

Hong Kong Bar Association

**Comments on Draft of Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Bill 2015 ("Draft Bill")**

1. The Hong Kong Bar Association has the following comments on the Draft Bill.

Amendments to CWUMPO

s.199B(4)(c)

2. Under s.199B(2), a provisional liquidator holding office by virtue of section 194(1A) may exercise any of the powers specified in Part 1, 2 or 3 of Schedule 25 with the sanction of the court or the Official Receiver. Under s.199B(4)(c), a provisional liquidator appointed under section 194(1A) has power to, despite the aforesaid subsection (2), sell or otherwise dispose of the specific assets of the company to any person other than a relevant person without the sanction of the court.
3. It appears that s.199B(4)(c) has not dealt with whether the power thereunder can be exercised without the sanction of the Official Receiver. If it is the legislative intention that the power under s.199B(4)(c) is exercisable without either the sanction of the court or the Official Receiver, such intention should be made clear in the amendment. The following further amendment is therefore suggested.

“(c) despite subsection (2), sell or otherwise dispose of the specific assets of the company to any person other than a relevant person without sanction of the court or the Official Receiver.”

s.206(3)

4. It should be made clear that this subsection is subject to subsection (4). The following further amendment is therefore suggested.

“Subject to subsection (4), a committee of inspection must consist of not less than 3, and not more than 7 members.”

s.228A(1A)

5. The current amendment states that the directors or the majority of the directors may deliver the winding-up statement to the Registrar after taking the actions specified in subsection 1(a), (b) and (c). Unless this is a deliberate relaxation, the delivery of the winding up statement to the Registrar should not be an option but mandatory.

6. Hence, the following further amendment is suggested:-

“After taking the actions specified in subsection 1(a), (b) and (c), the directors or the majority of the directors ~~must may~~ deliver the winding-up statement to the Registrar.”

s.241(6)

7. There appears to be a typographical error in the amendment. The following further amendment is suggested.

“If default is made-

...

(c) by any director of the company, without reasonable excuse, in complying subsection (4), the company, directors or director, as the case may be, commits ~~an~~ an offence and is liable on conviction to a fine,...

s.243A(4)

8. There should be a connective “or” between subsection 4(a) and subsection 4(b). The following further amendment is suggested.

“If section 241(1) is not complied with, the liquidator must apply to the court for directions as to the manner in which the default is to be remedied within 7 days of the later of the following -

- (a) the day on which the liquidator was nominated by the company; or
- (b) the day on which the liquidator first became aware of the default.

s.245

9. The connective “or” rather than “and” is more appropriate as the options are in the alternative. The following further amendment is suggested.

“if a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator

(a) for a liquidator appointed by, or by the direction of, the court, the court may fill the vacancy; ~~and~~ or

(b) for a liquidator who does not fall within paragraph (a), the creditors of the company may fill the vacancy.

s.266B(1)(b) & (c)

10. For clarity, the term “that day” under both subsections should be more specifically defined. The following further amendment is suggested.

“(b) for an unfair preference which is not a transaction at an undervalue and is given to a person who is connected with the company (otherwise than by reason only of being its employee) at a time in the period of 2 years ending with the day on which the winding up of the company commences that day; and

(c) in any other case of an unfair preference which is not a transaction at an undervalue – at a time in the period of 6 months ending with the day on which the winding up of the company commences that day.

s.266B(2)

11. The connective “or” should be inserted between subsections (a) and (b). The following further amendment is suggested.

(a) the company is unable to pay its debts (within the meaning of section 178) at that time; or

(b) the company becomes unable to pay its debts (within the meaning of section 178) in consequence of the transaction or unfair preference.”

s.267(4)

12. The amendment reads “For the purposes of subsection (3)(c)...”. However, there is no such subsection 3(c) under s.267 of the Ordinance.

Amendments to Companies (Winding Up) Rules

Rule 175(2)(a)

13. This subsection refers to “rule 199(4)(b)”. However, there is no such winding up rule, the reference should be made to “s.199(4)(b) of the Ordinance”. The following further amendment is suggested.

“(a) a copy of the resolution or any other authority sanctioning the employment of the solicitor to assist the liquidator in performing the

liquidator's duties, or if the sanction is not required or has not been obtained, proof that the requirement under s.199(4)(b) of the Ordinance ~~rule 199(4)(b)~~ has been complied with; and"

Rule 179(2B)

14. The amendment reads "The Official Receiver, when acting as liquidator, may, without taxation, pay or allow the costs and charges of a person, other than a solicitor employed by the Official Receiver, if the costs of and charges (a) are within the scale usually allowed by the court; and (b) do not exceed \$3,000 in total."
15. Consideration should be given to whether the aforesaid procedure should extend to the situation where the Official Receiver acts as the provisional liquidator as well.

Hong Kong Bar Association

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