

CB(1)203/15-16(05)

CMA

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Your Ref : CB1/BC/1/15

Legislative Council
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong.

Dear Sir/Madam,

**RE: Bills Committee on Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Bill 2015**

The proposed amendments to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32) and its subsidiary legislation aim to allow greater protection to creditors as well as to streamline the winding up process. The CMA Australia Hong Kong Branch takes the view that the amendments are beneficiary to businesses in general and in principal agrees with the initiatives which strive to further improve the business environment of Hong Kong.

Considered that the objectives of the proposals are to modernize the existing corporate winding-up system and procedures, we believe that with careful implementation, they can enhance the protection to different stakeholders of a company and the efficiency of winding-up regime. These in turn brings Hong Kong into line with international development.

We welcome the proposal that the court may set aside transactions at an undervalue entered into by a company within five years before the commencement of its winding-up, in which the company in question had received no consideration or one that is much less than the value of the subject of the transaction that occurred within five years immediately before the winding-up. We consider the five-year look-back appropriate and agree with the view that the court would not make an order if it is satisfied that the company which entered into the transaction did so in good faith for the purpose of carrying on its business and there were reasonable grounds for believing that such transaction would benefit the company.

We also concur with the proposal to enforce liabilities of liquidators notwithstanding their release by the court. We take the view that the proposal will not impose an undue burden on liquidators in performing their duty. Rather, the objective of the proposed amendments is to bring the liability limitation period of liquidators in line with other professional sectors. Further,



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we believe liquidators should be able to manage the risk which they would be exposed, by taking out appropriate professional indemnity insurance.

We agree with the proposal to provide for civil liability of past directors and members in connection with a redemption or buy-back of shares out of capital before the company is wound up or insolvent as it can avoid any intent to defraud the creditors. The proposed one-year period is in line with the requirement of the solvency test, which we consider as a reasonable timeframe. The proposal has a constraint on the claw back and it is only applicable when the relevant solvency statement supporting the redemption or buyback is made without having reasonable grounds for the opinion expressed in the statement, which we believe directors are fairly protected if they carried out the due diligence properly. We are in line with this proposal as it deters offence from directors who do not act in good faith.

While we are supportive of the proposed amendments, we would like to raise our concern regarding the preferential payments to employees. We suggest to adjust upward the caps on preferential payments in respect of employees' outstanding entitlements to match with the cap set under Protection of Wages on Insolvency Fund. Employees should have a higher priority than other creditors when the company is wound up voluntarily and PWIF could be better utilized.

Yours sincerely,



CMA Australia (Hong Kong Branch)