

立法會
Legislative Council

LC Paper No. CB(1)884/15-16
(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 sixth meeting on
Tuesday, 16 February 2016, at 8:30 am
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 NG Leung-sing, SBS, JP
Hon CHAN Yuen-han, SBS, JP
Hon Kenneth LEUNG
Hon Dennis KWOK
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 absent** : Hon Alice MAK Mei-kuen, BBS, JP
- 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 Anita TONG
Assistant Official Receiver (Legal Services) (Acting)
Official Receiver's Office

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

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

Ms Amy CHAN
Senior Assistant Law Draftsman (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 Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)552/15-16(01) — List of follow-up actions arising from the discussion at the meeting on 25 January 2016

LC Paper No. CB(1)552/15-16(02) — Administration's response to issues raised at the meeting on 25 January 2016

LC Paper No. CB(1)481/15-16(05) — Letter dated 21 January 2016 from Legal Service Division to the Administration

LC Paper No. CB(1)552/15-16(03) — Administration's response to Legal Service Division's letter dated 21 January 2016)

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

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

Admin Follow-up actions to be taken by the Administration

Clauses 98 and 106 – sections 278A and 297B on exemption from liability in offering inducement to affect appointment as a provisional liquidator or liquidator and the receiver or manager of the property of a wound-up company respectively

2. The proposed amended section 278A and the new section 297B of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) prohibited the offering of inducements to affect the appointment as a provisional liquidator or liquidator and the receiver or manager respectively. Carve-out provisions for the accounting profession were provided in the proposed sections

278A(2) and 297B(2). Some members had enquired about the rationale and operation of the exemption in practice. The Administration was requested to:

- (a) explain the purposes and operation of the carve-out provisions for the accounting profession; and
- (b) provide the Administration's responses to the views of the accounting profession raised on the above subject during the public consultation in 2013.

Clause 129 – rule 39 on preparation of statement of affairs and affidavit of concurrence

3. The proposed amended rule 39(6) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) ("CWUR") provided for the persons the Official Receiver, provisional liquidator or liquidator might hold interviews with for the purpose of investigating the wound-up company's affairs. Members noted that the directors and the company secretary of the wound-up company were explicitly stated in rule 39(6)(a) and (b). The Administration was requested to:

- (a) consider some members' suggestion that the financial controller and the auditor of the wound-up company should be stipulated in the provision given their important roles in the company's affairs; and
- (b) explain the sanctions against parties failing to attend the interviews.

Protection for holders of the convertible securities of a company

4. Holders of the convertible securities of a company (who were creditors) might become the shareholders of the company (who were debtors) ("securities holders") during the winding-up of the company. Some members were concerned about the protection for securities holders, in particular those who might be deceived by the company in making the conversion, and whether the Bill had included provisions to void the conversion concerned. The Administration was requested to respond to the above concerns and explore possible measures to protect the interests of securities holders.

Drafting issues

5. The Administration was requested to consider a member's suggestion that the phrase "考慮和准許" ("considered and allowed" in the English text) in the amended rule 179(2) of CWUR (clause 169) should be changed to "准許" ("allowed" in the English text) to make the provision more concise.

6. Members noted that the reference of the year "19..." in some of the forms in the Appendix of CWUR would be amended to "20..." under the Bill (clause 173). The Administration agreed to consider members' view that the reference of the year "19..." should be updated to "20..." in all forms in the Appendix of CWUR for maintaining consistency in the forms.

(Post-meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)610/15-16(02) on 29 February 2016.)

II Any other business

Date of next meetings

7. The Chairman reminded members that the next two meetings would be held on 1 March 2016, at 10:45 am and 14 March 2016, at 4:30 pm.

