

立法會
Legislative Council

LC Paper No. CB(1)597/15-16
(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 second meeting on
Monday, 30 November 2015, at 3:00 pm
in Conference Room 1 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 CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Hon Alice MAK Mei-kuen, BBS, JP
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH

Members absent : Hon NG Leung-sing, SBS, JP
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

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 TONG Wing Sze, Anita
Assistant Official Receiver (Legal Services)
(Designate)
Official Receiver's Office

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

Attendance by invitation : **Deputations**

The Federation of Hong Kong and Kowloon Labour Unions

Mr LEE Chi Keung
Secretary

Hong Kong Bar Association

Mr Vincent S.K. CHEN

Hong Kong Institute of Certified Public Accountants

Mr Mat NG
Restructuring and Insolvency Faculty Executive
Committee Chairman

Briscoe Wong Ferrier Limited

Mr BRISCOE, Stephen
Managing Director

Individual

Mr CHUNG Siu Kong

PricewaterhouseCoopers (PWC)

Ms Marie ROWBOTHAM
Director

ShineWing (HK) CPA Limited

Mr KAN Lap Kee
Partner

Hong Kong & Kowloon Trades Union Council

Mr LEE Kwok Keung
Chairman

The Hong Kong Chinese Importers' & Exporters'
Association

Mr LO Chi Wai, Ian
Director

Federation of Hong Kong Industries

Mr Jimmy KWOK
Deputy Chairman

CMA Australia (Hong Kong Branch)

Mr YIP Tze Wai, Albert
Chairman of Committee of Corporate Governance

The Hong Kong Federation of Trade Unions

Mr KWAN Shing Kit, Gary
Secretary, Right and Benefits Committee

CPA Australia and Zhonglei Specialist Advisory
Services Limited

Mr Kenneth CHEN
Divisional President 2015 - Greater China for CPA
Australia
and
Managing Director for Zhonglei Specialist Advisory
Services Limited

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 Meeting with deputations and the Administration

Meeting with deputations

- (LC Paper No. CB(1)203/15-16(03) — Submission from Hong Kong Bar Association (English version only)
- LC Paper No. CB(1)203/15-16(04) — Submission from Briscoe Wong Ferrier Limited (English version only)
- LC Paper No. CB(1)203/15-16(05) — Submission from CMA Australia (Hong Kong Branch) (English version only)
- LC Paper No. CB(1)203/15-16(06) — Submission from Hong Kong Institute of Certified Public Accountants (English version only)
- LC Paper No. CB(1)203/15-16(08) — Submission from The Federation of Hong Kong & Kowloon Labour Unions (Chinese version only)
- LC Paper No. CB(1)229/15-16(01) — Submission from Federation of Hong Kong Industries (Chinese version only)
- LC Paper No. CB(1)229/15-16(02) — Submission from The Hong Kong Chinese Importers' & Exporters' Association (Chinese version only)

- LC Paper No. CB(1)229/15-16(03) — Submission from Hong Kong & Kowloon Trades Union Council
- LC Paper No. CB(1)256/15-16(02) — Further submission from Briscoe Wong Ferrier Limited (English version only)
- LC Paper No. CB(1)256/15-16(03) — Submission from The Hong Kong Federation of Trade Unions (Chinese version only)
- LC Paper No. CB(1)256/15-16(04) — Submission from ShineWing (HK) CPA Limited (English version only)
- LC Paper No. CB(1)352/15-16(01) — Submission from CPA Australia (English version only)
- LC Paper No. CB(1)352/15-16(02) — Speaking note of Ms Marie ROWBOTHAM, Director of PricewaterhouseCoopers (PWC) (English version only))

Submissions/letters from organizations/individuals not attending the meeting

- (LC Paper No. CB(1)203/15-16(07) — Submission from Hong Kong Confederation of Trade Unions (Chinese version only)
- LC Paper No. CB(1)203/15-16(09) — Submission from Hong Kong Monetary Authority (English version only)
- LC Paper No. CB(1)203/15-16(10) — Submission from Hong Kong Exchanges and Clearing Limited (English version only)
- LC Paper No. CB(1)203/15-16(11) — Submission from Belinda Wong, Director of Leader Corporate Services Limited (English version only)

