Bills Committee on the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 ("the Bill")

Summary of views of submissions and Government's responses

Item	Clause No.	Summary of views of submissions	Government's responses
	Part I – Comments on the legislative proposals of the Bill		
	(A) General comments		
1	Overall comments	Deputations agreed with the major content of the legislative proposals. *[Hong Kong Institute of Certified Public Accountants ("HKICPA"), Hong Kong Institute of Directors ("HKIoD"), Hong Kong Exchanges and Clearing Limited, The Chinese General Chamber of Commerce ("CGCC"), Federation of Hong Kong Industries ("FHKI"), CMA Australia (Hong Kong Branch) ("CMA Australia"), Yeung Wai-sing, Fung Hau-chung]*	We are pleased to note the views of the submissions.
2		Deputations' views have been taken into account in preparing the Bill. *[The Standing Committee on Company Law Reform, Hong Kong Monetary Authority]*	
3		No comment. *[The DTC Association, Office of the Privacy Commissioner for Personal Data]*	
	(B) Redemption or buy-back of the company's own shares out of capital		
4	20, 21 and 26	A deputation agreed with the proposal. *[CMA Australia]*	We are pleased to note the respondent's support.
5		There are reservations on the requirement that the	Directors are protected under the proposal in the Bill as a

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		directors involved in the redemption or buy-back of the company's shares are held liable and the proposal should only catch the recipient of the payment for the redeemed shares or the bought-back shares. If the directors are to be held liable under the proposal, the directors may use a lot of resources to verify the circumstances of the company before signing documents and this will add to the operation costs of the company. Some directors may refuse to sign relevant documents in order to avoid liability. *[CGCC]*	director would only be held liable if he had made the solvency statement supporting the redemption or buy-back without having reasonable grounds for the opinion expressed in the statement. In fact, section 207 of the Companies Ordinance (Chapter 622) already provides that it is an offence for a director to make a solvency statement without having reasonable grounds for the opinion expressed in it.
6		A deputation enquired regarding the justification of providing the claw-back period as one year. *[Hong Kong Confederation of Trade Unions ("CTU")]*	This proposal under the Bill corresponds to the provisions of the Companies Ordinance on solvency statement, which provides that prior to making a payment out of capital in respect of a redemption or buy-back of its shares, the directors of the company have to make a solvency statement. The solvency statement is required to state that, having made full inquiry into the affairs and prospects of the company, the directors have formed the opinion that the company is able to pay its debts after the proposed date of payment and also has the ability to continue to carry on business as a going concern in the following one year.
7		The definition of "members", "recipient" and "directors" should cover corporate shareholders and corporate directors (incorporated in Hong Kong or overseas) to the ultimate natural persons who own and control these legal entities. *[CPA Australia]*	Under the Bill, liabilities to repay are imposed on the legal owners of the shares (whether an individual or a body corporate) since only the legal owners are entitled to receive the payment. Liabilities to repay are also imposed on the directors (whether an individual or a body corporate) making the solvency statement in respect of the redemption or bought-back shares without having reasonable grounds for the opinion expressed in the statement.

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	(C) Prescribed form of statutory demand		
8	24	The statutory demand to be submitted by the petitioner should be accompanied with an affidavit (also in prescribed form) verifying that the debt is due and payable. *[CPA Australia]*	Under the existing provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) ("CWUMPO") and the Companies (Winding-up) Rules (Chapter 32H), if a company fails to comply with the statutory demand within three weeks, the creditor may petition for the winding up of the company by the court and the petition is already required to be verified by an affidavit.
	(D) Matters relevant to provisional liquidators		
9	Not applicable	Since the appointment of provisional liquidator involves high costs that small and medium sized enterprises may not be able to afford, it should not be compulsory for the court to appoint a provisional liquidator in a voluntary winding-up. *[The Hong Kong Chinese Importers' & Exporters' Association ("HKCIEA")]*	At present, CWUMPO does not provide that a provisional liquidator must have to be appointed in a voluntary winding-up of a company (other than in the special circumstances of instituting the procedure pursuant to section 228A of CWUMPO). We do not have any relevant legislative proposal.
10	33	Under special circumstances, the court should take into consideration the wishes of creditors / members / stakeholders of the company in the drafting of the order for the appointment of a section 193 provisional liquidator, providing for comprehensive yet specific powers and duties to suit the business model and the location and nature of assets etc. *[CPA Australia]*	Where the court appoints a provisional liquidator under section 193 in urgent cases when there is an imminent need to protect the assets of a company, there may not be sufficient time for stakeholders to express their views. However, the court would only make the relevant order, where there are sufficient grounds and in appropriate cases, for the protection of the interests of all parties. The new section 193(6) also provides that the court may, on cause shown, terminate the appointment of a provisional liquidator appointed under section 193 on application by a creditor or other stakeholders listed in that provision.
11	33	Apart from approval by the court, a deputation	A provisional liquidator appointed under section 193 acts

