

**立法會**  
**Legislative Council**

LC Paper No. CB(1)675/15-16  
(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 fourth meeting on  
Monday, 11 January 2016, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon Alan LEONG Kah-kit, SC  
Hon NG Leung-sing, SBS, JP  
Hon CHAN Yuen-han, SBS, JP  
Hon Kenneth LEUNG  
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
- Members absent** : Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon Alice MAK Mei-kuen, BBS, JP  
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)

Miss TONG Wing Sze, Anita  
Assistant Official Receiver (Legal Services) (Acting)

Mr Alvin SIN  
Senior Solicitor (Project Work)  
Official Receiver's Office

Mr Coleman WONG  
Senior Solicitor (Project Work)  
Official Receiver's Office

Mr Manuel NG  
Senior Government Counsel  
Department of Justice

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 Confirmation of minutes of meeting**

(LC Paper No. CB(1)398/15-16 — Minutes of meeting on  
6 November 2015)

The minutes of the meeting held on 6 November 2015 were confirmed.

## **II Meeting with the Administration**

### Matters arising from previous meetings

- (LC Paper No. CB(1)383/15-16(01) — List of follow-up actions arising from the discussion at the meeting on 14 December 2015
- LC Paper No. CB(1)383/15-16(02) — Administration's response to issues raised at the meeting on 14 December 2015
- LC Paper No. CB(1)283/15-16(03) — Letter dated 10 December 2015 from Legal Service Division to the Administration
- LC Paper No. CB(1)383/15-16(03) — Administration's response to Legal Service Division's letter dated 10 December 2015
- LC Paper No. CB(1)383/15-16(04) — Letter dated 4 January 2016 from Legal Service Division to the Administration)

### Clause-by-clause examination of the Bill

- (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)

Discussion

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

Admin Follow-up actions to be taken by the Administration

*Clause 15(7) – section 168IA(7) on the public examination procedure in the winding-up regime*

3. Existing section 168IA(1) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") provided that the Official Receiver ("OR") might apply to the court for a public examination by a report stating that in his opinion a prima facie case existed against any person that would render the person liable to a disqualification order under Part IVA of CWUMPO. The proposed amendments to section 168IA(7) removed the existing right of the person ordered to be publicly examined by the court to be furnished with a copy of OR's report. While the proposed new rule 51A of the Companies (Winding-up) Rules (Clause 137) provided that a person might apply to the court to see all or part of the report for a court order made under the proposed section 286A(1), members had expressed concerns that the right for the person to apply to the court for seeing the report was not explicitly provided for an order made under section 168IA(1), and whether the person concerned might appeal further if the application to see the report was turned down by the court. The Administration was requested to explain the right for the person in this regard and the relevant appeal mechanism, and consider specifying the mechanism explicitly in the Bill.

*Clause 43 – section 206A on meeting time of the first meeting of the committee of inspection ("COI")*

4. The proposed new section 206A(2) of CWUMPO stipulated that the liquidator must summon the first meeting of COI to be held within six weeks from the date of the appointment of the liquidator or the COI, whichever was the later. The Administration was requested to consider a member's view that the six-week duration should be curtailed to expedite the winding-up procedure.

*Clause 45 – section 207A on the letter of authority authorizing a person to represent a member of COI*

5. Under the proposed new section 207A(2)(b)(ii) of CWUMPO, the letter of authority authorizing a person to represent a member of COI might be signed by or on behalf of a member of COI, and there was no restriction on the person who might sign the letter of authority on behalf of a member of COI. Members

were concerned about possible abuse of the proposed arrangement. The Administration was requested to consider measures to address members' concern, including imposing restrictions on the person who might sign the letter of authority.

*Clause 45 – section 207B on remote attendance at meetings of COI*

6. The proposed new section 207B of CWUMPO allowed remote attendance of members at meetings of COI. In view that a COI would consist of a maximum of seven members and the importance of COI meetings for creditors, Bills Committee members considered that remote attendance might not serve any practical purpose and there should be stringent requirements for remote attendance to ensure that COI meetings are conducted in a prudent manner. The Administration was requested to consider specifying preconditions, such as providing discretionary power to the chairman of COI, on the use of remote attendance for meetings of COI.