- LC Paper No. CB(1)203/15-16(12) — Submission from Office of the Privacy Commissioner for Personal Data, Hong Kong (English version only)
- LC Paper No. CB(1)203/15-16(13) — Submission from Mr YEUNG Wai-sing, Eastern District Council member (Chinese version only)
- LC Paper No. CB(1)203/15-16(14) — Submission from The DTC Association (English version only)
- LC Paper No. CB(1)203/15-16(15) — Submission from Consumer Council (English version only)
- LC Paper No. CB(1)203/15-16(16) — Submission from The Chinese General Chamber of Commerce (Chinese version only)
- LC Paper No. CB(1)203/15-16(17) — Submission from Companies Registry (English version only)
- LC Paper No. CB(1)203/15-16(18) — Submission from Mr NG Chau-pei, member of the Labour Advisory Board ("LAB") (Chinese version only)
- LC Paper No. CB(1)203/15-16(19) — Submission from Mr Stanley LAU, member of LAB (Chinese version only)
- LC Paper No. CB(1)203/15-16(20) — Submission from Mr FUNG Hau-chung, member of the Protection of Wages on Insolvency Fund Board (Chinese version only)
- LC Paper No. CB(1)229/15-16(04) — Submission from The Hong Kong Association of Banks (English version only)

LC Paper No. CB(1)256/15-16(01) — Submission from The Hong Kong Institute of Directors (English version only)

Matters arising from previous meeting

(LC Paper No. CB(1)203/15-16(01) — List of follow-up actions arising from the discussion at the meeting on 6 November 2015

LC Paper No. CB(1)203/15-16(02) — Administration's response to issues raised at the meeting on 6 November 2015)

Other relevant papers

(LC Paper No. CB(3)7/15-16 — The Bill

LC Paper No. CB(1)197/15-16(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

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)

The Chairman welcomed representatives of the Administration and deputations to the meeting. He reminded the deputations that their written submissions provided to the Bills Committee and views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

Discussion

2. The deputations presented their views on the Bill and the Bills Committee deliberated (Index of proceedings attached at **Appendix**).

3. The Administration was requested to provide written responses on the views of the deputations.

Admin Follow-up actions to be taken by the Administration

Safeguards for employees under the provisions on "transaction at an undervalue"

4. The Administration was requested to address some members' concern that if employees received commissions from a transaction entered into by a company, but the transaction was subsequently found to be one at an undervalue, there would be adverse impact on the employees.

Measures to streamline the winding-up process

5. The Administration was requested to provide information on the views received during the public consultation on the proposals in respect of a court winding-up: (a) allowing the bills of costs or charges of the liquidators' agents to be approved by the committee of inspection ("COI"); and (b) enabling the liquidator to exercise the power to appoint a solicitor to assist in performing the liquidator's duties by giving seven days' advance notice to COI (or to the creditors in case there is no COI).

Measure relating to the redemption or buy-back of a company's own share out of capital

6. The Bill provided for the liabilities of directors and members concerned to contribute to the assets of a company in connection with a redemption or buy-back of the company's own shares out of capital in cases where the company was wound up within one year of the relevant payment out of capital. The Administration was requested to address a member's concern that the proposed measure might hinder the normal redemption and buy-back of shares by companies.

Changes to the existing insolvency regime

7. To facilitate members' understanding of changes introduced by the Bill, the Administration was requested to set out the major proposals/provisions of the Bill under the following four categories and compare them with the provisions under the existing insolvency regime:

- (a) introduction of new measures;
- (b) enhancement of the existing measures;

- (c) codification of the existing practices; and
- (d) deletion of the existing measures.

(Post meeting note: The Chinese version and English version of the Administration's written response were circulated to members vide LC Paper Nos. CB(1)283/15-16 and CB(1)302/15-16 on 11 December 2015 and 15 December 2015 respectively.)