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		suggested that the remuneration of a provisional liquidator appointed under section 193 of CWUMPO can be approved by a subsequently appointed committee of inspection ("COI"). *[The Hong Kong Association of Banks ("HKAB")]*	pursuant to the court order appointing him, and his remuneration is determined by the court. This provisional liquidator in fact does not administer the winding up of the company as it is not yet clear whether an order for the winding up of the company will eventually be made. Further, it is not appropriate to extend the powers of COI, which is appointed only when the company is being wound up, to determine the remuneration of this type of provisional liquidator during the provisional liquidation period prior to the making of the winding-up order.
12	33 and 34	For a court winding-up, a respondent does not agree that the powers, duties, the basis for determining remuneration and tenure of office of a provisional liquidator appointed by the court should be expressly provided. There would be a lack of flexibility if these matters are expressly provided in the law. *[HKCIEA]*	A considerable number of respondents in the 2013 public consultation agree with the need to provide in CWUMPO the powers, duties, the basis for determining remuneration, tenure of office, etc. of provisional liquidator appointed by the court in a court winding-up. The Bill addresses these comments.
13	35	A deputation suggested that it is clear from the judgment in *Re MF Global Hong Kong Ltd (No 4) [2015] 2 HKLRD 325* that the word "continues" in the existing section 194(1)(aa) of CWUMPO still has significance in matters such as the provisional liquidator's remuneration. *[HKAB]*	The new section 196(1B) already provides for how the remuneration of a provisional liquidator holding office by virtue of section 194(1)(aa) of CWUMPO is to be determined.
	(E) <u>Appointment of solicitor</u>		
14	36	The submissions do not agree with the proposal in the Bill to enable the liquidator in a court winding-up to exercise the power to appoint a solicitor to assist in performing the liquidator's duties by giving 7 days'	As we have stated in our paper No. CB(1)283/15-16(02) to the Bills Committee, given that it is very common for a liquidator to engage a solicitor to assist in the performance of his duties, and sanction is usually given for the liquidator

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		advance notice to the COI / creditors. Under the existing arrangement, the liquidator must apply to the court or the COI in exercising such power. The submissions note that the present requirement imposes checks-and-balances on liquidators by the court, the COI or the creditors. *[FHKI, Stanley Lau]*	to appoint one in normal court winding-up cases, there is room for streamlining the existing procedures. To strike a balance between the interests of different parties, the liquidator would be required to give notice to the COI or, where there is no COI, to the creditors 7 days in advance of his exercise of this power. Under CWUMPO, any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of the powers under section 199. The law also provides that if any person is aggrieved by any act or decision of the liquidator, that person may apply to the court, and the court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as the court thinks just.
15	36	The legislation should set out what a COI can do in case it has a different opinion from the liquidator regarding the proposed appointment of solicitors. *[CPA Australia]*	
16	36	In situations where giving seven days' advance notice is impracticable, a deputation considered it unlikely that seeking sanction from the court or the COI would be a better option for the liquidator in terms of the time and costs involved. *[HKAB]*	
	(F) <u>Matters relevant to COI</u>		
17	42	The liquidator should notify the creditors and contributories of any proposal of not filling a vacancy of the COI with sufficient notice period. This would allow other creditors and contributories who did not join the COI previously to have a chance to participate. *[CPA Australia]*	A creditor or contributory who is interested in joining the COI may express interest to the liquidator at any time during a winding-up for the liquidator to make an appropriate decision taking into account circumstances of the case.
18	45	A submission expressed reservations on the written resolution (by postal or electronic means) and on the use of remote attendance and the arrangement of allowing non-simultaneous arbitration.	The Bill already provides safeguard measures. If a COI member does not agree with the use of written resolution or remote attendance, the COI member may request the liquidator to summon a meeting to consider the relevant

