

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

**Clause-by-clause Examination
Draft Committee Stage Amendments – Second Batch**

With the deliberation of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 (“the Bill”) at the Bills Committee meetings, the Government will propose some Committee Stage Amendments (“CSAs”) to amend the Bill. We have issued the first batch of the proposed draft CSAs to the Bills Committee on 29 February 2016 (Paper No. CB(1)610/15-16(03)). This paper sets out the second batch at **Annex**.

2. Members are invited to examine the mark-up version of the relevant parts of the Bill with the proposed draft CSAs marked thereto. The reasons for these draft CSAs have been provided in the footnotes as appropriate. These draft CSAs are subject to revisions if necessary.

**Financial Services and the Treasury Bureau
Official Receiver’s Office
11 March 2016**

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

Draft Committee Stage Amendments – Second Batch

(1) Clause 16 / the new section 168IB**“168IB. Self-incrimination in relation to ~~direction or~~¹ requirement under section 168IA**

- (1) A person is not excused from complying with a ~~direction or~~¹ requirement imposed on the person under section 168IA only on the ground that to do so might tend to incriminate the person. ”
- “(3) The proceedings are those in which the person is charged with ~~an offence in respect of the affidavit or answer—~~
- ~~—(a) under section 349;~~
- ~~—(b) under Part V of the Crimes Ordinance (Cap. 200); or~~
- ~~—(c) for perjury.~~
- any of the following offences in respect of the affidavit or answer—
- (a) an offence under section 349;
- (b) an offence under Part V of the Crimes Ordinance (Cap. 200).²”

(2) Clause 36 / the amended section 199(6)

- “(6) A creditor or contributory may apply to the court ~~for directions~~³ on the exercise or proposed exercise of any of those powers.”

(3) Clause 37 / the new section 199A(3)

- “(3) A creditor or contributory may apply to the court ~~for directions~~³ on the exercise or proposed exercise of any of those powers.”

¹ This draft CSA seeks to add a reference to “direction” in the heading and subsection (1) of the new section 168IB which refers to the new section 168IA (Clause 15 of the Bill) containing provisions on directions and requirements made by the court.

² This draft CSA seeks to reflect the fact that the offence for perjury mentioned in the new section 168IB(3)(c) is already covered by an offence under Part V of the Crimes Ordinance (Chapter 200) as mentioned in the new section 168IB(3)(b). As the offence for perjury is also mentioned in the new section 286D(3) (Clause 101 of the Bill), a similar CSA will be introduced to the new section 286D(3).

³ These draft CSAs seek to improve consistency in the wording of both the English and Chinese texts of the amended section 199(6), the new section 199A(3) and the new section 199B(7). These provisions are derived from the existing section 199(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) (“CWUMPO”) which does not limit the applications of a creditor or contributory to the court for “directions” only. The policy intention is to maintain the scope of the existing section 199(3) in the amended section 199(6), the new sections 199A(3) and 199B(7). The background of these draft CSAs has been explained in paragraph 15 of the Government’s reply of 7 January 2016 (Paper No. CB(1)383/15-16(03)) in response to the Assistant Legal Advisor’s letter dated 10 December 2015.

(4) Clause 37 / the new section 199B(7) – Chinese text

“(7) 債權人或分擔人可向法院提出申請，要求就行使或擬行使任何上述權力，給予指示。就行使或擬行使任何上述權力，向法院提出申請。”³”

(5) Clause 45 / the new section 207A(2)(b)(ii)

“(2) A person is authorized by a member only if the person holds—
(a) a general power of attorney from the member; or
(b) a letter of authority that—
(i) entitles the person to act as the member’s representative (either generally or specifically); and
(ii) ~~(ii) is signed by or on behalf of the member.~~ is signed—
(A) (if the member is a natural person) by the member; or
(B) (in any other cases) by or on behalf of the member.”⁴”

(6) Clause 45 / the new section 207B(8)

~~“(8) The liquidator must specify a place for the meeting if—
(a) the notice of the meeting under section 206A(6) does not specify a place for the meeting; and
(8) Despite subsection (6), the liquidator must specify a place for the meeting if—
(a) because of subsection (6), the notice of the meeting under section 206A(6) is given without a place specified for the meeting; and⁵
(b) at least one member of the committee requests the liquidator to specify a place for the meeting in accordance with section 207C.”~~

(7) Clause 66 / the new section 237A(1G)(a) – Chinese text

“(1G) 關於公司的事務狀況的詳盡陳述書，須顯示 —
(a) 公司的資產、債項及法律責任債務⁶的詳情；

⁴ This draft CSA provides to the effect that if the member of a committee of inspection is a natural person, the letter of authority must be signed by himself/herself. The rationale for introducing this draft CSA has been explained in paragraph 4 of the Government’s reply of 22 January 2016 (Paper No. CB(1)481/15-16(02)) in response to the letter of the Clerk to Bills Committee (“the Clerk”) dated 12 January 2016.