II Any other business

Date of next meeting

8. The Chairman reminded members that the next two meetings would be held on 14 December 2015 at 4:30 pm, and 11 January 2016 at 8:30 am.
9. There being no other business, the meeting ended at 5:03 pm.

Council Business Division 1
Legislative Council Secretariat
24 February 2016

**Proceedings of the Bills Committee on Companies
(Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015
Second meeting on Monday, 30 November 2015, at 3:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000131 – 000607	Chairman	Introductory remarks	
Presentation of views by deputations and the Administration's initial responses			
000608 – 000938	The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views [LC Paper No. CB(1)203/15-16(08)]	
000939 – 001122	Hong Kong Bar Association	Presentation of views [LC Paper No. CB(1)203/15-16(03)]	
001123 – 001551	Hong Kong Institute of Certified Public Accountants	Presentation of views [LC Paper No. CB(1)203/15-16(06)]	
001552 – 001904	Briscoe Wong Ferrier Limited	Presentation of views [LC Paper Nos. CB(1)203/15-16(04), and CB(1)256/15-16(02)]	
001905 – 002443	Mr CHUNG Siu Kong Chairman	Mr CHUNG mentioned a winding-up case involving The Incorporated Owners of Kai Tak Mansion (Block Three), and highlighted the grievances of some owners of the building.	
002444 – 002923	PricewaterhouseCoopers	Presentation of views [LC Paper No. CB(1)352/15-16(02)]	
002924 – 003343	ShineWing (HK) CPA Limited	Presentation of views [LC Paper No. CB(1)256/15-16(04)]	
003344 – 003939	Hong Kong & Kowloon Trades Union Council	Presentation of views [LC Paper No. CB(1)229/15-16(03)]	
003940 – 004139	The Hong Kong Chinese Importers' & Exporters' Association	Presentation of views [LC Paper No. CB(1)229/15-16(02)]	
004140 – 004526	Federation of Hong Kong Industries	Presentation of views [LC Paper No. CB(1)229/15-16(01)]	

Time Marker	Speaker	Subject(s)	Action Required
004527 – 004815	CMA Australia (Hong Kong Branch)	Presentation of views [LC Paper No. CB(1)203/15-16(05)]	
004816 – 005114	The Hong Kong Federation of Trade Unions	Presentation of views [LC Paper No. CB(1)256/15-16(03)]	
005127 – 005507	CPA Australia and Zhonglei Specialist Advisory Services Limited	Presentation of views [LC Paper No. CB(1)352/15-16(01)]	
005508 – 012241	Chairman Administration	<p>The Administration's initial responses to deputations' views as follows:</p> <p>(a) regarding the two proposals relating to a court winding-up: (i) allowing the bills of costs or charges of the liquidators' agents to be approved by the committee of inspection ("COI"); and (ii) enabling the liquidator to exercise the power to appoint a solicitor to assist in performing the liquidator's duties by giving seven days' advance notice to COI (or to the creditors in case there is no COI), the policy objective was to promote court-free procedures under reasonable conditions which could in turn save time and costs. Most of the feedback on the two proposals received during the public consultation exercise was positive;</p> <p>(b) the proposed amendments to section 228A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") were to provide additional safeguards to reduce the risk of abuse in a director-initiated creditors' voluntary winding-up. There were no fundamental changes to the underlying policy objectives;</p> <p>(c) the Bill introduced a number of new regulatory requirements e.g. introducing disclosure requirement for prospective provisional liquidator and liquidators and introducing provisions on voidable transactions. Whether a licensing regime should be established for liquidators should be a matter for consideration separately and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>outside the context of the current legislative exercise;</p> <p>(d) most respondents of the public consultation exercise who commented on the new provisions on "transaction at an undervalue" considered that the proposed 5-year claw-back period appropriate. Apart from the 5-year period, the court would take into account other relevant circumstances of individual cases in applying the provisions, such as whether the value of the consideration for the transaction was significantly less than the value of the goods at the time of the transaction. The Bill also had provisions to protect genuine business transactions;</p> <p>(e) the Official Receiver's Office was aware of the case mentioned by Mr CHUNG Siu Kong and was following up the case as appropriate;</p> <p>(f) the proposed amendments on liabilities of liquidators aimed to protect creditors. The provisions made it clear that liquidators would not be absolved from liabilities arising from their misfeasance or breach of duty or breach of trust notwithstanding that they had been released from the office of liquidator after completion of the winding-up. The Administration would carefully listen to the views and comments of deputations on the safeguard provisions for liquidators;</p> <p>(g) the proposed provisions in the Bill on removal of liquidator in a creditors' voluntary winding up were similar to those applicable in a members' voluntary winding up. The Administration decided not to adopt the suggestion to additionally allow liquidators to apply to the court against their removal as liquidators were in a position having conflict of interest, and the suggestion might cause delay in the removal process and add to the cost of the winding-up;</p>	