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		[FHKI]	resolution or to specify a place of meeting.
19	45	A deputation enquired if a written resolution of COI is considered as being passed by a 'vote by a show of hands' or by a 'vote by poll'. *[Leader Corporate Services Limited]*	A written resolution is a resolution that is passed by written correspondence without a meeting. The new section 207G(1) provides that a written resolution of a COI is passed when all or a majority of the members of the COI have signified their agreement to it. A 'vote by a show of hands' or 'a vote by poll' are voting methods used in a meeting, which cannot practically be applied to the case of a written resolution of a COI without any meeting.
	(G) Commencement of section 228A procedure under CWUMPO		
20	59	For commencement of the section 228A procedure, the winding-up statement should be delivered to the Registrar within a short period say two days, instead of the current requirement of seven days. *[HKICPA]*	The special procedure for company voluntary winding-up under section 228A shall commence only upon the delivery of the winding-up statement to the Registrar of Companies ("Registrar"). If the directors wish to commence the procedure earlier, they should deliver the winding-up statement to the Registrar as soon as possible. It may cause operational problems if the section is to provide that the winding-up statement must be delivered to the Registrar within two days after the date on which it is made.
	(H) Commencement of voluntary winding-up		
21	73 and 75	The proposed amendment introduces a time gap up to 14 days between the members' meeting and the first creditors' meeting. The potential time gap may create a period of uncertainty on the position of the members-appointed liquidator and lead to potential abuses of powers by directors *[HKICPA, CGCC]*	The Bill already provides adequate safeguards during the time gap. In respect of creditors' voluntary winding-up, there will be appropriate restrictions on the powers of the members' appointed liquidator before the holding of the first creditors' meeting. On the other hand, for voluntary winding-up, there will be appropriate restrictions on the powers of directors of the company before the appointment of liquidator.

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		Deputations have different opinions on the notice period for the first creditors' meeting. A deputation suggested that a minimum period of ten days (instead of seven days), while another thought that three days notice period would already be sufficient. *[CPA Australia, HKAB]*	The Bill prescribes that the first creditors' meeting is to be held within 14 days after the holding of the company's meeting, and hence it is appropriate to prescribe a minimum notice period of 7 days for calling the first creditors' meeting. There are similar requirements in the UK and Australia in relation to the minimum notice period for the first creditors' meeting.
22	Not applicable	CWUMPO provides that special resolution has to be passed for different types of winding-up. It should be clarified whether section 548 of the Companies Ordinance applies and written resolution can be passed in lieu of holding a meeting. *[Leader Corporate Services Limited]*	A special resolution by the members of the company to wind up the company under CWUMPO can be passed by a written resolution in accordance with the Companies Ordinance.
	(I) <u>Removal of liquidator</u>		
23	76	In addition to a creditor or contributory of the company, the liquidator or former liquidators should be allowed to apply to the court to object to the removal of the liquidator. *[HKICPA]*	The relevant provisions are consistent with those in a members' voluntary winding-up.
	(J) <u>Expanding the list of persons disqualified for appointment as a provisional liquidator or liquidator</u>		
24	85	Leave of the court should not be required before appointing a receiver or manager as a provisional liquidator or liquidator. *[HKAB]*	A receiver or manager appointed by a creditor pursuant to a security document acts primarily in the interest and benefit of that creditor. A provisional liquidator or liquidator, on the other hand, acts for the interest of the general creditors as a whole. Due to the close connection between the appointing creditor and the receiver or manager, there is a perceived conflict of interest and lack of independence if

