

**立法會**  
**Legislative Council**

LC Paper No. CB(1)398/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/1/15/2

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

**Minutes of the first meeting on**  
**Friday, 6 November 2015, at 8:30 am**  
**in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon NG Leung-sing, SBS, JP  
Hon CHAN Yuen-han, SBS, JP  
Hon Kenneth LEUNG  
Hon Alice MAK Mei-kuen, BBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon SIN Chung-kai, SBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu, JP  
Hon CHUNG Kwok-pan
- Member attending** : Hon James TO Kun-sun
- Member absent** : Hon Dennis KWOK
- Public officers attending** : Mr Patrick HO  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)

Mr Billy AU  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)

Mr Alan FONG  
Assistant Official Receiver (Legal Services)  
Official Receiver's Office

Miss Cindy CHEUK  
Senior Government Counsel (Acting)  
Department of Justice

**Clerk in attendance** : Ms Connie SZETO  
Chief Council Secretary (1)4

**Staff in attendance** : Miss Winnie LO  
Assistant Legal Adviser 7

Mr Hugo CHIU  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

## **I Election of Chairman**

Mr Andrew LEUNG, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WONG Ting-kwong was nominated by Mr NG Leung-sing and the nomination was seconded by Mr POON Siu-ping. Mr WONG Ting-kwong accepted the nomination. There being no other nomination, Mr WONG Ting-kwong was elected Chairman of the Bills Committee. Mr WONG then took the chair.

Election of Deputy Chairman

3. Members agreed that there was no need to elect a Deputy Chairman.

**II Meeting with the Administration**

- (LC Paper No. CB(3)7/15-16 -- The Bill
- File Ref: IB&W/2/1/5/4C -- Legislative Council Brief
- LC Paper No. LS1/15-16 -- Legal Service Division Report
- LC Paper No. CB(1)115/15-16(01) -- Background brief on Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 prepared by the Legislative Council Secretariat)

Discussion

4. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

*Interface between the winding-up process and application for the Protection of Wages on Insolvency Fund ("PWIF")*

5. Some members expressed concern that the Bill did not address issues of the long time gap between the commencement of the winding-up process of a company and the making of payments from PWIF, and the eligibility of a voluntary winding-up for application to PWIF. The Administration was requested to:

- (a) explain the interface between the winding-up process of a company and the mechanism of PWIF, including the need to obtain the relevant determination of the Labour Tribunal before invoking PWIF;
- (b) provide information in recent years on the number of cases in respect of each type of winding-up of companies (i.e. court winding-up, members' voluntary winding-up and creditors'

voluntary winding-up), the eligibility of such cases for applying PWIF, and the outcomes of the applications concerned; and

- (c) explore possible means under the context of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") to help expedite the application process of PWIF.

*Caps on preferential payments to employees*

6. The Administration was requested to respond to some members' views that the caps stipulated in section 265 of CWUMPO on preferential payments to employees should be reviewed to bring them in line with the levels payable to employees under PWIF.

*Order of payment of unsecured creditors*

7. The Administration was requested to respond to some members' views that ordinary customers and small suppliers of a company should be accorded higher priority in the list of unsecured creditors for the distribution of assets of a wound-up company.

*(Post-meeting note: The Administration's written response was issued vide LC Paper No. CB(1)203/15-16 on 27 November 2015.)*

**III Any other business**

Invitation of views

8. Members agreed to post a notice on the website of the Legislative Council ("LegCo") and write to the 18 District Councils ("DCs"), relevant government/public organizations, trade and professional organizations and labour groups to invite views on the Bill; and to meet with deputations.

*(Post-meeting note: The notice was posted on LegCo website on 9 November 2015 and letters were sent to DCs and relevant organizations on 10 November 2015.)*

Date of next meeting

9. The Chairman said that he would work out the date of the next meeting with the Clerk and inform members accordingly.

*(Post-meeting note: With the concurrence of the Chairman, the second meeting was scheduled for 30 November 2015 from 3:00 pm to 6:30 pm to meet with deputations and the Administration. The notice of meeting was issued vide LC Paper No. CB(1)141/15-16 on 10 November 2015.)*