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		<p>(h) on the concern that the proposed amendment to section 241 of CWUMPO (which provided that the first creditors' meeting must be held within 14 days after the holding of the company's meeting) could create a time gap in which directors of the wound-up company might abuse their power, the Bill had included provisions restricting the power of directors during the period;</p> <p>(i) there was no plan to adopt the UNCITRAL Model Law on Cross Border Insolvency ("the Model Law") in the current legislative exercise. It was noted that Hong Kong's top 10 trading partners which were also common law jurisdictions had not signed the Model Law; and</p> <p>(j) the Administration was preparing a bill on the introduction of a new statutory corporate rescue procedure and aimed to introduce it into the Legislative Council during the next term.</p> <p>Regarding views/concerns on the interface between the winding-up process and application for the Protection of Wages on Insolvency Fund ("PWIF"), and the caps stipulated in section 265 of CWUMPO on preferential payments to employees, the Administration explained its position as follows:</p> <p>(a) the Financial Services and the Treasury Bureau ("FSTB") agreed to the importance of protecting the interests of employees, the Bill would indeed enhance protection in this regard and any amendments to the PWIF regime would be outside the scope of CWUMPO and the present Bill;</p> <p>(b) PWIF would subrogate the right of the employees for any preferential payments provided to them under section 265 of CWUMPO. Therefore, an increase in the caps under section 265 would not enhance the level of payments actually received by employees who received PWIF ex gratia payments but would affect the interests of other creditors by reducing the amount of</p>	