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			such receiver or manager is appointed as the provisional liquidator or liquidator. Therefore, a receiver or manager of a company should not be appointed as the provisional liquidator or liquidator of that company except with the leave of the court.
25	85	Persons listed in section 262B(3) of the Bill are disqualified from appointment and acting as provisional liquidator or liquidator, except with the leave of the court. The two-stage process (i.e. obtaining the leave of the court first and then an application for appointment) is unnecessary and can be replaced with an approach to empower the court to decide both applications at the same hearing. *[HKAB]*	The relevant provisions do not prohibit two applications (i.e. application for leave and application for appointment) to be decided by the court at the same hearing.
26	85	The validity of the appointment of persons with potential conflict of interest should be dealt with on a case-by-case basis. *[CPA Australia]*	We should not exclude the possibility that there may be some exceptional circumstances which justify a person falling within one of the categories of disqualified persons to take up an appointment as a provisional liquidator or a liquidator. In this connection, the Bill provides if the prior approval of the court is obtained, these persons may accept such appointments.
27	85	The law should state clearly whether the disqualified provisional liquidator or liquidator will be indemnified by the estate of the company or he will be personally liable for his decisions made or contracts entered into on behalf of the company. *[CPA Australia]*	Notwithstanding that his appointment was or has become void, the provisional liquidator or the liquidator should be held accountable for his actions. Therefore, we consider it not appropriate to make specific provision in the CWUMPO to the effect that the liquidator will be indemnified for the decisions or contracts he made.

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	(K) Disclosure requirement for a prospective provisional liquidator and prospective liquidator		
28	85	A deputation supports the proposal. *[Yeung Wai-sing]*	We are pleased to note the views of the submission.
29	85	In case there is a change of facts or errors disclosed in the disclosure statement, a deputation suggested that adoption of Section 500 of Part E of Code of Ethics for Professional Accountants of the HKICPA should be considered. The Code requires an insolvency practitioner to take reasonable steps to identify circumstances that could pose a conflict of interest.	There is a need to strike a balance between legislative regulation and self-regulation. In preparing the Bill we have taken into account relevant references including the HKICPA's Code of Ethics for Professional Accountants ("the Code"). Although voluntary disclosure is one of the ways that may be taken to reduce the threat of conflict of interest, the primary objective of the proposal is to ensure that the court, directors or creditors will be able to make an informed decision on the appointment of a provisional liquidator or liquidator taking into account any potential conflict of interest associated with his relationship with the company.
30	85	Prescribed form should be used for a disclosure statement and a supplementary statement for consistency and standardization. *[CPA Australia]*	We intend to allow for flexibility by not providing a prescribed form for the disclosure statement and supplementary statement. This would facilitate a prospective provisional liquidator or liquidator to provide further details on the relevant relationships or any other submission in respect of his appointment to the appointing party for consideration.
31	85	There may be practical difficulties for a person from a large partnership with numerous offices to identifying all relevant relationships and obtain the necessary information within a short time. *[CPA Australia, HKICPA]*	The Bill already provides that it will be a defence for the prospective provisional liquidator or liquidator if he proves that after he has made all reasonable enquiries, he has no reasonable grounds for believing that the relevant relationships existed.
32	85	The definition for "financial advisor" and "legal	The terms "financial advisor" and "legal advisor" are

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		advisor" should be made clear. *[CPA Australia]*	widely used in everyday language and have been adopted in some ordinances without assigning any specific definition to them.
33	85	Respondents would like to seek clarification on some matters, including (a) whether or not the appointment of provisional liquidator or liquidator remains valid after deploying the defence; (b) the consequences to the liquidator for making inaccurate statement(s); and (c) the possible consequence may follow after an already-appointed liquidator or provisional liquidator submits a supplementary statement *[CPA Australia, HKICPA]*	Under the Bill, once the provisional liquidator or liquidator becomes aware of an omission, change or error in the disclosure statement, he is under a duty to make a supplementary statement within a specified period to notify the appointing party, and the appointing party may then accordingly decide whether or not to remove the provisional liquidator or liquidator. The appointment remains valid unless and until removal by the appointing party. A person who wilfully makes a false statement in the disclosure statement or the supplementary statement is subject to criminal liability.
	(L) <u>Voidable transactions</u>		
34	88 to 90	In respect of the provisions on unfair preference, the Government should clarify whether the definition of associate includes employees, and whether the bonus paid by the company to the employees prior to its winding up would be affected by the relevant provisions. *[The Federation of Hong Kong & Kowloon Labour Trades Unions]*	The new section 265C provides that employees are covered by the meaning of associate. If the company is not unable to pay its debts at the time when the company pays bonus to the employees prior to its winding up, and has not become unable to pay its debts in consequence of such payment, in general the bonus would not be affected.
35	88 to 90	Deputations support the proposal on transaction at an undervalue and recognize that the five-year claw-back period is appropriate. *[CMA Australia, Yeung Wai-sing]*	We are pleased to note the views of the submissions.
36	88 to 90	The Bill proposes that the court may set aside a	The Bill proposes that the court, in certain circumstances,

