

立法會
Legislative Council

LC Paper No. CB(1)886/15-16
(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 eighth meeting on
Monday, 14 March 2016, at 4:30 pm
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 Dennis KWOK
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
- Members absent** : 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 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)

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 Government Counsel
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)675/15-16 — Minutes of meeting on
11 January 2016)

The minutes of the meeting held on 11 January 2016 were confirmed.

II Meeting with the Administration

Consideration of Committee Stage amendments proposed by the Administration

(LC Paper No. CB(1)674/15-16(01) — Second batch of draft Committee Stage amendments proposed by the Administration)

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)

Discussion

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

Admin Follow-up actions to be taken by the Administration

Public examination procedure in the winding-up regime

3. The Legal Adviser to the Bills Committee ("ALA7") pointed out that the removal of the right for a person ordered to attend a public examination before the court to be provided with a copy of the report submitted by the Official Receiver ("OR") or the liquidator of a company being wound up to the court under the proposed amended section 168IA and new section 286A of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) might deprive the person with the opportunity of knowing the accusation or case

against him in the public examination because the report submitted by OR or the liquidator would set out the reasons for requiring a public examination order and, therefore, would enable the person to seek proper legal advice before attending the public examination. If the Administration considered it inappropriate to provide the person with the full report, ALA7 suggested that the Administration should consider providing the person with a summary or gist of the case before the public examination instead. The Administration was requested to provide written responses on ALA7's concerns and suggestion.

Drafting issue

4. The Administration agreed to consider ALA7's view that more specific references to the relevant paragraphs of section 268A(1) should be provided in the proposed new rules 51A(1) and 51B(1) of the Companies (Winding-up) Rules (Cap. 32 H). If the Administration decided to propose further Committee Stage amendments ("CSAs") on the matter, it would provide the relevant CSAs for circulation to the Bills Committee.

III Any other business

Legislative timetable and way forward

5. The Chairman said that the Bills Committee had completed scrutiny of the Bill. The Administration would provide written responses to outstanding issues for circulation to members as soon as possible. If members did not have views on the Administration's written responses, no further meeting would be held.

6. The Bills Committee noted the Administration's intention to resume the Second Reading debate on the Bill at the Council meeting of 20 April 2016. If no further meeting would be held, the Bills Committee would report its deliberations to the House Committee on 8 April 2016. The deadline for giving notice of CSAs to the Bill was 11 April 2016.

(Post-meeting note: The Administration's written responses on paragraph 3 and 4 above were circulated to members vide LC Paper No. CB(1)708/15-16(01) on 22 March 2016. Members did not raise any question on the Administration's written responses. Members were informed vide LC Paper No. CB(1)721/15-16 issued on 24 March 2016 that the meetings scheduled for 30 March and 18 April 2016 would not be held.)

7. There being no other business, the meeting ended at 5:07 pm.

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
Eighth meeting on Monday, 14 March 2016, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000311 – 000421	Chairman	Confirmation of minutes	
000422 – 001240	Administration	Briefing by the Administration on its second batch of proposed Committee Stage amendments ("CSAs") [LC Paper No. CB(1)674/15-16(01)]	
001241 – 003334	Chairman Assistant Legal Adviser 7 ("ALA7") Administration	<p><u>Remote attendance at meetings of the committee of inspection ("COI")</u></p> <p>Referring to the Administration's proposed CSA for the proposed new section 207B(8) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO"), ALA7 drew to members' attention that if any member of COI requested the liquidator to specify a place for the COI meeting in accordance with the proposed new section 207C, it did not mean that all members of COI must attend the meeting at the specified place in person. In such a case, COI members could still choose to attend the meeting at the specified place in person or by remote attendance.</p> <p>In response to the Chairman's enquiry, the Administration confirmed that if a liquidator sought to obtain the agreement of COI members to a proposed written resolution by circulation (i.e. the proposed new section 207E of CWUMPO) and if one or more COI members requested the liquidator to summon a COI meeting to consider the matters raised by the resolution (i.e. the proposed new section 207F of CWUMPO), the meeting might be held in such a way that would still allow remote attendance.</p> <p><u>Drafting issue</u></p> <p>ALA7 referred to the Administration's proposed CSA for the proposed new rules 51A and 51B of the Companies (Winding-up) Rules (Cap. 32 H) ("CWUR") and suggested that the Administration should consider making more specific references</p>	The Administration to take action as per paragraph 4 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		<p>to the relevant paragraphs of section 286A(1) in the rules. The Administration agreed to consider ALA7's suggestion.</p> <p><u>Public examination procedure in the winding-up regime</u></p> <p>ALA7 pointed out that the removal of the right for a person ordered to attend a public examination before the court to be provided with a copy of the report submitted to the court by the Official Receiver ("OR") or the liquidator of a company being wound up by the court under the proposed amended section 168IA and new section 286A of CWUMPO might deprive the person with the opportunity of knowing the accusation or case against him in the public examination because the report submitted by OR or the liquidator would set out the reasons for requiring a public examination order and, therefore, would enable the person to seek proper legal advice before attending the public examination. ALA7 opined that if the Administration considered it inappropriate to provide the person with the full report, it should consider providing the person with a summary or gist of the case before the public examination instead.</p> <p>The Administration responded as follows:</p> <p>(a) the legislative proposal of not providing the person ordered to attend the public examination before the court ("the examinee") with a copy of the report given by OR or liquidator ("the report") under the proposed amended section 168IA and new section 286A had been included in the public consultation document issued in 2013. The Administration had not received any negative comment on the proposal from the respondents, including the Hong Kong Bar Association and the Law Society of Hong Kong;</p> <p>(b) the purpose of a public examination under the proposed amended section 168IA and new section 286A was to gather more information on the affairs of the company being wound up and of the conduct or dealings of the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>examinees in relation to the company. The report should be confidential as it might contain information, which if disclosed to the examinee, might adversely affect the effectiveness of the order being sought or even frustrate its purpose;</p> <p>(c) under the existing rule 54 of CWUR, OR or the liquidator concerned was required to give a "Notice to Attend Public Examination" to the examinee if the court granted a public examination order. The notice, which must be in the form of the new Form 31 of the Appendix to CWUR, would set out, inter alia, the matters to be examined during the public examination, e.g. the conduct or dealings of the examinee in relation to the wound-up company; the promotion, formation or management of that company; and the conduct of the business and affairs of that company. Therefore, the notice would provide the scope of the matters to be examined in the public examination and it was considered that the extent of the information provided in Form 31 was appropriate;</p> <p>(d) as a part of the same legislative proposal, the Bill had already provided a mechanism that the examinee might apply to the court to see all or part of the report. The court would allow the examinee to see all or part of the public examination report if he satisfied the court that it would be unfair to him not to be allowed to see it. Giving the court the power to make a determination on the examinee's access to the report by reference to the principle of fairness will ensure justice and fairness to the examinee; and</p> <p>(e) a public examination was distinct from an application for disqualification order and would not by itself lead to the determination by the court of issuing a disqualification order. If the proceedings for a disqualification order were initiated, the Companies (Disqualification of Directors Proceedings) Rules (Cap. 32 K) required that there must be a due process to provide the respondent with sufficient safeguards, e.g. he</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>must be provided with the summons and informed of the evidence in support of the application for a disqualification order, and be given the opportunity to submit evidence in opposition to the application and defend his case.</p> <p>At the request of members, the Administration would provide a written response on ALA7's concerns and suggestion.</p>	<p>The Administration to take action as per paragraph 3 of the minutes</p>
003335 – 003716	Chairman Administration Mr SIN Chung-kai	Legislative timetable and concluding remarks	