⁵ This draft CSA seeks to express more clearly the intended operation of the new section 206A(6) (Clause 43 of the Bill), the new section 207B(6) (Clause 45 of the Bill) and the new section 207B(8). The background of this draft CSA has been explained in paragraphs 2 to 5 of the Government’s reply of 12 February 2016 (Paper No. CB(1)552/15-16(02)) in response to the Clerk’s letter dated 28 January 2016.

⁶ This draft CSA seeks to align the wording of the Chinese text of the new section 237A(1G)(a) and the new section 241(3A)(a) (Clause 73 of the Bill) with that of the similar texts in the existing sections

- (b) 公司債權人的姓名或名稱，以及每名該等債權人的申索的估計款額；
- (c) 每名該等債權人持有的抵押；
- (d) 作出每項該等抵押的日期；及
- (e) 訂明的任何進一步資料或其他資料。”

(8) Clause 127 / the amended rule 35(2) of the Companies (Winding-up) Rules (Chapter 32H) (“CWUR”)

“(2) An order to wind up a company, or for the appointment of a provisional liquidator before the making of a winding-up order, must contain at its foot a notice stating that, as the Official Receiver, provisional liquidator or liquidator (*interviewer*) may require, it is the duty of—

- ~~———— (a) a person who is, on the date of the order to wind up or appointment, a director of the company;~~
 - ~~———— (b) a person who is on that date a company secretary of the company; and~~
 - ~~———— (c) those persons who are, as the provisional liquidator or liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement;~~
 - ~~———— to attend on the interviewer according to the day, time and place the interviewer appoints and to give the interviewer all information that the interviewer requires.~~
- a person who is or may be liable to make the statement of affairs of the company, or a supplementary affidavit in relation to that statement, to attend on the interviewer according to the day, time and place the interviewer appoints and to give the interviewer all information that the interviewer requires.⁷”

(9) Clause 129 / the new rule 39(6)

~~“(6) The Official Receiver, provisional liquidator or liquidator may from time to time hold interviews with any of the following persons for the purpose of investigating the company’s affairs—~~

- ~~———— (a) a person who is, on the relevant date within the meaning of section 190(8) of the Ordinance, a director of the company;~~
- ~~———— (b) a person who is on that date a company secretary of the company;~~
- ~~———— (c) those persons who are, as the provisional liquidator or liquidator may require, liable to make the statement of affairs of the~~

190(1) and 300B(1) of CWUMPO. A similar CSA will be introduced to the new section 241(3A)(a). No CSA to amend the English text is necessary.

⁷ This draft CSA seeks to simplify the drafting of the amended rule 35(2) by removing paragraphs (a) and (b) from rule 35(2). See Footnote 8 on the rationale.

~~company or an affidavit of concurrence in relation to that statement.~~

- (6) The Official Receiver, provisional liquidator or liquidator may, for the purpose of investigating the company's affairs, hold interviews from time to time with a person who is or may be liable to make the statement of affairs of the company or a supplementary affidavit in relation to that statement.⁸

(10) Clause 137 / the new rule 51A

~~**“51A. Evidence in support of application for public examination**~~

- ~~(1) For the purposes of an application for an order of the court under section 286A(1) of the Ordinance (*public examination order*)—~~
- ~~(a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a public examination order is needed; and~~
- ~~(b) a report under subparagraph (a) is confidential.~~
- ~~(2) Despite paragraph (1)(b)—~~
- ~~(a) a person who is the subject of a public examination order being applied for may apply to the court to see all or part of the report; and~~
- ~~(b) if the person satisfies the court that it would be unfair to the person not to see it, the court may allow the person to see all or part of the report subject to any condition that it thinks fit.~~

51A. Further report confidential if public examination ordered⁹

- (1) If the court makes an order under section 286A(1) of the Ordinance after consideration of a further report made under section 191(2) of the Ordinance, the further report is not open to inspection.
- (2) Despite paragraph (1)—
- (a) a person in respect of whom the order is made may apply to the court to see all or part of the further report; and

⁸ This draft CSA seeks to simplify the drafting of the new rule 39(6) by removing paragraphs (a) and (b) from rule 39(6). The rationale for introducing this draft CSA has been explained in paragraph 5 of the Government's reply of 29 February 2016 (Paper No. CB(1)610/15-16(02)) in response to the Clerk's letter dated 18 February 2016.