8. There being no other business, the meeting ended at 10:27 am.

Council Business Division 1
Legislative Council Secretariat
6 May 2016

**Proceedings of the Bills Committee on Companies
(Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015
Sixth meeting on Tuesday, 16 February 2016, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000240 – 000440	Chairman	Introductory remarks	
000441 – 001344	Administration Mr CHUNG Kwok-pan Chairman	Briefing by the Administration on: (a) its response to issues raised at the meeting on 25 January 2016 [LC Paper No. CB(1)552/15-16(02)]; and (b) its response to Legal Service Division's letter dated 21 January 2016 [LC Paper No. CB(1)552/15-16(03)]	
Clause-by-clause examination of the Bill			
001345 – 002932	Chairman Administration Mr SIN Chung-kai Mr Kenneth LEUNG	<p><u>Clause 106 – Section 297B added</u></p> <p><i>297B. Inducement affecting appointment etc. as receiver or manager</i></p> <p><u>Clause 107 – Section 300A amended (provisions as to information where receiver or manager is appointed)</u></p> <p><u>Clause 108 – Section 300B amended (special provisions as to statement submitted to receiver)</u></p> <p><u>Exemption from liability in offering inducement to affect appointment as a provisional liquidator or liquidator and the receiver or manager respectively</u></p> <p>The proposed amended section 278A and the new section 297B of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) prohibited the offering of inducements to affect the appointment as a provisional liquidator or liquidator and the receiver or manager respectively. Carve-out provisions for the accounting profession were provided in the proposed sections 278A(2) and 297B(2). Mr SIN and Mr LEUNG enquired about the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>rationale and operation of the exemption in practice. At Mr LEUNG's request, the Administration was required to:</p> <p>(a) explain the purposes and operation of the carve-out provisions for the accounting profession; and</p> <p>(b) provide its responses to the views of the accounting profession raised on the above subject during the public consultation in 2013.</p> <p>The Administration also advised that:</p> <p>(a) the proposed sections 278A(2)(b) and 297B(2)(b) were drafted so as not to affect the existing mode of operation of the accounting profession; and</p> <p>(b) the effects were that the offence provisions in the amended section 278A(1) or the new section 297B(1) would not apply if the appointment or nomination of the provisional liquidator or liquidator of a company or the receiver or manager of the property of a company was the result of a transfer or sale of the business of the practice unit, or a change in the composition of the practice unit, e.g. new partners had joined the accounting firm, or the firm had merged with other firms.</p>	<p>The Administration to take action as per paragraph 2 of the minutes</p>
<p>002933 – 004319</p>	<p>Administration Mr NG Leung-sing Chairman</p>	<p><u>Clause 109 – Section 327 amended (winding up of unregistered companies)</u></p> <p><u>Clause 110 – Headings before section 349 substituted</u></p> <p><i>Part XIII – Miscellaneous</i></p> <p><i>Division 1 – Miscellaneous Offences</i></p> <p><u>Clause 111 – Heading before section 350B substituted</u></p> <p><i>Division 2 – Injunctions</i></p> <p><u>Clause 112 – Heading before section 351 substituted</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Division 3 — General Provisions as to Offences</i></p> <p><u>Clause 113 – Heading after section 355 substituted</u></p> <p><i>Division 4 — Legal Proceedings</i></p> <p><u>Clause 114 – Heading before section 359A substituted</u></p> <p><i>Division 5 — General Provisions as to Chief Executive in Council</i></p> <p><u>Clause 115 – Section 360G amended (certain sections to apply)</u></p> <p><u>Clause 116 – Twelfth Schedule amended (punishment of offences under this Ordinance)</u></p> <p><u>Clause 117 – Fifteenth Schedule amended (matters for determining unfitness of directors)</u></p> <p><u>Clause 118 – Schedule 25 added</u></p> <p><i>Schedule 25 Powers of liquidator in winding up</i></p>	
004320 – 010143	Administration Mr NG Leung-sing Mr Kenneth LEUNG Mr Andrew LEUNG Chairman	<p>Part 3</p> <p>Amendment to Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C)</p> <p><u>Clause 119 – Schedule 2 amended</u></p> <p>Part 4</p> <p>Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)</p> <p><u>Clause 120 – Rule 2 amended (interpretation of terms)</u></p> <p><u>Clause 121 – Rule 3 amended (use of forms in Appendix)</u></p> <p><u>Clause 122 – Cross-heading and rules 3A, 3B and 3C added</u></p> <p><i>3A. Interpretation of rules 3B and 3C</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>3B. <i>Form and content of statutory demand</i></p> <p>3C. <i>Information to be given in statutory demand</i></p> <p><u>Clause 123 – Rule 5 amended (matters in court