

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

Response to Matters Raised by Members at the Meeting on 25 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 28 January 2016, raised by Members in relation to the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 ("the Bill") at the meeting on 25 January 2016.

Clause 45 – section 207B on the meeting place of a committee of inspection using remote attendance

2. As explained in our earlier reply to the Assistant Legal Advisor of the Legislative Council ("ALA") in the Paper No. CB(1)481/15-16(03) and at the Bills Committee meeting on 25 January 2016, the purpose of the new section 207B(8) is to allow any member of the committee of inspection ("COI") to request the liquidator to specify a meeting place for a COI meeting where the liquidator has summoned the meeting to be held by remote attendance without a place of the meeting specified. By acceding to the member's request and specifying a meeting place under the new section 207B(8), the meeting arranged by the liquidator could still be a meeting held with remote attendance arrangements.

3. Following our response at the Bills Committee meeting on 25 January 2016, we would like to further explain the operation of the new sections 206A(6), 207B(6) and 207C. As a starting point, the new section 206A(6) provides to the effect that if the liquidator determines to hold a COI meeting in the remote attendance manner referred to in the new section 207B, the liquidator is required to give 10 days' written notice of the date, time and place of the meeting to every member of the COI. In other words, a meeting may be held by remote attendance but with a place of the meeting specified. In response to such a notice, the COI members may choose to go to the specified place to attend the meeting or join the meeting by remote attendance.

4. The new section 207B(6) provides to the effect that if in the reasonable opinion of the liquidator, a meeting will be attended by persons who will not be present together at the same place and it is not necessary or expedient to specify a place for the meeting, the liquidator may satisfy the requirement to specify a place for the meeting under the new section 206A(6) by specifying the arrangements the liquidator proposes

to enable persons attending the meeting to exercise their rights to speak and vote. In such a case, no place will be specified in the notice of the meeting and all members are expected to join the meeting by remote attendance. However, under the new section 207B(8), after a notice of meeting which does not specify a place for the meeting is issued by the liquidator under the new sections 206A(6) and 207B(6), any member of the COI may request the liquidator to specify a place for the meeting in accordance with the new section 207C, and the liquidator must comply with the request by specifying a place for the meeting. In such a case, the COI members may choose to attend the meeting at the specified place or join the meeting by remote attendance.

5. Taking into account the discussion at the Bills Committee meeting on 25 January 2016, we will consider introducing a Committee Stage Amendment to make the above intention clearer.

Clause 98 – section 278A on exemption from liability in offering inducement to affect appointment as a provisional liquidator or liquidator

6. The amended section 278A extends the scope of the offence provision under the existing section 278A to cover offering inducements to any person (instead of only any member or creditor of the relevant company as provided in the existing section 278A) to affect the appointment or nomination of provisional liquidators or liquidators (instead of only liquidators as provided in the existing section 278A). During the public consultation on the legislative proposals in 2013, we noted the accounting profession's views that the arrangements as described in section 500.65 of the Code of Ethics for Professional Accountants ("the Code") might be caught by the amended section 278A. Having regard to the views gathered during the public consultation, carve-out provisions similar to section 500.65 of the Code were added to the amended section 278A(2), so as not to affect the existing operations of the accounting profession. Therefore, the amended section 278A(2) provides for the exemptions, which relate to "practice units" as defined under the Professional Accountants Ordinance (Chapter 50), from the offence provision under the amended section 278A(1).

7. During the public consultation, we did not receive views that similar carve-out provisions should be applied to other professions. The amended section 278A(2) was included in the draft provisions of the Bill sent to relevant professional bodies (including the legal profession) for further comment in July 2015. No comment on the amended section 278A(2) was received from these professional bodies. As different professions have different *modi operandi* and we have not received any request from other professions, we do not consider that there is a need to extend the application

of the carve-out provisions to other professions (including the legal profession) at this stage.

Clause 105 – section 296D on communication by liquidators by means of website

8. The letter from the Clerk to the Bills Committee dated 28 January 2016 reflects the Members' suggestion at the Bills Committee meeting on 25 January 2016 that consideration should be given to specifying a minimum period for which a document or information must be made available on a website in the case of a failure mentioned in the new section 296D(6), so as to provide clarity and to ensure that the relevant parties will not overlook the document or information.

9. We understand that the suggestion from Members was primarily based on the concern that an intended recipient may not be aware of the presence of a document or information on a website as made available by the provisional liquidator or liquidator in the case of a failure mentioned in the new section 296D(6), even though the document or information must still be made available on the website for part of the relevant period before the failure can be disregarded for the purposes of the new section 296D(2)(f) and (3). We wish to point out that there are already adequate safeguard provisions to address the concern.

10. As explained in our separate response to the letter from the ALA dated 21 January 2016, a failure mentioned in the new section 296D(6) must be wholly attributable to circumstances that it would not be reasonable to have expected the provisional liquidator or liquidator to prevent or avoid. It should not be common to invoke the new section 296D(6). Besides, the effect of the new section 296D(6) is that in the case of a failure mentioned in that subsection, although a document or information cannot be made available on a website continuously throughout the period mentioned in the new section 296D(2)(f) or (3), the document or information must still be made available on the website for part of that period before the failure can be disregarded for the purposes of section 296D(2)(f) and (3).

11. As we explained at the Bills Committee meeting on 25 January 2016, pursuant to the new section 296D(2)(a), if a document or information is to be sent or supplied by the provisional liquidator or liquidator to the intended recipients by making the document or information available on a website, the provisional liquidator or liquidator must first obtain agreement from those intended recipients. In addition, whilst this was not mentioned at the said meeting, we would like to point out that the new section 296D(2)(e), in effect, provides that for the purpose of communication by

means of a website, it is required that a provisional liquidator or liquidator has sent a notification to the intended recipients notifying them of, among other things, the presence of the document or information on the website. The notification must be sent to the address provided by an intended recipient under the new section 296D(2)(d) for the purpose of receiving the notification. Therefore, in our view, there are already relevant provisions to address the concern that the intended recipients may overlook the document or information in the case of a failure mentioned in the new section 296D(6). It follows that it would not be necessary to specify a minimum period for which a document or information must be made available on a website in the case of a failure mentioned in the new section 296D(6).

Issues raised by the Legal Adviser to the Bills Committee

12. We will separately issue the Government's response to the letter from the ALA dated 21 January 2016.

Financial Services and the Treasury Bureau

Official Receiver's Office

12 February 2016