⁹ This draft CSA seeks to improve clarity in the public examination procedure under the new section 286A (Clause 101 of the Bill) by introducing a new revised rule 51A and having the original rule 51A renumbered as rule 51B. Under the new section 286A, a public examination order may be made under either of the following scenarios: (i) where the court makes a public examination order after consideration of a further report made under section 191(2) of CWUMPO or (ii) where an application for a public examination order to the court is made by the Official Receiver or the liquidator. The confidentiality of the relevant report under scenario (ii) mentioned above has been provided in the original rule 51A (i.e. rule 51B in this draft CSA). In addition to that, this draft CSA clarifies the confidentiality of the relevant report under scenario (i) mentioned above. As the draft CSA will make changes to the rule numbers (namely rule 51A and rule 51B), technical CSAs will be introduced to the amended rule 57A (Clause 143 of the Bill) and section 2(3)(b) of the new Schedule 26 (Clause 177 of the Bill) (both by substituting "51A" with "51B"), and section 15(3)(b) of the new Schedule 26 (Clause 177 of the Bill) (by substituting "rule 51A" with "rules 51A and 51B").

- (b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the further report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.

51B. Evidence in support of application for public examination

- (1) If an application for an order of the court under section 286A(1) of the Ordinance (*public examination order*) is made—
 - (a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a public examination order is needed; and
 - (b) a report under subparagraph (a) is not open to inspection.
- (2) Despite paragraph (1)(b)—
 - (a) a person in respect of whom the application is made may (whether or not the application has been disposed of) apply to the court to see all or part of the report; and
 - (b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.”

(11) Clause 144 / the new rule 58A(4) and (5)

- ~~“(4) For the purposes of an application for a section 286B order—~~
 - ~~(a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a section 286B order is needed; and~~
 - ~~(b) a report under subparagraph (a) is confidential.~~
- ~~(5) Despite paragraph (4)(b)—~~
 - ~~(a) a person who is the subject of a section 286B order being applied for may apply to the court to see all or part of the report; and~~
 - ~~(b) if the person satisfies the court that it would be unfair to the person not to see it, the court may allow the person to see all or part of the report subject to any condition that it thinks fit.~~
- (4) If an application for a section 286B order is made—
 - (a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a section 286B order is needed; and
 - (b) a report under subparagraph (a) is not open to inspection.
- (5) Despite paragraph (4)(b)—
 - (a) a person in respect of whom the application is made may (whether or not the application has been disposed of) apply to the court to see all or part of the report; and

- (b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.¹⁰,

(12) Clause 169 / the amended rule 179(2)

- “(2) A payment in respect of a bill or charges of a solicitor, manager, accountant, auctioneer, broker or other person is only allowed out of the assets of a company on proof that the payment has been ~~considered and~~ allowed¹¹ by the Registrar, unless it is—
- (a) a payment made for costs and expenses payable under section 190A of the Ordinance;
 - (b) a payment of a bill that has been taxed and allowed under an order made for its taxation; or
 - (c) a payment in respect of a bill or charges that have been approved by the committee of inspection by resolution.”

(13) Clause 173(2)(b) / the amended Note to Form 9 in the Appendix to CWUR

~~“NOTE It will be the duty of the person who is at the time company secretary or chief officer of the company and of such of the persons who are liable to make out or concur in making out the company's statement of affairs as the Official Receiver or provisional liquidator may require, to attend on the Official Receiver or provisional liquidator at such time and place as he may appoint and to give him all information he may require.~~

~~— Note As the Official Receiver or provisional liquidator may require, it is the duty of—~~

~~— (a) a person who is, on the date of the above mentioned appointment, a director of the company;~~

~~— (b) a person who is on that date a company secretary of the company; and~~

~~— (c) those persons who are, as the provisional liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement,~~

~~to attend on the Official Receiver or provisional liquidator according to the day, time and place the Official Receiver or provisional liquidator appoints and to give the Official Receiver or provisional liquidator all information that the Official Receiver or provisional liquidator requires.~~

¹⁰ This draft CSA is a consequential amendment to Item (10) of this paper for the purpose of aligning the wording of the new rule 58A(4) and (5) with that of the new rule 51B(1) and (2) (Item (10) of this paper).

¹¹ This draft CSA seeks to make the provisions more concise. The rationale for introducing this draft CSA has been explained in paragraph 10 of the Government's reply of 29 February 2016 (Paper No. CB(1)610/15-16(02)) in response to the Clerk's letter dated 18 February 2016.

Note—As the Official Receiver or provisional liquidator (interviewer) may require, it is the duty of a person who is or may be liable to make the statement of affairs of the company, or a supplementary affidavit in relation to that statement, to attend on the interviewer according to the day, time and place the interviewer appoints and to give the interviewer all information that the interviewer requires¹².