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		transaction at an undervalue entered into by a company within five years before the commencement of its winding up. The five-year claw-back period is too long and creates uncertainty for business transactions. *[HKAB, FHKI, HKIoD, Stanley Lau, HKCIEA]*	may set aside a transaction at an undervalue entered into by a company within five years before the commencement of its winding up. This is to ensure that the company's assets will not be inappropriately disposed of or transferred prior to its winding up and preserve as far as possible the company's assets available for distribution to the creditors. The relevant provisions of the Bill will not affect genuine business transactions e.g. where a company entered into a transaction with a person, at the time of the transaction the value of the consideration paid by that person for the transaction was not "significantly" less than the value of the goods or other considerations provided by the company; or where the company entered into the transaction in good faith and for the purpose of carrying on its business and at that time there were reasonable grounds for believing that the transaction would benefit the company.
37	88 to 90	A respondent is concerned that the provisions on transactions at an undervalue may affect the interests of employees e.g. prior to its winding up, if a company boosts sales by dumping prices, would the commission payments earned by the front-line salespersons have to be returned? *[The Hong Kong Federation of Trade Unions ("FTU")]*	As we have stated in our paper No. CB(1)283/15-16(02) to the Bills Committee, employees' commission is generally calculated according to employment contracts or company policies, rather than as part of a transaction between the company and a third party. As the relevant provisions are applicable only to transactions which are at an undervalue, if the employee receives commission payment in accordance with the prevailing arrangement of the company in return for rendering his service in that transaction, the commission payments made to the employee will not in normal circumstances be affected.
38	88 to 90	In relation to the new section 265D(3), what would the court do to "restore the position to what it would have been if the company had not entered into that transaction"? Are the relevant directors and	The new section 265D(3) provides that the court may make an order that it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction. The new section 266C lists out some orders

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		shareholders liable? *[CTU]*	which the court may make and relevant restrictions. For example, the order may require any property transferred as part of the transaction to be vested in the company (see section 266C(1)(a)), or require a person to pay, in respect of benefits received by that person from the company, any sums to the liquidator that the court may direct (see section 266C(1)(d)). The issue of whether the order could result in liabilities on the part of directors or shareholders would depend on the circumstances of each case. The court shall make orders that it thinks fit after considering the circumstances of the transaction at an undervalue.
	(M) <u>Liabilities of liquidators arising from misfeasance, breach of duty or breach of trust</u>		
39	95	Deputations support the proposal. *[Yeung Wai-sing, CMA Australia]*	We are pleased to note the views of the submissions.
40	95	The amended section 276 raises uncertainties and practical concerns for the insolvency practitioners. Respondents list some examples: (a) insurance coverage - There are only a few insurance companies in the market which are willing to offer liquidator's bonds and they are subject to strict terms and conditions; (b) costs for storage and safe keeping of documents and files; and (c) there is a change of liquidator. *[HKICPA, CPA Australia]*	The amended section 276 focuses on the conduct of a liquidator during the performance of their duties, e.g. including the misfeasance, breach of duty or breach of trust of a liquidator. These provisions protect the interests of creditors. By making reference to overseas jurisdictions, this proposal has been implemented for long in the United Kingdom ("UK"), viz. notwithstanding the release of liquidator, he is still subject to liabilities similar to those in section 276 of CWUMPO. In Hong Kong, other professional sectors likewise have to be subject to similar liabilities, and the liabilities to be borne by a liquidator are generally time-limited. In addition, in order to avoid frivolous litigation to reasonably protect liquidators, the Bill provides that if a liquidator has been released under section 205, an application under section 276 against him can only be made with the leave of the court.

