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

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A BILL

To

Amend the Companies (Winding Up and Miscellaneous Provisions) Ordinance and its subsidiary legislation to increase protection of creditors; to streamline the winding up process; to strengthen regulation under the winding up regime; and to make related, consequential and minor technical amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 8 are amended as set out in those Parts.

Part 2

Amendments to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

3. Long title amended

The long title—

Repeal

"of directors"

Substitute

"orders".

4. Part I heading and Part I, Division 1 heading added

Before section 1—

Add

"**Part I**

Preliminary

Division 1—Short Title".

5. Heading before section 2 substituted

Heading before section 2—

Repeal the heading

Substitute

"**Division 2—Interpretation and Specification of Forms**".

6. Section 2 amended (interpretation)

(1) Section 2(1), definition of ***contributory***—

Repeal

"171"

Substitute

"171(1)".

(2) Section 2(1), definition of ***liquidator***—

Repeal

"194"

Substitute

"194(1)(a) or (aa) or (1A)".

(3) Section 2(1)—

Add in alphabetical order

"***transaction at an undervalue*** (遜值交易)—see section 265E;

unfair preference (不公平優惠)—see section 266A;".

7. Headings before section 37 substituted

Headings before section 37—

Repeal the headings

Substitute

"**Part II**

Share Capital and Debentures

Division 1—Prospectus".

8. Heading before section 42 substituted

Heading before section 42—

Repeal the heading

Substitute

"**Division 2—Allotment**".

9. Heading before section 48A substituted

Heading before section 48A—

Repeal the heading

Substitute

"**Division 3—Construction of References to Offering Shares or Debentures to the Public**".

10. Heading before section 79 substituted

Heading before section 79—

Repeal the heading

Substitute

"**Division 4—Special Provisions as to Debentures**".

11. Part IV repealed (management and administration)

Part IV—

Repeal the Part.

12. Part IVA heading amended (disqualification of directors)

Part IVA, heading—

Repeal

"**of Directors**"

Substitute

"**Orders**".

13. Section 168D amended (disqualification orders: general)

Section 168D(1)(b), after "be a"—

Add

"provisional liquidator or".

14. Section 168G amended (disqualification for fraud, etc., in winding up)

(1) Section 168G(1)(b), after "an officer"—

Add

", provisional liquidator".

(2) Section 168G(1)(b), after "such officer,"—

Add

"provisional liquidator,".

15. Section 168IA amended (power to order public examination)

(1) Section 168IA(1)—

Repeal

everything after "render" and before "conduct and dealings"

Substitute

"the person liable to a disqualification order under this Part, direct by order the person to attend before the court, on a day appointed by the court, and be publicly examined as to the conduct of the business and affairs of a company or as to the person's".

(2) Section 168IA(2), after "business" (wherever appearing)—

Add

"and affairs".

(3) Section 168IA(2), Chinese text—

Repeal

"事務往來" (wherever appearing)

Substitute

"交易".

(4) Section 168IA(3), English text—

Repeal

"deems"

Substitute

"thinks".

(5) Section 168IA(3), after "business" (wherever appearing)—

Add

"and affairs".

(6) Section 168IA(3), Chinese text—

Repeal

"事務往來"

Substitute

"交易".

(7) Section 168IA—

Repeal subsection (7)

Substitute

"(7) The person examined may at the person's own cost employ a solicitor with or without counsel, who may—

(a) put to the person any questions that the court thinks just for the purpose of enabling the person to explain or qualify any answers given by the person; and

(b) make representations on the person's behalf.".

(8) Section 168IA(8), English text—

Repeal

"record" (wherever appearing)

Substitute

"notes".

16. Section 168IB added

After section 168IA—

Add

"**168IB. Self-incrimination in relation to requirement under section 168IA**

(1) A person is not excused from complying with a requirement imposed on the person under section 168IA only on the ground that to do so might tend to incriminate the person.

(2) Despite anything in this Ordinance, if—

(a) a person is required to—

(i) submit an affidavit under section 168IA(2); or

(ii) answer a question under section 168IA(6); and

(b) the affidavit or answer might tend to incriminate the person,

the requirement and the affidavit, or question and answer, are not admissible in evidence against the person in criminal proceedings other than those specified in subsection (3).

