



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/1/15-16
電話 TELEPHONE : 3919 3510

傳真 FACSIMILE : 2877 5029
電郵 E-MAIL : wwylo@legco.gov.hk

By Fax (2869 4195)

4 January 2016

Mr AU Ka-shing, Billy
Prin AS for Financial Services & the Treasury
(Financial Services)4
Financial Services and the Treasury Bureau
15/F, Queensway Government Offices
66 Queensway
Hong Kong

Dear Mr AU,

**Companies (Winding Up and Miscellaneous
Provisions) (Amendment) Bill 2015**

Further to my letter dated 10 December 2015, I would like to seek clarification on the following points -

Part I - Legal issues

Clause 43 - section 206A

New section 206A(3) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) requires the liquidator to summon a meeting of the committee of inspection (COI) not later than 21 days after the date the request from a member (or his or her representative) of COI is received by the liquidator after the first meeting of COI. Further, new section 206A(4) requires the liquidator to summon a meeting of COI for the date and time specified by COI. In a situation where the date of meeting specified by COI under section 206A(4) falls within 21 days after the date a request from a member (or his or her representative) of COI under section 206A(3) is received by the liquidator, can the liquidator summon only one meeting of COI for the purpose of complying with both section 206A(3) and (4) at the same time?

New section 206A(7) provides that the notice of meeting may be given to a member's representative designated for "that purpose". Please clarify whether it is to be given to a representative specifically designated to receive a notice of meeting. Please also clarify the meaning of "that purpose" in similar provisions in sections 207A(1), 207E(3) and 207I(2).

New section 206A(8) provides that "The requirement to give notice may be waived by or on behalf of a member before or at a meeting". It is noted that new section 206A(7) provides that "The notice of a meeting may be given to a member's representative designated for that purpose instead of a member". Please clarify whether the waiver of notice of meeting can only be given by the designated member's representative mentioned in section 206A(7) "on behalf of a member" under section 206A(8). If so, please specify and amend new section 206A(8) accordingly. If a member has no such designated member's representative, please clarify who may give waiver of notice of meeting "on behalf of a member" under section 206A(8).

Clause 45 - sections 207A and 207B

Under new section 207A(2)(b)(ii), a letter of authority to authorize a person to represent a member of COI can be signed by or on behalf of the member. Under new section 206(6), a body corporate may be a member of COI but cannot act as a member otherwise than by a representative authorized under section 207A. In such circumstances, please confirm that the letter of authority can be signed "on behalf of the member" only in cases where the member is a body corporate. If this is not the case, please clarify who else may sign the letter of authority on behalf of a member of COI and the justification.

New section 207B(6) provides that the liquidator may, in certain circumstances, satisfy the requirement under new section 206A(6) for notice to be given of a specified place for a meeting of COI by specifying the proposed arrangements to enable persons to exercise their rights to speak and vote. However, new section 207B(8) provides specified circumstances in which the liquidator must specify a place for the meeting of COI. In such circumstances, should section 207B(6) be made subject to section 207B(8)?

Clause 59 - section 228A

The proposed amended section 228(1)(d) provides that a company may be wound up voluntarily if the directors of the company or, in the case of a company having more than 2 directors, the majority of the directors, deliver to

the Registrar of Companies a winding-up statement under section 228A. New section 228A(1A) provides that "After taking the actions specified in subsection (1)(a), (b) and (c), the directors or the majority of the directors may deliver a winding-up statement to the Registrar". Please clarify whether it is optional or compulsory to deliver a winding-up statement to the Registrar under 228A. If it is compulsory to do so, please replace "may" with "must" in section 228A(1A) and provide a deadline for delivery of the winding-up statement to the Registrar.

Clause 75 - section 243A(5)

Under new section 243A(5), if section 241(2), (3) or (4) is not complied with, the liquidator may (in contrast with "must" under subsection (4)) apply to the court for directions as to the manner in which the default is to be remedied. Please explain the reason for the difference between section 243A(4) and (5). What is the consequence if section 241(2), (3) or (4) has not been complied with and the liquidator chooses not to apply to the court for directions to remedy the default?

Clause 101 - section 286A(8)(a)

In the new section 286A(8)(a), the existing right under section 222(6) of the person ordered to be publicly examined by the court to be furnished with a copy of the further report made under section 191(2) is removed. Please explain the reason for removing this right. Please also clarify how the right of the person ordered to be publicly examined to know the case against him may be protected.

Part II - Drafting issues

Clause 66 - section 237A

In light of the proposed amendment to the heading of section 237A by replacing "call creditors' meeting" with "summon creditors' meeting...", please consider amending section 237A(2) to "The creditors may, at a meeting summoned by the liquidator..." in substitution of "called".

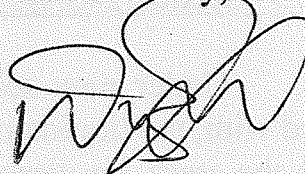
Clause 69 - section 239

Clause 69 of the Bill repeals "Subject to 239A, as" in section 239(1). However, section 239(1) provides "Subject to section 239A, as...". Please amend.

As scrutiny of the Bill is continuing, further letter may be issued to seek clarification on further points, if necessary.

I would appreciate if you could let me have the said information (in both Chinese and English with soft copy to Miss Kathy NG at pcng@legco.gov.hk) at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie LO', written in a cursive style.

(Winnie LO)
Assistant Legal Adviser

c.c. LA
SALA3
CCS(1)4