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	(N) Expanding the existing prohibition on offering inducement		
41	98	The carve-out provisions in the amended section 278A of the Bill only apply to the accounting profession. Some solicitors may serve as liquidator but are unable to rely on this carve-out. *[HKAB]*	Considering the operation of the legal profession is different from that of the accounting profession, and we have not received similar comments from the legal profession or other stakeholders, we do not think there is a need to extend the carve-out provisions to the legal profession at this stage.
	(O) Bills of costs or charges of the liquidators' agents		
42	168 and 169	Respondents did not agree that the bills of costs or charges of the liquidators' agents can be approved by COI, and if approved there would be no need to be put to the court for taxation. The majority of liquidators or COI do not comprehend the reasonable amount of fees to be paid to their agents, the existing mechanism of taxation by the court should be retained. *[HKCIEA, FHKI]*	As we have stated in our paper No. CB(1)283/15-16(02) to the Bills Committee, the proposal aims to provide an alternative for an agreement to be made between the two parties on the costs or charges of liquidators' agents with a view to saving time and costs required for the court's examination and determination. If the liquidators are unable to reach an agreement with the COI members, the liquidators are still required to use the existing mechanism in determining the costs or charges of the liquidators' agents. The objectives of the proposal are to streamline the winding-up process and to provide flexibility on the approval of bills of costs and charges. If the COI does not agree with the proposed fees charged by the solicitor appointed by the liquidator, they may refuse to approve the fees.
43		The winding-up procedure may take a long time such that the professional costs charged by the solicitors are huge. Respondents suggested that to protect interests of creditors the court should set the caps for professional fees on a discretionary basis according to the complexity of cases and other factors. *[FHKI, Stanley Lau]*	
44		Only costs and charges of agents charged at a fixed costs or a percentage or on a success fees basis should be determined by agreement between the liquidator and the COI. All other agents who are charged on hourly basis should go through the normal taxation process.	

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		[CPA Australia]	
45	169	The new rule 179(2B) provides that when the Official Receiver acts as a liquidator, she may without taxation pay and allow the costs and charges of a person (other than a solicitor) employed by the Official Receiver. Consideration should be given whether this procedure should extend to the situation where the Official Receiver acts as the provisional liquidator as well. *[Hong Kong Bar Association ("HKBA")]*	It has become an established practice that a private insolvency practitioner would be appointed as a provisional liquidator in court winding-up cases under outsourcing schemes. Hence, we do not consider that an extension of the Official Receiver's power in this aspect is necessary.
	Part II – Comments on the drafting of provisions		
46	42	The new section 206(5) - Provisions relevant to the composition of the COI *[HKICPA]*	The new section 206(5) is derived from the existing section 207(1) and we have no plan to propose any change in this regard.
47	59	The new section 228A(1A) – Provisions relevant to the commencement of the section 228A procedure *[HKICPA, HKBA]*	The new section 228A(1A) is derived from the existing section 228A(1) and so the delivery of the winding-up statement is not mandatory.
48	75	The new section 243A(4) – Provisions relevant to the powers and duties of liquidator appointed by company *[HKBA]*	As the lead-in in section 243A(4) refers to "the later of the following", it is considered not necessary to use a conjunction between subsections (a) and (b).
49	77	The amended section 245 – Provisions relevant to power to fill vacancy in office of liquidator *[HKBA]*	We consider that the use of "and" is appropriate on review in the present case.
50	88	The new section 265E(b) – Provisions on meaning of transaction at an undervalue *[HKAB]*	The new section 265E(b) is modelled on the corresponding provisions in section 49(3)(c) of the Bankruptcy Ordinance (Chapter 6) and in section 238(4)(b) of the UK Insolvency

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			Act 1986. Case law shows that a key issue in establishing transaction at an undervalue is to identify the benefit of the "consideration" assessed from the perspective of the company. In a case where the consideration is received by the company and a third party (e.g. a director), if the consideration paid to the third party carries no benefit to the company, a transaction at an undervalue could be established.
51	89	The new section 266B(2) – Provisions on relevant time under sections 265D and 266 *[HKBA]*	As the lead-in in section 266B(2) refers to "either of the following conditions", it is considered not necessary to use a conjunction between subsections (a) and (b).
52	173	The new form 1A – Provisions relevant to the prescribed form for statutory demand *[HKAB]*	The new form 1A is a general form for use under section 178(1)(a) or section 327(4)(a) of CWUMPO, as the statutory requirements are already detailed in the two provisions, we do not intend to set out such requirements in the form.
	Part III – Other comments outside the scope of the Bill		
	(A) <u>Labour issues</u>		
53	Not applicable	The Government should review the caps on preferential payments in respect of employees' outstanding entitlements. *[CMA Australia, The Federation of Hong Kong & Kowloon Labour Trades Unions, FTU, CTU, Hong Kong & Kowloon Trades Union Council]*	We have set out the Government's responses in our paper No. CB(1)203/15-16(02) to the Bills Committee.
54		There is a comment that after the closing down of Ansett airlines, the payment caps for payments to	According to our research, the closing down of Ansett airlines and the enactment of the Australian Corporations

