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By Fax (2869 4195)

21 January 2016

Mr AU Ka-shing, Billy
Prin AS for Financial Services & the Treasury
(Financial Services)4
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr AU,

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

Further to my letter dated 4 January 2016, I would like to seek clarification on the following points -

Part I - Legal issues

Clause 92 - section 267A

In determining the relevant time for creating a floating charge under section 267(2) as amended, the requirement of the company being unable to pay its debts under new section 267A(2)(b) only applies to a floating charge created in favour of any person other than a person connected with the company but not that created in favour of a person connected with the company under new section 267A(1). Please clarify the legislative intent and the justification.

Clause 105 - section 296D

New section 296D(2)(f) and (3) specify a period throughout which the document or information must be made available on a website by a liquidator. New section 296D(6) appears to be an exception to section

296D(2)(f) and (3). What incidents are contemplated to fall under section 296D(6)? Please clarify the purpose of section 296D(6) and the justification.

Clause 120 - Rule 2 of Cap. 32H

The term "affidavit of concurrence" is added to, among others, rule 2 of the Companies (Winding-up) Rules (Cap. 32H). In light of paragraph 12 of the Administration's reply dated 7 January 2016 (File Ref.: CB(1)383/15-16(03)), please make any necessary amendment as appropriate in rule 2 and all other provisions in the Bill where such term are added.

Part II - Drafting issues

Clause 105 - section 296D

In new section 296D(7), only subsection (7)(b) refers to subsection (8). In such circumstances, should section 296D(8) provide "The period specified for the purpose of subsection (7)(b)..." instead of "subsection (7)" to refer more specifically to subsection (7)(b)?

Clauses 116 to 118 - Twelfth Schedule, Fifteenth Schedule and Schedule 25

The newly added Schedule 25 is numbered using Arabic numerals. In the Bill, the existing "Twelfth Schedule" and "Fifteenth Schedule" is not amended to the same numbering style. Please confirm whether amendments to the old numbering style are to be effected under the Legislation Publication Ordinance (Cap. 614) and clarify when such amendment will take place.

Clause 149 - Rules 69(4) and 71(3) of Cap. 32H

New rule 69(4) of Cap. 32H provides that "In addition, a notice of provisional list of contributories must be in Form 43.". A similar provision is found in new rule 71(3). The words "In addition" does not seem to serve any purpose in these provisions. Please amend rules 69(4) and 71(3) by deleting such words.

Clause 173 - Forms in Appendix of Cap. 32H

In Form 1 of the Appendix of Cap. 32H, should "...Dated the day of , 19 ." be amended to "...Dated the day of , 20 .", like the amendments made to other forms in the Appendix under the Bill?

In Form 98 of the Appendix of Cap. 32H, should "...Dated this day of , 19 ." be amended to "...Dated this day of , 20 .", like the amendments made to other forms in the Appendix under the Bill?

Clause 177 - Schedule 26

Section 31(2) of new Schedule 26 provides that "If the winding up of a company commences before the expiry of the period of 2 years beginning on the first day of the first one of the company's financial years that begin on or after the commencement date,...". Please clarify the meaning of the words underlined and simplify the drafting.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie LO', written in a cursive style.

(Winnie LO)

Assistant Legal Adviser

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