*Clause 66 – section 237A on details of a full statement of the position of the company's affairs ("the full statement") for the creditors' meeting*

7. Under the proposed new section 237A(1F) and (1G) of CWUMPO, a liquidator must prepare for the creditors' meeting the full statement, which included, inter alia, the particulars of the company's assets, debts and liabilities. The Administration was requested to consider a member's suggestion that the full statement should also include the company's contingent liabilities, and if so, make corresponding amendments to relevant provisions in the Bill (e.g. the proposed section 241(3A) (Clause 73)).

*Issues raised by the Legal Adviser to the Bills Committee*

8. The Administration was requested to provide written responses to the issues raised by the Legal Adviser to the Bills Committee in her letter dated 4 January 2016 (LC Paper No. CB(1)383/15-16(04)).

*(Post-meeting note: The Administration's written responses were issued to members vide LC Paper Nos. CB(1)481/15-16(02) and (03) on 22 January 2016.)*

*(At 9:01 am, noting that the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2015 which was concurrently holding a meeting in Conference Room 1 lacked a quorum, the Chairman ordered this meeting be suspended to enable members of that Bills Committee to attend the said meeting. The meeting resumed at 9:09 am.)*

### **III Any other business**

#### Date of next meetings

9. The Chairman reminded members that the next two meetings would be held on 25 January 2016, at 8:30 am and 16 February 2016, at 8:30 am respectively.

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

Council Business Division 1  
Legislative Council Secretariat  
10 March 2016

**Proceedings of the Bills Committee on Companies  
(Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015  
Fourth meeting on Monday, 11 January 2016, at 8:30 am  
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000629 – 000804	Chairman	Introductory remarks and confirmation of minutes	
000805 – 002243	Chairman Administration Mr Kenneth LEUNG	<p>Briefing by the Administration on its response to issues raised at the meeting on 14 December 2015 [LC Paper No. CB(1)383/15-16(02)]</p> <p>Mr LEUNG enquired about:</p> <p>(a) the set-off mechanism ("set-off mechanism") between the ex gratia payments from the Protection of Wages on Insolvency Fund ("PWIF") and the preferential payments to employees under section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO");</p> <p>(b) whether the Bill proposed any changes to the set-off mechanism or to the caps on preferential payments to employees stipulated in section 265 of CWUMPO; and</p> <p>(c) the priority of remunerations for liquidators.</p> <p>The Administration responded that:</p> <p>(a) employees who successfully applied to PWIF would receive ex gratia payments. In such cases, subrogation rights were provided to the Protection of Wages on Insolvency Fund Board ("PWIFB"), and PWIFB could receive money from the realization of assets of a wound-up company;</p> <p>(b) the Bill did not propose any changes to the set-off mechanism nor the existing caps on preferential payments to employees stipulated in section 265 of CWUMPO; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(c) liquidators would receive their remunerations prior to the making of preferential payment to employees in the winding-up process.	
002244 – 003158	Chairman Administration	Briefing by the Administration on its response to Legal Service Division's letter dated 10 December 2015 [LC Paper No. CB(1)383/15-16(03)]	
003159 – 004005	Mr NG Leung-sing Chairman	Suspension of meeting	
004006 – 004505	Administration Chairman Assistant Legal Adviser 7 ("ALA7")	<p>Briefing by the Administration on its response to Legal Service Division's letter dated 10 December 2015 [LC Paper No. CB(1)383/15-16(03)]</p> <p><u>Public examination procedure in the winding-up regime</u></p> <p>Existing section 168IA(1) of CWUMPO provided that the Official Receiver ("OR") might apply to the court for a public examination by a report stating that in his opinion a prima facie case existed against any person that would render the person liable to a disqualification order under Part IVA of CWUMPO. The proposed amendments to section 168IA(7) removed the existing right of the person ordered to be publicly examined by the court to be furnished with a copy of OR's report.</p> <p>Members noted that while the proposed new rule 51A of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) provided that a person might apply to the court to see all or part of the report for a court order made under the proposed section 286A(1), such right of the person was not explicitly provided in the case of an order made under section 168IA(1). There was also concern about whether the person might appeal further if the application to see the report was turned down by the court.</p> <p>The Administration was requested to explain the right for the person under section 168IA(7), the relevant appeal mechanism, and consider specifying the mechanism explicitly in the Bill.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>