(3) The proceedings are those in which the person is charged with an offence in respect of the affidavit or answer—

(a) under section 349;

(b) under Part V of the Crimes Ordinance (Cap. 200); or

(c) for perjury.

(4) To avoid doubt, a question or answer not admissible under subsection (2) includes a record of the question or answer contained in the notes of the examination made under section 168IA(8).".

17. Section 168R amended (register of disqualification orders)

Section 168R(5), definition of ***disqualification order***, paragraph (c)—

Repeal

"or 303(2)(a)"

Substitute

", 303(2)(a) or 307N(1)(a)".

18. Headings before section 169 substituted

Headings before section 169—

Repeal the headings

Substitute

"**Part V**

Winding Up

Division 1—Preliminary

Subdivision 1—Modes of Winding Up".

19. Heading before section 170 substituted

Heading before section 170—

Repeal the heading

Substitute

"**Subdivision 2—Contributories**".

20. Section 170A added

After section 170—

Add

"**170A. Liability of directors and shareholders involved in share redemption or buy-back out of capital**

(1) This section applies where a company is being wound up and—

(a) it has under Division 4 of Part 5 of the Companies Ordinance (Cap. 622) made a

payment out of capital in respect of the redemption or buy-back of any of its own shares (***payment out of capital***) from a person (***past shareholder***); and

(b) the aggregate amount of the company's assets and the amounts paid by way of contribution to its assets (apart from this section) is insufficient for payment of its debts and liabilities, and the costs, charges and expenses of the winding up.

(2) If the winding up commenced on, or within 1 year after, the date on which the payment out of capital was made, then the following persons are liable to contribute to the company's assets in accordance with subsection (3) so as to enable the insufficiency mentioned in subsection (1)(b) to be met—

(a) the past shareholder; and

(b) the directors who signed the solvency statement required to be made under section 259(1) of the Companies Ordinance (Cap. 622) in relation to the payment out of capital (except a director who shows that the director had reasonable grounds for forming the opinion expressed in the statement).

(3) For the purposes of subsection (2)—

(a) the past shareholder is liable to contribute an amount not exceeding the amount of the payment out of capital made by the company in respect of the shares redeemed or bought back from the past shareholder; and

(b) the directors are jointly and severally liable with the past shareholder to contribute the amount to which the past shareholder is liable to contribute.

(4) A person who has contributed any amount to the assets of a company under this section may apply to the court for an order directing any other person who is jointly and severally liable in respect of that amount to pay the person an amount that the court thinks just and equitable.

(5) Section 170 does not apply in relation to liability accruing under this section.".

21. Section 171 amended (definition of contributory)

(1) Section 171, heading—

Repeal

"**Definition of contributory**"

Substitute

"**Meaning of *contributory***".

(2) Section 171—

Renumber the section as section 171(1).

(3) After section 171(1)—

Add

"(2) A reference in a company's articles to a contributory does not (unless the context requires) include a person who is a contributory only by virtue of section 170A.".

22. Headings before section 176 substituted

Headings before section 176—

Repeal the headings

Substitute

"**Division 2—Winding Up by the Court**

Subdivision 1—Jurisdiction".

23. Heading before section 177 substituted

Heading before section 177—

Repeal the heading

Substitute

"**Subdivision 2—Cases in which Company may be Wound Up by Court**".

24. Section 178 amended (definition of inability to pay debts)

(1) Section 178(1)—

Repeal paragraph (a)

Substitute

"(a) if—

(i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due that equals or exceeds the specified amount, has served on the company a written demand—

(A) in the prescribed form requiring the company to pay the sum so due; and

(B) by leaving it at the registered office of the company; and

(ii) the company has, for 3 weeks after the service of the demand, neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;".

(2) Section 178(2), Chinese text—

Repeal

"要求書"

Substitute

"要求償債書".

25. Heading before section 179 substituted

Heading before section 179—

Repeal the heading

Substitute

"**Subdivision 3—Petition for Winding Up and its Effects**".

26. Section 179 amended (provisions as to applications for winding up)

(1) Section 179(1), proviso, paragraph (a), before "a contributory shall"—

Add

"subject to subsection (1A),".