10. There being no other business, the meeting ended at 10:24 am.

Council Business Division 1  
Legislative Council Secretariat  
6 January 2016

**Proceedings of the Bills Committee on Companies  
(Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015  
First meeting on Friday, 6 November 2015, at 8:30 am  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000127 – 000205	Mr Andrew LEUNG Mr NG Leung-sing Mr POON Siu-ping Mr WONG Ting-kwong	Election of Chairman	
000206 – 000413	Chairman	Introductory remarks	
000414 – 004023	Administration	<p>Briefing by the Administration on the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 ("the Bill").</p> <p><i>(Post-meeting note: The powerpoint presentation materials (LC Paper No. CB(1)129/15-16(01)) were issued to members vide Lotus Notes e-mail on 6 November 2015.)</i></p> <p>The Administration remarked that the Bill made no change to:</p> <p>(a) the order of priority of preferential payments in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO"); and</p> <p>(b) the existing caps set out in section 265 of CWUMPO on preferential payments to employees.</p>	
004024 – 014840	Chairman Mr TANG Ka-piu Miss CHAN Yuen-han Mr POON Siu-ping Miss Alice MAK Mr CHUNG Kwok-pan Mr SIN Chung-kai Mr Kenneth LEUNG Mr NG Leung-sing Administration	<p>Mr TANG and Mr SIN supported holding a public hearing to receive views on the Bill.</p> <p>Mr POON declared that he was a member of the Protection of Wages on Insolvency Fund ("PWIF") Board.</p> <p><u>Interface between the winding-up process and application for the Protection of Wages on Insolvency Fund</u></p> <p>Mr TANG's views and enquiries as follows:</p> <p>(a) he was concerned that cases of voluntary winding-up of companies might not be eligible for application for PWIF and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>requested the Administration to provide information on the eligibility for PWIF in respect of the three types of winding-up of companies (i.e. court winding-up, members' voluntary winding-up and creditors' voluntary winding-up); and</p> <p>(b) the Administration should provide information on the average time taken for employees to receive (i) payments from PWIF; and (ii) preferential payments under section 265 of CWUMPO.</p> <p>Miss MAK echoed the concern about the eligibility of a voluntary winding-up for application for PWIF.</p> <p>Miss CHAN's views as follows:</p> <p>(a) the Bill failed to address the issues of (i) the long time gap between the commencement of a winding-up process and the making of payments from PWIF to employees; and (ii) the need for applicants of PWIF to contact various Government departments in invoking PWIF. The Bills Committee should examine how the application process of PWIF could be streamlined and expedited;</p> <p>(b) some companies in winding-up tried to evade from the obligation to pay wages in arrears to employees through creating a complicated structure involving multiple layers of companies. In such cases, the Police and the Customs and Excise Department were called in to help move forward the process for invoking PWIF; and</p> <p>(c) the determinations of the Labour Tribunal ("LT"), which often took a long time to obtain, were required for invoking PWIF in a number of winding-up cases.</p> <p>In the light of members' concern, the Administration was requested to:</p> <p>(a) explain the interface between the winding-up process of a company and the mechanism of PWIF, including the need to obtain the relevant determination of LT</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>before invoking PWIF;</p> <p>(b) provide information on the number of cases in recent years in respect of each type of winding-up of companies, the eligibility of such cases for applying to PWIF, and the outcomes of the applications concerned; and</p> <p>(c) explore possible means under the context of CWUMPO to help expedite the application process of PWIF.</p> <p><u>Caps on preferential payments to employees</u></p> <p>Mr TANG was disappointed that the Bill had not proposed to raise the existing caps stipulated in section 265 of CWUMPO (i.e. the following preferential payments payable to an employee: \$8,000 for arrears of wages, \$8,000 for long service payment and \$2,000 for any wages in lieu of notice under the Employment Ordinance (Cap. 57)). He pointed out that the caps had been prescribed for years, and it was high time for the Administration to review these caps taking into account the present median household income.</p> <p>Mr POON shared the above views.</p> <p>The Administration was requested to respond to members' views that the caps stipulated in section 265 of CWUMPO on preferential payments to employees should be reviewed to bring them in line with the levels payable to employees under PWIF.</p> <p><u>Order of payment of unsecured creditors</u></p> <p>Miss MAK's views as follows:</p> <p>(a) in the winding-up of a company, customers who had made pre-payment for goods/services of the company usually did not receive any payment owing to their low priority in the distribution of the company's assets in liquidation. Other legislation like the Trade Descriptions Ordinance (Cap. 362) could not address the grievances of such customers; and</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p>



Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the Administration should consider according ordinary customers a higher payment priority among other unsecured creditors.</p> <p>Mr CHUNG remarked that during the winding-up of DSC ("德爾斯"), many small suppliers suffered substantial losses owing to their low priority in the distribution of the company's assets in liquidation. He considered that the Administration should strengthen protection of the interests of small suppliers in the winding-up process.</p> <p>Miss CHAN opined that if a company being wound up involved an intention to defraud, the employees and suppliers concerned should be classified as secured creditors.</p> <p>Mr NG remarked that the assets of a company in liquidation should be distributed among creditors in accordance with the existing law and the contracts signed between the company and the creditors concerned. It would be inappropriate to single out particular classes of unsecured creditors for preferential treatment.</p> <p>The Administration responded as follows:</p> <p>(a) with regard to customers who had made pre-payment for good/services in a winding-up case, there were legislation which provided for criminal liability against persons who were responsible for fraudulent acts;</p> <p>(b) the general principles adopted in the Bill were to (i) void inappropriate transactions conducted by a company prior to its winding-up; and (ii) distribute the assets of the company to its creditors in a fair manner. These general principles were in line with other comparable jurisdictions;</p> <p>(c) in the corporate insolvency law of other comparable common law jurisdictions, the trend was to ensure equal treatment to unsecured creditors in the distribution of assets in a winding-up instead of complicating the regime by singling out more categories of unsecured creditors for preferential treatment; and</p>	

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		<p>(d) the Administration had reviewed the need of amending section 265 of CWUMPO taking into account stakeholders' views. On the idea raised by some members to accord a higher payment priority to some classes of unsecured creditors the Administration would welcome views from other members.</p> <p>The Administration was requested to respond to members' views that ordinary customers and small suppliers of a company should be accorded higher priority in the list of unsecured creditors for the distribution of assets of a wound up company.</p> <p><u>Other issues</u></p> <p>Mr POON enquired whether the term "associates" in the proposed provisions for transactions which were "unfair preferences" covered employees (including senior employees) of wound up companies.</p> <p>The Administration advised that in general, the term "associates" covered the directors and their spouses, company secretaries and auditors of companies being wound up and also employees.</p> <p>Mr CHUNG enquired whether the Administration would introduce a Bill similar to Chapter 11 of the United States Bankruptcy Code on bankruptcy protection to enable restructure of debts for a company and prevent it from winding-up.</p> <p>The Administration responded that it had made a public commitment to pursue a legislative exercise to introduce a new statutory corporate rescue procedure ("CRP") and insolvent trading provisions for Hong Kong. After completion of consultation on the broad proposals in 2014, the Administration was developing detailed legislative proposals. Taking into account the time required for engaging relevant stakeholders on specific proposals and preparation of the amendment bill, the target was to introduce the amendment bill into the Legislative Council ("LegCo") as soon as possible in the next LegCo term.</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr LEUNG's enquiries as follows:</p> <ul style="list-style-type: none"> <li>(a) whether creditors holding fixed charges would have a higher priority than creditors holding floating charges over the assets of a company being wound up ("fixed charge holders" and "floating charge holders" respectively);</li> <li>(b) whether suppliers of a company being wound up could be regarded as fixed charge holders over the goods supplied to the company or whether such goods could be subject to a floating charge; and</li> <li>(c) whether a supplier could protect its interests by specifying in the contract with a company that the legal title of the goods it supplied to the company would not pass to the company before payment was received by the supplier.</li> </ul> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) fixed charge holders had higher priority of payment than floating charge holders;</li> <li>(b) there was no legislative provision giving a supplier a fixed charge holder status in respect of the goods the supplier supplied. In general, a supplier of a company being wound up would be regarded as an unsecured creditor unless there was a legal document creating a charge. Whether such goods would be subject to a floating charge would be determined having regard to the contracts/legal documents signed between the floating charge holder and the company and the circumstances of the case; and</li> <li>(c) whether the contractual terms had the legal effect intended would depend on the effectiveness of the terms and the circumstances of the case.</li> </ul>	
014841 – 015228	Mr Kenneth LEUNG Administration Chairman	Mr LEUNG enquired whether the Bill would address the situation under which a company realized that it would become insolvent soon but engaged in fraudulent trading and sold its assets.	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		The Administration responded that the provisions on "transaction at an undervalue" under the Bill would cover cases where the company's assets were fraudulently sold at an undervalue to a third party. The relevant bill on a new statutory CRP and insolvent trading provisions would include provisions to impose liability on directors involved in insolvent trading.	
015229 – 015443	Chairman Mr NG Leung-sing Mr Kenneth LEUNG Miss CHAN Yuen-han Clerk	Invitation of views and meeting with deputations  Date of next meeting	

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6 January 2016