Time Marker	Speaker	Subject(s)	Action Required
<b>Clause-by-clause examination of the Bill</b>			
004506 – 005604	Chairman Administration Mr NG Leung-sing Miss CHAN Yuen-han ALA7	<p>The Chairman remarked that ALA7 sent a letter to the Administration on certain legal and drafting issues relating to the Bill on 4 January 2016 [(LC Paper No. CB(1)383/15-16(04) issued on 8 January 2016)]. The Administration was requested to provide a written response to the letter, and ALA7 could raise her concerns when the Bills Committee discussed the relevant clauses.</p> <p><i>Subdivision 7 – Committees of Inspection</i></p> <p><u>Clause 41 – Sections 205A and 205B added</u></p> <p>205A. <i>Interpretation of sections 205A, 207E, 207F, 207G, 207H and 207K and Division 6</i></p> <p>205B. <i>Interpretation: circulation date</i></p> <p><u>Clause 42 – Section 206 amended (meetings of creditors and contributories to determine whether committee of inspection shall be appointed)</u></p> <p><u>Clause 43 – Section 206A added</u></p> <p>206A. <i>Meetings of committee of inspection</i></p> <p><u>Clause 44 – Section 207 amended (constitution and proceedings of committee of inspection)</u></p> <p><u>Meeting time of the first meeting of committee of inspection ("COI")</u></p> <p>The proposed new section 206A(2) of CWUMPO stipulated that the liquidator must summon the first meeting of COI to be held within six weeks from the date of the appointment of the liquidator or COI, whichever was the later. The Administration was requested to consider Mr NG's view that the six-week duration should be curtailed to expedite the winding-up procedure.</p>	<p>The Administration to take action as per paragraph 8 of the minutes</p> <p>The Administration to take action as per paragraph 4 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
005605 – 012352	Administration Mr NG Leung-sing Chairman Miss CHAN Yuen-han Mr CHUNG Kwok-pan ALA7	<p><u>Clause 45 – Sections 207A to 207L added</u></p> <p>207A. <i>Representatives of members of committee of inspection</i></p> <p>207B. <i>Remote attendance at meetings of committee of inspection</i></p> <p>207C. <i>Procedure for requests that place for meeting should be specified under section 207B</i></p> <p>207D. <i>Written resolution of committee of inspection</i></p> <p>207E. <i>Circulation of written resolution</i></p> <p>207F. <i>Request for summoning meeting to consider resolution</i></p> <p>207G. <i>Procedure for signifying agreement to proposed written resolution</i></p> <p>207H. <i>Period for agreeing to proposed written resolution</i></p> <p>207I. <i>Liquidator's duty to notify members of committee of inspection that written resolution has been passed</i></p> <p>207J. <i>Liquidator's duty to keep record of written resolution that has been passed</i></p> <p>207K. <i>Communication with liquidator by electronic means for the purpose of written resolution</i></p> <p>207L. <i>Travelling expenses of members of committee of inspection</i></p> <p><u>Travelling expenses of members of COI</u></p> <p>Mr NG's view that the proposed new section 207L of CWUMPO should specify the type of transport which members of COI were allowed to claim reimbursement for travelling expenses so as to prevent possible abuses.</p> <p>The Administration responded that the provisions had restricted that the expenses must be incurred for travelling within Hong Kong, and the amount</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>had to be reasonable. Moreover, the expenses would be paid on reimbursement basis.</p> <p><u>Remote attendance at meetings of COI</u></p> <p>Miss CHAN enquired about whether it was common practice for COI meetings to be held by way of remote attendance, and the usual number of members of a COI. She opined that if a COI would consist of a maximum of seven members and given the importance of COI meetings for creditors, there should be stringent requirements for the use of remote attendance to ensure COI meetings will be conducted in a prudent manner.</p> <p>Mr CHUNG enquired whether remote attendance at COI meetings would serve any practical purpose, and suggested that the Chairman of COI be provided with discretionary power to decide whether remote attendance should be allowed for meetings of the COI.</p> <p>The Chairman opined that remote attendance could be used on a need basis.