(2) After section 179(1)—

Add

"(1A) A person who is liable under section 170A to contribute to the assets of a company in the event of its being wound up may—

(a) present a winding-up petition on the ground specified in section 177(1)(d) or (f) whether or not the condition under paragraph (a)(i) or (ii) of the proviso to subsection (1) is fulfilled; or

(b) present a winding-up petition on any ground specified in section 177(1) if—

(i) the person is also a contributory otherwise than under section 170A; and

(ii) the condition under paragraph (a)(i) or (ii) of the proviso to subsection (1) is fulfilled.".

27. Heading before section 184 substituted

Heading before section 184—

Repeal the heading

Substitute

"**Subdivision 4—Commencement of Winding Up**".

28. Heading before section 185 substituted

Heading before section 185—

Repeal the heading

Substitute

"**Subdivision 5—Consequences of Winding-up Order**".

29. Heading after section 187 substituted

Heading after section 187—

Repeal the heading

Substitute

"**Subdivision 6—Official Receiver and Liquidators**".

30. Section 190 amended (statement of company's affairs to be submitted to provisional liquidator or liquidator)

(1) Section 190(1)—

Repeal

", there shall"

Substitute

"before the making of a winding-up order, there must".

(2) Section 190(1)—

Repeal

"made out"

Substitute

"made".

(3) Section 190(1), after "a statement as to the affairs of the company"—

Add

"(***statement of affairs***)".

(4) Section 190(2)—

Repeal

"shall be"

Substitute

"of affairs must be made,".

(5) Section 190(2), after "may require to"—

Add

"make,".

(6) After section 190(2)—

Add

"(2A) The provisional liquidator or liquidator may, subject to the direction of the court, require any of the persons mentioned in subsection (2)(a), (b), (c) and (d) who has not made, submitted and verified the statement of affairs to make and submit an affidavit of concurrence to the provisional liquidator or liquidator, stating that the person concurs in the statement.

(2B) An affidavit of concurrence made under subsection (2A) may be qualified in respect of matters dealt with in the statement of affairs, where the maker of the affidavit—

(a) is not in agreement with the maker of the statement;

(b) considers the statement to be erroneous or misleading; or

(c) is without the direct knowledge necessary for concurring in the statement.".

(7) Section 190(3)—

Repeal

"shall be submitted"

Substitute

"of affairs and affidavit of concurrence must be submitted to the provisional liquidator or liquidator".

(8) Section 190—

Repeal subsection (4).

(9) Section 190(5A), after "A statement"—

Add

"of affairs".

(10) Section 190(5A)—

Repeal

"any person making or concurring in making"

Substitute

"the person making".

(11) After section 190(5A)—

Add

"(5B) An affidavit of concurrence required by this section may be used in evidence against the person making the affidavit.".

(12) Section 190—

Repeal subsections (6) and (7)

Substitute

"(6) A person claiming in writing to be a creditor or contributory of a company is entitled, on payment of the prescribed fee—

(a) to inspect at all reasonable times, either personally or through an agent, the statement of affairs of the company, or an affidavit of concurrence in relation to that statement, that is submitted under this section; and

(b) to obtain a copy of or extract from the statement or affidavit.

(7) A person untruthfully claiming to be a creditor or contributory under subsection (6) is guilty of a contempt of court and is, on the application of the liquidator or Official Receiver, punishable accordingly.".

(13) Section 190(8), after "appointed"—

Add

"before the making of a winding-up order".

(14) After section 190(8)—

Add

"(9) In subsections (3), (5A) and (6), a reference to statement of affairs includes the affidavit verifying the statement as required by subsection (1).".

31. Section 190A added

After section 190—

Add

"**190A. Costs and expenses of statement of affairs or affidavit of concurrence**

(1) Subject to subsections (2) and (3), a person who makes the statement of affairs of a company, or an affidavit of concurrence in relation to that statement, that is required by section 190 is entitled to be paid by the provisional liquidator or liquidator out of the assets of the company the costs and expenses incurred in and about the preparation and making of the statement or affidavit.

(2) Except by order of the court, the person is not entitled to be paid any of the costs and expenses unless, before the costs and expenses were incurred—

(a) the person had—

(i) applied to the provisional liquidator or liquidator for sanction of the incurring of the costs and expenses; and

(ii) submitted to the provisional liquidator or liquidator a statement of the estimated costs and expenses intended to be incurred; and

(b) the provisional liquidator or liquidator had sanctioned the incurring of the costs and expenses.