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		<p>realized assets of a wound-up company available for distribution to them; and</p> <p>(c) FSTB would continue to liaise with the Labour and Welfare Bureau on possible measures to assist eligible employees of a voluntary winding-up in applying to PWIF; and would examine, for those creditors' voluntary winding-up cases that failed to make use of the relevant procedures to invoke PWIF, whether it was appropriate and feasible to address the problems of employees concerned through this Bill.</p>	
012242 – 013513	<p>Chairman Miss Alice MAK Administration Miss CHAN Yuen-han CMA Australia (Hong Kong Branch)</p>	<p>Miss MAK's views that:</p> <p>(a) the Administration should assure members that the new provisions on "transaction at an undervalue" would not adversely impact on employees who had received commission from a transaction entered into by a company but the transaction was subsequently ruled by the court as a transaction at an undervalue; and</p> <p>(b) she supported the Consumer Council's suggestion in its submission that consumers, particularly those had made prepayment for goods/services, should be accorded with higher priority in the distribution of the company's assets during liquidation.</p> <p>Miss CHAN concurred with Miss MAK's views in (b).</p> <p>The Administration responded that the policy objective of the insolvency law was to comply with the international norm of upholding the corporate insolvency law principle of <i>pari passu</i>. The distribution of the assets of a wound-up company among the unsecured creditors should be handled in accordance with the principles that it must be fair, reasonable and operationally practicable. The consideration of the issue of whether prepaying customers should be accorded special treatment in the order of priority should be based on these principles.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration undertook to address members' concern about safeguards for employees under the provisions on "transaction at an undervalue".</p> <p>Miss CHAN and Miss MAK urged that the Administration should examine the feasibility of amending the Bill to expedite the process for invoking PWIF, including removing the requirement of obtaining the determinations of the Labour Tribunal in certain PWIF applications.</p> <p>The Administration responded that the corporate winding-up regime under CWUMPO and the PWIF regime worked independently. The Administration would study members' concern that some employees had failed to make use of the relevant procedures to invoke PWIF in creditors' voluntary winding-up cases.</p> <p>In response to Miss CHAN's enquiry, the representative of CMA Australia confirmed that CMA Australia supported the suggestion that the caps under section 265 be increased to match with those set under PWIF.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
013514 – 014159	Mr Kenneth LEUNG Administration	<p>Mr LEUNG enquired about:</p> <p>(a) the coverage and limitation period of the proposed amended section 276 of CWUMPO relating to civil liability of liquidators/officers of a wound-up company; and</p> <p>(b) the Administration's plans to establish a licensing/registration regime for liquidators.</p> <p>The Administration responded that:</p> <p>(a) the proposed amendments to section 276 of CWUMPO applied to (i) court winding-ups; and (ii) misfeasance or breach of duty or breach of trust committed by liquidators or officers;</p> <p>(b) the relevant provisions of the Limitation Ordinance (Cap. 347) on the limitation period would apply. For negligence cases, the limitation period would be six years</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>from the date on which the cause of action accrued, or three years from the date of knowledge. As for cases involving fraudulent intention, separate considerations applied as it might involve criminal offence; and</p> <p>(c) the existing mechanism on the appointment of liquidators had been operating smoothly. The Administration had no intention to establish a licensing/registration regime for liquidators in the current legislative exercise.</p>	
014200 – 014710	Mr Andrew LEUNG Administration Chairman	<p>Mr LEUNG's views as follows:</p> <p>(a) the suggestion of according consumers with higher priority in receiving preferential payments should be handled with care as it would adversely affect the interests of other creditors and might also affect the small and medium-sized enterprises; and</p> <p>(b) some creditors had expressed concerns about the proposals allowing COI to approve the costs/charges of the liquidators' agents and enabling the appointment of solicitors by the liquidators through notification to COI. These matters were currently subject to approval by the court/COI where appropriate.</p> <p>At Mr LEUNG's request, the Administration was required to provide information on the views received on the above two proposals during the public consultation.</p>	The Administration to take action as per paragraph 5 of the minutes
014711 – 015459	Mr Christopher CHEUNG Administration	<p>Mr CHEUNG declared that he was a director of a securities company and a non-executive director of a listed company.</p> <p>Mr CHEUNG enquired about the rationale behind the proposal requiring directors and members of a company to contribute to the assets of the company in connection with a redemption or buy-back of the company's own shares out of capital in cases where the company was wound up within one year of the relevant payment out of capital, and expressed concern</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>that it might hinder the normal activities of redemption and buy-back of shares by companies.</p> <p>The Administration responded that:</p> <p>(a) the proposal was for capital maintenance. It corresponded to the relevant provisions of the Companies Ordinance (Cap. 622) which provided that prior to a redemption or buy-back for shares made out of the company's capital, the directors of the company had to make a solvency statement confirming that they were satisfied that the company was able to pay its debts in full within 12 months after the transaction; and</p> <p>(b) the Administration would provide a written response to address Mr CHEUNG's concern.</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p>
015500 – 020014	Chairman Mr Alan LEONG Administration	<p>Mr LEONG requested the Administration to set out the major proposals/provisions in the Bill under the following four categories and compare them with the provisions under the existing insolvency regime:</p> <p>(a) introduction of new measures;</p> <p>(b) enhancement of the existing measures;</p> <p>(c) codification of the existing practices; and</p> <p>(d) deletion of the existing measures.</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>
020015 – 020233	Miss CHAN Yuen-han Chairman	<p>Miss CHAN reiterated her views that the Administration should explore possible means under the context of CWUMPO to help expedite the process to invoke PWIF.</p> <p>The Chairman suggested that Miss CHAN should pursue the issue at the relevant Panel of LegCo.</p>	

Time Marker	Speaker	Subject(s)	Action Required
020234 – 020329	Chairman	Dates of next two meetings	

Council Business Division 1
Legislative Council Secretariat
24 February 2016