</p> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> <li>(a) the proposed section 207B of CWUMPO allowed remote attendance at meetings of COI, which might involve the use of telephone and video conferencing;</li> <li>(b) a COI would normally consist of not less than 3, and not more than 7 members;</li> <li>(c) remote attendance could expedite the winding-up process as in many cases it might be difficult for members of COI to attend COI meetings in person;</li> <li>(d) remote attendance was allowed in the winding-up regime of the United Kingdom ("UK"); and</li> <li>(e) it might complicate the provisions if further preconditions were to be prescribed for using remote attendance for COI meetings.</li> </ul>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		<p>The Administration was requested to address members' concerns and consider specifying preconditions on the use of remote attendance for meetings of COI.</p> <p>On the issues raised in ALA7's letter regarding the place for a COI meeting using remote attendance in the proposed new section 207B(6) and (8) of CWUMPO, the Administration considered it unnecessary to make the proposed subsection (6) subject to subsection (8) as the requirement to specify a place of meeting under the two subsections was different.</p> <p><u>Letter of authority authorizing a person to represent a member of COI</u></p> <p>Under the proposed new section 207A(2)(b)(ii) of CWUMPO, the letter of authority authorizing a person to represent a member of COI might be signed by or on behalf of a member of COI. There was no restriction on the person who might sign the letter of authority on behalf of a member of COI.</p> <p>Miss CHAN and Mr CHUNG were concerned that the proposed arrangement might be abused, and considered that the letter of authority should be signed in a prudent manner. The Chairman shared their concern.</p> <p>The Administration responded that the proposed arrangement would facilitate a COI member to find a representative to handle the business of the COI on his/her behalf, and aimed to streamline the authorization process.</p> <p>The Administration was requested to consider measures to address members' concern, including imposing restrictions on the person who might sign the letter of authority.</p> <p><u>Circulation of written resolutions</u></p> <p>Mr CHUNG expressed concern about possible abuse of the proposed section 207E of CWUMPO which allowed liquidators to circulate proposed written resolutions.</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p> <p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration advised that while a liquidator might seek to obtain the agreement of COI members to a proposed written resolution by circulation, as a safeguard, members could request the liquidator to summon a COI meeting to consider the matters raised by the resolution (i.e. the proposed section 207F of CWUMPO).</p>	
<p>012353 – 014047</p>	<p>Administration Chairman Miss CHAN Yuen-han ALA7 Mr NG Leung-sing</p>	<p><u>Clause 46 – Heading before section 209 substituted</u></p> <p><b><i>Subdivision 8 — General Powers of Court in case of Winding Up by Court</i></b></p> <p><u>Clause 47 – Section 209A amended (power of court to order winding up to be conducted as creditors' voluntary winding up)</u></p> <p><u>Clause 48 – Section 209B amended (consequences of an order under section 209A)</u></p> <p><u>Clause 49 – Section 210 amended (settlement of list of contributories and application of assets)</u></p> <p><u>Clause 50 – Sections 221, 222 and 222A repealed</u></p> <p><u>Clause 51 – Heading before section 227A substituted</u></p> <p><b><i>Subdivision 9 — Winding Up by Court with Regulating Order</i></b></p> <p><u>Clause 52 – Section 227A amended (court may make a regulating order)</u></p> <p><u>Clause 53 – Section 227B amended (appointment of liquidator and committee of inspection)</u></p> <p><u>Clause 54 – Section 227C amended (informing creditors and contributories and ascertaining their wishes and directions)</u></p> <p><u>Clause 55 – Section 227E amended (proof of debts)</u></p> <p><u>Clause 56 – Heading before section 227F substituted</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Subdivision 10 — Winding Up by Court by way of Summary Procedure</i></p> <p><u>Clause 57 – Headings before section 228 substituted</u></p> <p><i>Division 3 — Voluntary Winding Up</i></p> <p><i>Subdivision 1 — Resolutions for and Commencement of Voluntary Winding Up</i></p> <p><u>Clause 58 – Section 228 amended (circumstances in which company may be wound up voluntarily)</u></p> <p><u>Clause 59 – Section 228A amended (special procedure for voluntary winding up of company in case of inability to continue its business)</u></p> <p><u>Clause 60 – Section 228B added</u></p> <p><i>228B. Other powers, duties and liabilities of provisional liquidator appointed under section 228A.