(3) For the costs and expenses incurred, the person is entitled to be paid only the amount that the provisional liquidator or liquidator considers reasonable.

(4) A decision of the provisional liquidator or liquidator under this section relating to the payment of costs and expenses is subject to an appeal to the court.

(5) In this section, a reference to statement of affairs includes the affidavit verifying the statement as required by section 190(1).".

32. Section 191 amended (report by Official Receiver or liquidator)

(1) Section 191(1)(c), after "business"—

Add

"and affairs".

(2) Section 191—

Repeal subsection (3).

33. Section 193 amended (appointment and powers of provisional liquidator)

(1) Section 193, heading, after "**liquidator**"—

Add

"**before winding-up order**".

(2) Section 193—

Repeal subsections (1) and (2)

Substitute

"(1) Subject to the provisions of this section, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the making of a winding-up order in respect of a company.

(2) The court may appoint either the Official Receiver or any other fit person to be the provisional liquidator.".

(3) After section 193(3)—

Add

"(4) A provisional liquidator appointed under this section must perform the duties that may be imposed on the provisional liquidator by the court.

(5) Where a person other than the Official Receiver is appointed as a provisional liquidator under this section, the court may, by the order appointing the

provisional liquidator or on the application of the provisional liquidator, determine how the provisional liquidator is to be remunerated.

(6) The court may, on cause shown, terminate the appointment of a provisional liquidator appointed under this section on application by any of the following—

(a) a provisional liquidator;

(b) the Official Receiver;

(c) a creditor;

(d) a contributory;

(e) the petitioner;

(f) the company.

(7) A provisional liquidator appointed under this section may resign and on the application of the provisional liquidator, the court may determine whether or not to accept the resignation, and may give any directions and make any orders that the court thinks necessary.".

34. Section 194 amended (appointment, style, etc. of liquidators)

(1) Section 194, heading, after "**liquidators**"—

Add

"**on making of winding-up order**".

(2) Section 194(1)—

Repeal

"with respect to liquidators shall".

(3) After section 194(1)(d)—

Add

"(da) if a vacancy occurs in the office of a provisional liquidator who is holding office by virtue of paragraph (aa) or subsection (1A), the Official Receiver becomes the provisional liquidator and is taken to be the provisional liquidator of the company holding office by virtue of paragraph (a);".

(4) After section 194(5)—

Add

"(6) To avoid doubt, if a person appointed as a provisional liquidator of a company under section 193 continues to act as the provisional liquidator of the company under subsection (1)(aa) on a winding-up order being made, the person is a provisional liquidator holding office by virtue of subsection (1)(aa).".

35. Section 196 amended (general provisions as to liquidators)

(1) Section 196(1)—

Repeal

"provisional liquidator or liquidator appointed under section 193 or"

Substitute

"liquidator appointed under section".

(2) After section 196(1A)—

Add

"(1B) Subsection (2) applies to a provisional liquidator holding office by virtue of section 194(1)(aa) as it applies to a liquidator (other than the Official

Receiver) and to avoid doubt, subsection (2) does not apply to determine the remuneration of the provisional liquidator in respect of the period before the making of the winding-up order.".

(3) Section 196—

Repeal subsection (5).

36. Section 199 substituted

Section 199—

Repeal the section

Substitute

"**199. Powers of liquidator in winding up by court**

(1) Subject to section 193(3), this section applies to a liquidator in a winding up by the court but does not apply to—

(a) the Official Receiver holding office as a provisional liquidator by virtue of section 194(1)(a); or

(b) a provisional liquidator holding office by virtue of section 194(1)(aa) or (1A).

(2) A liquidator may exercise any of the powers specified in Part 1 or 2 of Schedule 25 only with the sanction of the court or the committee of inspection.

(3) Except as provided in subsection (4), a liquidator may exercise any of the powers specified in Part 3 of Schedule 25.

(4) A liquidator (other than the Official Receiver) may only exercise the power specified in item 8 of Part 3 of Schedule 25—

(a) with the sanction of the court or the committee of inspection; or

(b) without the sanction if the liquidator has, before exercising the power, given at least 7 days' notice of the intention to exercise the power—

(i) (if there is a committee of inspection) to the members of the committee; or

(ii) (if there is no committee of inspection) to the creditors.

(5) The exercise by a liquidator of the powers conferred by this section is subject to the control of the court.