to be heard in court and chambers)</u></p> <p><u>Clause 124 – Rule 20A added</u></p> <p>20A. <i>Person giving notice, etc. to provide contact details</i></p> <p><u>Clause 125 – Rule 22 amended (form of petition)</u></p> <p><u>Clause 126 – Rule 28 amended (appointment of provisional liquidator)</u></p> <p><u>Clause 127 – Rule 35 amended (drawing up and contents of winding-up order)</u></p> <p><u>Clause 128 – Cross-heading before rule 39 amended (statement of affairs)</u></p> <p><u>Clause 129 – Rule 39 substituted</u></p> <p>39. <i>Preparation of statement of affairs and affidavit of concurrence</i></p> <p><u>Clause 130 – Rule 40 substituted</u></p> <p>40. <i>Extension of time for submitting statement of affairs or affidavit of concurrence</i></p> <p><u>Clause 131 – Rule 41 amended (information subsequent to statement of affairs)</u></p> <p><u>Preparation of statement of affairs and affidavit of concurrence</u></p> <p>The proposed amended rule 39(6) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) ("CWUR") provided for the persons whom the Official Receiver, provisional liquidator or liquidator might hold interviews with for the purpose of investigating the affairs of the company being wound up. Members noted that the directors and the company secretary of the company being wound up were explicitly stated</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>in rule 39(6)(a) and (b) whereas rule 39(6)(c) covered other persons.</p> <p>Mr NG suggested that the financial controller and the auditor of the company being wound up should also be stipulated in the provision given their important roles in the company's affairs. Mr Andrew LEUNG and Mr Kenneth LEUNG agreed with Mr NG's suggestion. Mr Kenneth LEUNG further enquired about the sanctions against parties failing to attend the interviews.</p> <p>The Administration was requested to consider Mr NG's suggestion and address Mr LEUNG's enquiry.</p> <p>The Administration explained that the statement of affairs must be made, submitted and verified by the directors and the company secretary of a company being wound up or by certain other persons as the provisional liquidator or liquidator might require them to make, submit and verify the statement.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
<p>010144 – 011906</p>	<p>Administration Mr Kenneth LEUNG Chairman</p>	<p><u>Clause 132 – Rule 42 amended (default)</u></p> <p><u>Clause 133 – Rule 43 repealed (expenses of statement of affairs)</u></p> <p><u>Clause 134 – Rule 44 amended (dispensing with statement of affairs)</u></p> <p><u>Clause 135 – Cross-heading before rule 45 amended (appointment of liquidator in a winding up by the court)</u></p> <p><u>Clause 136 – Rule 45 amended (appointment of liquidator on report of meetings of creditors and contributories)</u></p> <p><u>Clause 137 – Rule 51A added</u></p> <p><i>51A. Evidence in support of application for public examination</i></p> <p><u>Clause 138 – Rule 52 amended (order for public examination)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 139 – Rule 54 amended (appointment of time and place for public examination)</u></p> <p><u>Clause 140 – Rule 55 amended (notice of public examination to creditors and contributories)</u></p> <p><u>Clause 141 – Rule 56 amended (default in attending)</u></p> <p><u>Clause 142 – Rule 57 amended (notes of examination to be filed)</u></p> <p><u>Clause 143 – Rule 57A amended (application of certain rules where report is made under section 168IA of Ordinance)</u></p> <p><u>Clause 144 – Rules 58A and 58B added</u></p> <p>58A. <i>Application for order under section 286B of Ordinance</i></p> <p>58B. <i>Order under section 286B of Ordinance and notice for attendance</i></p> <p><u>Clause 145 – Rule 59 amended (use of depositions taken at public examinations)</u></p> <p><u>Clause 146 – Rule 62 amended (depositions at private examinations)</u></p> <p><u>Clause 147 – Rule 63 amended (disclaimer)</u></p> <p><u>Clause 148 – Rule 67A added</u></p> <p>67A. <i>Interpretation of rules 67A to 73</i></p> <p><u>Clause 149 – Rules 68 to 71 substituted</u></p> <p>68. <i>Liquidator to settle list of contributories</i></p> <p>69. <i>Provisional list of contributories and objection by person included in the list</i></p> <p>70. <i>Settlement of list of contributories</i></p> <p>71. <i>Notice to contributory</i></p> <p><u>Clause 150 – Rule 72 amended (application to the court to vary the list)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr LEUNG's enquiry, the Administration advised that the list of contributories would set out the amount of called up and paid up share capital and individual shareholders would know the extent of their liabilities for unpaid share capital. Apart from existing shareholders, a company's contributories might include other categories of persons such as a person liable under the proposed section 170A.</p> <p><u>Protection for holders of the convertible securities of a company</u></p> <p>Holders of the convertible securities of a company (who were creditors) might become the shareholders of the company (who were debtors) ("securities holders") during the winding-up of the company. Mr LEUNG expressed concern about protection for the securities holders, in particular those who might be deceived by the company in making the conversion, and enquired whether the Bill had provisions to void the conversion concerned. The Administration was requested to respond to the above concerns and explore possible measures to protect the interests of the securities holders.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