</i></p> <p>Regarding the issue raised in ALA7's letter on the delivery of a winding-up statement to the Registrar of Companies ("the Registrar") in the proposed amended section 228A of CWUMPO, the Administration advised that the delivery of a winding-up statement under section 228A was not compulsory, and the time limits stipulated in the provisions would only start to run upon the delivery of the winding-up statement to the Registrar.</p> <p><u>Signing of the winding-up statement by the company secretary of a wound-up company</u></p> <p>Mr NG suggested that the company secretary of a wound-up company should be allowed to sign the winding-up statement.</p> <p>The Administration responded as follows:</p> <p>(a) the suggestion might not expedite the winding-up process as the relevant resolution must be passed by the directors; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(b) there would be liabilities for company secretaries if they were allowed to sign the winding-up statements.	
014048 – 014529	Administration Mr NG Leung-sing Chairman	<p><u>Clause 61 – Section 229 amended (notice of resolution to wind up voluntarily)</u></p> <p><u>Clause 62 – Heading before section 231 substituted</u></p> <p><b><i>Subdivision 2 — Consequences of Voluntary Winding Up</i></b></p> <p><u>Clause 63 – Heading before section 233 substituted</u></p> <p><b><i>Subdivision 3 — Certificate of Solvency</i></b></p> <p><u>Clause 64 – Heading before section 234 substituted</u></p> <p><b><i>Subdivision 4 — Provisions Applicable to Members' Voluntary Winding Up</i></b></p> <p><u>Clause 65 – Section 234 amended (provisions applicable to members' winding up)</u></p> <p><u>Clause 66 – Section 237A amended (duty of liquidator to call creditors' meeting in case of insolvency)</u></p> <p><u>Clause 67 – Section 237B added</u></p> <p><i>237B. Conversion to creditors' voluntary winding up in case of insolvency</i></p> <p><u>Details of a full statement of the position of the company's affairs ("the full statement") for the creditors' meeting</u></p> <p>Under the proposed new section 237A(1F) and (1G) of CWUMPO, a liquidator must prepare for the creditors' meeting the full statement, which included, inter alia, the particulars of the company's assets, debts and liabilities.</p> <p>The Administration was requested to consider Mr NG's suggestion that the full statement should also include the company's contingent liabilities.</p>	<p>The Administration to take action as per paragraph 7 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Chairman remarked that the Administration should make corresponding amendments to relevant provisions in the Bill (e.g. the proposed new section 241(3A) of CWUMPO) if it acceded to Mr NG's suggestion.</p> <p>On ALA7's letter regarding the drafting of the proposed amended sections 237A and 239 of CWUMPO, the Administration said that it would take on board ALA7's suggestions and make the relevant Committee Stage amendments.</p>	
014530 – 015256	Administration Chairman Mr Kenneth LEUNG	<p><u>Clause 68 – Section 238 amended (duty of liquidator to call general meeting at end of each year)</u></p> <p><u>Clause 69 – Section 239 amended (final meeting and dissolution)</u></p> <p><u>Clause 70 – Section 239A repealed (alternative provisions as to annual and final meetings in case of insolvency)</u></p> <p><u>Clause 71 – Heading before section 240 substituted</u></p> <p><b><i>Subdivision 5 — Provisions Applicable to Creditors' Voluntary Winding Up</i></b></p> <p><u>Clause 72 – Section 240 amended (provisions applicable to creditors' winding up)</u></p> <p><u>Clause 73 – Section 241 amended (meeting of creditors)</u></p> <p>Mr LEUNG's concern that the proposed amendment to section 241 of CWUMPO (which provided that the first creditors' meeting was to be summoned for a date not later than 14 days after the day on which the meeting of the company at which the resolution for voluntary winding up was proposed was held) might create a time gap in which directors of the wound-up company might abuse their power to make illegal transfer of assets.</p> <p>The Administration responded that, subject to sufficient notice of the meeting having been given to facilitate creditors to better understand the matters to be deliberated so that they could make</p>	



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		an informed decision at the meeting, the 14-day requirement only represented the latest date by which the creditors' meeting was to be held and the meeting might be held earlier. The Administration further advised that the Bill had introduced the proposed section 250A to restrict the power of directors during that period.	
015257 – 015406	Chairman	Date of next two meetings	

Council Business Division 1  
Legislative Council Secretariat  
10 March 2016