(6) A creditor or contributory may apply to the court for directions on the exercise or proposed exercise of any of those powers.".

37. Sections 199A and 199B added

After section 199—

Add

"**199A. Powers of Official Receiver holding office as provisional liquidator by virtue of section 194(1)(a)**

(1) The Official Receiver holding office as provisional liquidator by virtue of section 194(1)(a) may—

(a) exercise any of the powers specified in Part 3 of Schedule 25; and

(b) exercise any of the powers specified in Part 1 or 2 of Schedule 25 only with the sanction of the court.

(2) The exercise by the Official Receiver of the powers conferred by this section is subject to the control of the court.

(3) A creditor or contributory may apply to the court for directions on the exercise or proposed exercise of any of those powers.

199B. Powers of provisional liquidator holding office by virtue of section 194(1)(aa) or (1A)

(1) Except as provided in subsection (3), a provisional liquidator holding office by virtue of section 194(1)(aa) may exercise any of the powers specified in Part 1, 2 or 3 of Schedule 25 only with the sanction of the court.

(2) Except as provided in subsection (4), 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 only with the sanction of the court or the Official Receiver.

(3) A provisional liquidator holding office by virtue of section 194(1)(aa) may without the sanction of the court—

(a) take into the provisional liquidator's custody, or under the provisional liquidator's control, all the property and things in action to which the company is or appears to be entitled; and

(b) dispose of the specified assets of the company to a person other than a relevant person.

(4) A provisional liquidator holding office by virtue of section 194(1A) may without the sanction of the court or the Official Receiver—

(a) take into the provisional liquidator's custody, or under the provisional liquidator's control, all the property and things in action to which the company is or appears to be entitled; and

(b) dispose of the specified assets of the company to a person other than a relevant person.

(5) The Official Receiver is not personally liable for costs for any refusal to grant sanction under subsection (2) or (4).

(6) The exercise by a provisional liquidator of the powers conferred by this section is subject to the control of the court.

(7) A creditor or contributory may apply to the court on the exercise or proposed exercise of any of those powers.

(8) In this section—

relevant person (有關人士), in relation to a company, means—

(a) a director or shadow director of the company; or

(b) an associate of the company or of any such director or shadow director;

specified assets (指明資產) means any perishable goods or other assets (excluding derivatives, warrants, options, shares and things in action) the estimated value of which—

(a) is less than $100,000; and

(b) is likely to significantly diminish if they are not immediately disposed of.".

38. Section 203 amended (audit of liquidator's accounts)

(1) Section 203(5)—

Repeal

"cause the account or a summary thereof to be printed, and shall".

(2) Section 203(6)(b)—

Repeal

"cause the audited account or a summary thereof to be printed, and shall".

39. Section 205 amended (release of liquidators)

(1) Section 205—

Repeal subsection (1)

Substitute

"(1) This section applies if the liquidator of a company that is being wound up by the court—

(a) has—

(i) realized all the property of the company, or so much of the property of the company that, in the opinion of the liquidator, can be realized without needlessly protracting the liquidation;

(ii) distributed a final dividend, if any, to the creditors; and

(iii) adjusted the rights of the contributories among themselves, and made a final return, if any, to those contributories;

(b) has resigned or been removed from the office of liquidator; or

(c) has passed away.".

(2) After section 205(1)—

Add

"(1A) The liquidator or (if subsection (1)(c) applies) the personal representative of the liquidator may apply to the court for the release of the liquidator.

(1B) On an application under subsection (1A), the court is to cause a report on the accounts of the liquidator to be prepared.

(1C) On the liquidator or the personal representative of the liquidator complying with all the requirements of the court, the court may grant or withhold the release after having considered—

(a) the report; and

(b) any objection against the release urged by a creditor or contributory or any person interested.".

(3) Section 205(3)—

Repeal

everything after "but"

Substitute

"any such order—

(a) does not prevent the exercise of the court's powers under section 276; and

(b) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.".

40. Heading before section 206 substituted

Heading before section 206—

Repeal the heading

Substitute

"**Subdivision 7—Committees of Inspection**".