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		employees have been abolished since September 2001 in Australia. *[Hong Kong & Kowloon Trades Union Council]*	Act 2001 are not directly related.
55	Not applicable	There is a comment that the process of Protection of Wages on Insolvency Fund ("PWIF") should be improved so that employees may be paid the ex gratia allowance as soon as possible. In particular, employees should be allowed to apply for PWIF direct without the need to go through the process by the Labour Tribunal *[Ng Chau-pei, FTU]*	We have conveyed the relevant comments to the Labour and Welfare Bureau and the Labour Department. Details are set out in our papers No. CB(1)203/15-16(02) and No. CB(1)383/15-16(02) to the Bills Committee.
56		The Protection of Wages on Insolvency Ordinance (Chapter 380) should be amended so that for voluntary windings-up, employees may be paid the ex gratia allowance under section 18 of the Ordinance without having to present a winding-up petition against the company. *[Hong Kong & Kowloon Trades Union Council]*	We have set out our responses to the interface between the winding-up process and application for the PWIF in our papers No. CB(1)203/15-16(02) and No. CB(1)383/15-16(02) to the Bills Committee.
	(B) <u>Consumers protection</u>		
57	Not applicable	Unlike creditors, suppliers or investors, consumers lack the means to assess the information about the financial viability of the retail merchant and are not in a bargaining position to negotiate the terms to mitigate the default risk or insure against such risk. Therefore, the position of consumers should be moved up on the list of creditors receiving preferential payments. *[Consumer Council]*	We have to consider the relevant proposal in accordance with the principle that it must be fair, reasonable and operationally practicable. Specific response is set out in our paper No. CB(1)203/15-16(02) to the Bills Committee.

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	(C) Licensing system for insolvency practitioners		
58	Not applicable	A licensing system should be introduced for insolvency practitioners instead of imposing the disclosure requirement on provisional liquidators or liquidators. The size of market has not dissuaded jurisdictions such as the BVI, the Cayman Islands and Singapore from introducing licensing regimes. *[Briscoe Wong Ferrier Limited]*	The Official Receiver's Office ("ORO") has been monitoring the performance of private insolvency practitioners to ensure the quality of outsourced services. According to the past statistics, ORO has identified few problematic cases and the quality of the outsourced cases has been good. Since the outsourcing schemes have been operating smoothly so far, and the number of insolvency practitioners is limited, we have no intention to tighten the regulation on insolvency practitioners, and it appears unnecessary to introduce a licensing system for insolvency practitioners at present.
	(D) Model Law of the United Nations Commission on International Trade Law on cross border insolvency ("UNCITRAL Model Law")		
59	Not applicable	The UNCITRAL Model Law should be introduced to facilitate the insolvency and restructuring procedures relating to Hong Kong companies with assets overseas and overseas companies with assets in Hong Kong. *[Briscoe Wong Ferrier Limited]*	At present, many major trading partners of Hong Kong, have not signed and adopted the UNCITRAL Model Law, and in fact only 23 jurisdictions have adopted it. We will closely monitor the international development and the attitude of our major trading partners in this regard and will consider how best to take forward the matter.
60		If the UNCITRAL Model Law is not enacted, a provision similar to section 426 of the UK Insolvency Act should be implemented. *[Briscoe Wong Ferrier Limited, HKICPA]*	As section 426 of the UK Insolvency Act 1986 has a wide coverage, we must first study the legislative context and intent of the relevant provisions when the UK enacted those provisions, and carefully review the provisions to ascertain whether they should be introduced in Hong Kong as appropriate.
	(E) Corporate rescue procedure and insolvent trading provisions		
61	Not applicable	These legislative initiatives are supported and the target	We are pleased to note the views of the submission.

Item	Clause No.	Summary of views of submissions	Government's responses
		of introduction of the relevant bill into the Legislative Council in 2017-18 should remain on course. *[HKICPA]*	

Financial Services and the Treasury Bureau
Official Receiver's Office
22 January 2016