(14) Clause 173(10)(b) – Chinese text

“(b) 英文文本 —
廢除

“on a day and at a place to be named for the purpose of being publicly examined”

代以

“, on a day and at a place ~~to be appointed~~ to be appointed¹³, and be publicly examined” ; ”

(15) Clause 177 / Section 18 of the new Schedule 26 (transitional and saving provisions)

“18. Voluntary winding up under section 228A

(1) If the winding up of a company has commenced before the commencement date, then—

(a) ~~subject to subsections (2) and (3), the former section 228A and the provisions in the Twelfth Schedule to the former Ordinance relating to that section continue to apply; and~~

(b) ~~section 228B and the provisions in the Twelfth Schedule relating to section 228B do not apply.~~

(2) ~~Section 228A(11) applies if a provisional liquidator appointed under the former section 228A(5)(b) ceases to act as such on or after the commencement date.~~

(3) ~~Section 228A(12) applies to a notice of appointment delivered under the former section 228A(10) if, on or after the commencement date, any change occurs in the particulars in that notice.¹⁴,~~

¹² This draft CSA seeks to simplify the drafting of the “Note” in the amended Form 9 by removing paragraphs (a) and (b) of the “Note” for the purpose of aligning the wording with that in the amended rule 35(2) (as further amended by Item (8) of this paper). A similar CSA will be introduced to the amended Form 14 (Clause 173(3)(b) of the Bill) which contains a similar “Note”. See Footnote 8 on the rationale.

¹³ This draft CSA seeks to rectify a slip in the Chinese text of the Bill. No CSA to amend the English text is necessary.

¹⁴ This draft CSA is a consequential amendment to Item (5) in the Annex of the Government’s paper “Draft Committee Stage Amendments – First Batch” (Paper No. CB(1)610/15-16(03)) to the Bills Committee dated 29 February 2016 and provides for the transitional and saving arrangements for that CSA.

(16) Heading of Division 2 of Part 8 of the Bill and heading of Clause 181¹⁵

“Division 2—Amendments to Insurance Companies Ordinance (Cap. 41)

181. Section 46 amended (continuation of long term business of ~~authorized~~ insurer in liquidation)”

(17) Clause 182 (consequential amendments to the Insurance Companies Ordinance (Chapter 41))¹⁵

“182. Section 49A amended (winding up of ~~authorized~~ insurer subject to direction under section 35(2)(b))

(3) After section 49A(2)—

Add

“(2A) For the purposes of anything done or suffered to be done by the ~~authorized insurer~~ insurer mentioned in subsection (1) or (2) before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015), ~~subsections (1) and (2) apply as if the references to section 266B of CWUMPO in those subsections were~~ ~~referencees~~ that subsection applies as if the reference to section 266B of CWUMPO in that subsection were a reference to section 266 of the pre-amended CWUMPO.

(2B) For the purposes of a charge created on the undertaking or property of the ~~authorized insurer~~ insurer mentioned in subsection (1) or (2) before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015), ~~subsections (1) and (2) apply as if the references to section 267A of CWUMPO in those subsections were~~ ~~referencees~~ that subsection applies as if the reference to section 267A of CWUMPO in that subsection were a reference to section 267 of the pre-amended CWUMPO.”

(18) Clause 189 (consequential amendments to the Payment Systems and Stored Value Facilities Ordinance (Chapter 584))¹⁶

“Section ~~60~~ 61 added

¹⁵ These draft CSAs are technical amendments in relation to the Insurance Companies (Amendment) Bill 2014 which was passed in July 2015 and is pending commencement. These draft CSAs seek to provide flexibility so that no matter whether the commencement of the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015) is earlier or later than the commencement of this Bill (if enacted), the provisions of the relevant consequential amendments set out in Items (16), (17) and (19) of this paper will be legally in order.

¹⁶ This draft CSA seeks to update a section number in the re-titled Payment Systems and Stored Value Facilities Ordinance (Chapter 584) in view of the commencement of the Clearing and Settlement Systems (Amendment) Ordinance 2015 (18 of 2015) which has added section 60 to Chapter 584.

Before Schedule 1—

Add

~~60.61.~~Transitional and saving provision relating to the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015” ”

- (19) The new Clause 190 / the new Division 7 of Part 8 of the Bill (consequential amendment to the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015))¹⁵

“Division 7—Amendment to Insurance Companies (Amendment) Ordinance 2015 (12 of 2015)

190. Part 3, Division 34 added

Part 3, after Division 33—

Add

“Division 34—Amendments to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (of 2016)

171. Part 8, Division 2 heading amended (amendments to Insurance Companies Ordinance (Cap. 41))

Part 8, Division 2 heading—

Repeal

“Companies”.

172. Section 181 heading amended (section 46 amended (continuation of long term business of insurer in liquidation))

Section 181, heading, before **“insurer”**—

Add

“authorized”.

173. Section 182 heading amended (section 49A amended (winding up of insurer subject to direction under section 35(2)(b)))

Section 182, heading, before **“insurer”**—

Add

“authorized”. ”.