<p>011907 – 012847</p>	<p>Administration Chairman Mr NG Leung-sing</p>	<p><u>Clause 151 – Rule 74 amended (calls by liquidator)</u></p> <p><u>Clause 152 – Rule 93 amended (notice to creditors to prove)</u></p> <p><u>Clause 153 – Rule 111 amended (summary of statement of affairs)</u></p> <p><u>Clause 154 – Rule 114 amended (summoning of meetings)</u></p> <p><u>Clause 155 – Rule 117 amended (costs of calling meeting)</u></p> <p><u>Clause 156 – Rule 119 heading amended (ordinary resolution of creditors and contributories)</u></p> <p><u>Clause 157 – Rule 131 amended (proxies)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 158 – Rule 142 amended (dividends to creditors)</u></p> <p><u>Clause 159 – Rule 148 amended (dealings with assets)</u></p> <p><u>Clause 160 – Rule 150 amended (committee of inspection not to make profit)</u></p> <p><u>Clause 161 – Rule 152 amended (sanction of payments to committee)</u></p> <p><u>Clause 162 – Rule 154 substituted</u></p> <p><i>154. Resignation of liquidator in winding up by court</i></p> <p><u>Clause 163 – Rules 154A and 154B added</u></p> <p><i>154A. Resignation of liquidator in creditors' voluntary winding up</i></p> <p><i>154B. Resignation of liquidator in members' voluntary winding up</i></p> <p><u>Clause 164 – Rule 155 substituted</u></p> <p><i>155. Cessation of office of liquidator</i></p> <p><u>Clause 165 – Rule 162 amended (Official Receiver's audit of liquidator's accounts)</u></p> <p><u>Clause 166 – Rule 167 amended (proceedings on resignation, &c., of liquidator)</u></p> <p><u>Clause 167 – Rule 175 amended (certificate of employment)</u></p> <p><u>Clause 168 – Rule 176 amended (costs and taxation)</u></p> <p><u>Clause 169 – Rule 179 amended (costs payable out of the assets)</u></p> <p>The Administration was requested to consider Mr NG's suggestion that the phrase "考慮和准許" ("considered and allowed" in the English text) in the amended rule 179(2) of CWUR should be changed to "准許" ("allowed" in the English text)</p>	<p>The Administration to take action as per paragraph 5 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		to make the provision more concise.	
012848 – 013504	Administration Chairman Miss CHAN Yuen-han	<p><u>Clause 170 – Rule 189 amended (proceedings for release of liquidator)</u></p> <p><u>Clause 171 – Rule 200 amended (applications under ss. 204 and 277(3) of the Ordinance)</u></p> <p><u>Clause 172 – Rule 206 amended (prison to which a person arrested is to be conveyed, and production and custody of persons arrested)</u></p> <p><u>Clause 173 – Appendix amended (forms)</u></p> <p>Members noted from the Legal Adviser to the Bills Committee's letter dated 21 January 2016 [LC Paper No. CB(1)481/15-16(05)] that the reference of the year "19..." in some of the forms in the Appendix of CWUR would be amended to "20..." under the Bill. The Administration agreed to consider the view of the Chairman and Miss CHAN that the reference of the year "19..." should be updated to "20..." in <u>all forms</u> in the Appendix of CWUR for maintaining consistency in the forms.</p>	The Administration to take action as per paragraph 6 of the minutes
013505 – 015506	Administration	<p>Part 5</p> <p>Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I)</p> <p><u>Clause 174 – Schedule 1 amended</u></p> <p>Part 6</p> <p>Amendment to Companies (Reports on Conduct of Directors) Regulation (Cap. 32 sub. leg. J)</p> <p><u>Clause 175 – Section 3 amended (return by office-holder)</u></p> <p>Part 7</p> <p>Transitional and Saving Provisions</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Division 1 — Transitional and Saving Arrangements for Amendments to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)</i></p> <p><u>Clause 176 – Part XV added</u></p> <p><i>Part XV — Transitional and Saving Provisions</i></p> <p><i>368. Transitional and saving provisions relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015)</i></p> <p><u>Clause 177 – Schedule 26 added</u></p> <p><i>Schedule 26. Transitional and Saving Provisions Relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015</i> (up to section 21 of the proposed new Schedule 26)</p>	
015507 – 015615	Chairman Administration	Date of next two meetings	

Council Business Division 1
Legislative Council Secretariat
 6 May 2016