondents who made submissions on this proposal agreed to setting the time limit of six weeks for conducting the first COI meeting. In any event, the liquidator may summon the first COI meeting at an earlier time if necessary. As we explained at the

Bills Committee meeting on 11 January 2016, we do not see strong reasons to revise the proposed time limit.

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

4. The intention of the new section 207A(2)(b)(ii) (Clause 45 of the Bill) is to provide flexibility so that a COI member may also authorize a person to be his representative in the COI by a letter of authority that is signed by or on behalf of the member apart from giving a general power of attorney pursuant to the existing section 207(1) of the CWUMPO. As set out in our response to the letter from the ALA dated 4 January 2016 on 21 January 2016, taking into account Members' views, we will consider introducing a Committee Stage Amendment to the effect that if the COI member is an individual, the person representing the individual COI member is to be authorized by holding a letter of authority that is signed by that member; and for other cases such as where the COI member is a body corporate, the representative is to be authorized by holding a letter of authority that is signed by or on behalf of the relevant COI member.

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

5. The introduction of the provisions on remote attendance facilitates the operation of COI meetings by allowing members to attend a meeting at different places by the use of technology, which would facilitate members' participation in COI meetings and save time and costs for holding and attending COI meetings. The new section 207B(2) (Clause 45 of the Bill) allows the use of remote attendance at COI meetings. In this connection, the new section 206A(6) (Clause 43 of the Bill) provides that if a liquidator determines to hold a COI meeting with remote attendance, the liquidator must give 10 days' written notice on the arrangement for the meeting to every COI member. In addition, the new section 207B(8) (Clause 45 of the Bill) further provides that, if at least one COI member requests the liquidator to specify a place for the COI meeting, the liquidator must do so. There are sufficient safeguards such that any COI member who does not agree to the remote attendance arrangement can request a face-to-face meeting, in which case the liquidator must specify a place for the COI meeting. As such, we do not consider it necessary to specify further preconditions for using remote attendance at COI meetings.

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

6. We would like to confirm that "contingent liabilities" is within the meaning of liabilities in the new section 237A(1G) and the amended section 241(3A) (Clause 66

and 73 of the Bill respectively). There is case law that the legal concept of contingent liabilities denotes a liability that the company may, pursuant to an existing obligation of the company, become subject to upon the happening of some future event. Since there are various types of company liabilities (contingent liabilities being only one of them), as well as different types of assets and debts which are other items that should also be included in the full statement under sections 237A(1G) and 241(3A), and noting the availability of case law mentioned above, we do not consider it necessary or appropriate to highlight “contingent liabilities” in the relevant provisions.

Issues raised by the Legal Adviser to the Bills Committee

7. We have issued the Government’s response to the letter from the Assistant Legal Adviser dated 4 January 2016 on 21 January 2016.

**Financial Services and the Treasury Bureau  
Official Receiver’s Office  
22 January 2016**