41. Sections 205A and 205B added

Before section 206—

Add

"**205A. Interpretation of sections 205A, 207E, 207F, 207G, 207H and 207K and Division 6**

(1) In this section and sections 207F, 207G, 207H and 207K and Division 6—

business day (辦公日) means a day that is not any of the following—

(a) a general holiday;

(b) a Saturday;

(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

circulation date (傳閱日期)—see section 205B;

electronic address (電子地址) means any sequence or combination of letters, characters, numbers or symbols of any language or, any number, used for the purpose of sending or receiving a document or information by electronic means;

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

(a) transmitted within an information system or from one information system to another; and

(b) stored in an information system or other medium;

information (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;

information system (資訊系統) means a system that—

(a) processes information;

(b) records information;

(c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and

(d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated).

(2) For the purposes of sections 207E, 207F and 207G and Division 6—

(a) a person sends a document, or supplies information, by post if the person posts a prepaid envelope containing the document or information addressed to the last known address of the recipient; and

(b) the document or information is to be regarded as having been received on the second business day after the day on which the document or information is sent or supplied, unless the contrary is proved.

(3) For the purposes of section 207K and Division 6—

(a) a document or information is sent or supplied by electronic means if it is sent or supplied in the form of an electronic record to an information system;

(b) a document or information is to be regarded as sent or supplied by electronic means if it is sent or supplied by facsimile transmission; and

(c) a reference to an electronic address includes a facsimile number.

205B. Interpretation: circulation date

For the purposes of section 205A—

(a) ***circulation date*** (傳閱日期), in relation to a proposed written resolution, means, subject to paragraph (b), the date on which copies of the resolution are sent to members of a committee of inspection for the purposes of section 207E(1);

(b) if the copies of the resolution are sent to the members—

(i) on the same day under section 207E(2), that day is taken to be the circulation date; and

(ii) on different days under section 207E(2), the first of those days is taken to be the circulation date.".

42. Section 206 amended (meetings of creditors and contributories to determine whether committee of inspection shall be appointed)

(1) Section 206, heading—

Repeal

everything after "**contributories to**"

Substitute

"**consider appointment of committee of inspection; constitution of committee of inspection**".

(2) Section 206(1)—

Repeal

everything after "determine further"

Substitute

"the following—

(a) whether or not an application is to be made to the court for the appointment of a committee of inspection to act with the liquidator; and

(b) if a committee of inspection is appointed—subject to subsections (3) and (4), who are to be the members of the committee.".

(3) Section 206(2)—

Repeal

"The court"

Substitute

"Subject to subsections (3) and (4), the court".

(4) Section 206(2)—

Repeal

"aforesaid"

Substitute

"referred to in subsection (1)".

(5) After section 206(2)—

Add

"(3) A committee of inspection appointed under this Ordinance must consist of not less than 3, and not more than 7 members.

(4) However, a liquidator may apply to the court for an order to vary the minimum or maximum number of members mentioned in subsection (3) and the court may make an order that it thinks fit.

(5) A committee of inspection appointed under this Ordinance must consist of creditors and contributories—

(a) in a proportion agreed on by the meetings of creditors and contributories; or

(b) in the event of a difference, in a proportion determined by the court.

(6) A body corporate may be a member of the committee but cannot act as a member otherwise than by a representative authorized under section 207A.".

43. Section 206A added

After section 206—

Add

"**206A. Meetings of committee of inspection**

(1) Subject to subsections (2), (3) and (4), meetings of a committee of inspection are to be held when and where determined by the liquidator.

(2) The liquidator must summon a first meeting of the committee to be held within 6 weeks from the date of the appointment of—

(a) the liquidator; or

(b) the committee,

whichever is the later.

(3) After the first meeting, if the liquidator receives a request in writing to summon a meeting of the committee from a member of the committee or the representative of a member, the liquidator must summon the requested meeting for a date not later than 21 days after the date the request is received.

(4) If the committee resolves at the first meeting or any subsequent meeting that a meeting is to be held—

(a) on a specified date, the liquidator must summon a meeting for that date; or

(b) on a specified date at a specified time, the liquidator must summon a meeting for that date and that time.

(5) Subject to subsection (6), the liquidator must give 5 days' written notice of the date, time and place of a meeting to every member of the committee.

(6) If the liquidator determines to hold a meeting in the manner referred to in section 207B, the liquidator must give 10 days' written notice of the date, time and place of the meeting to every member of the committee.

(7) The notice of a meeting may be given to a member's representative designated for that purpose instead of a member.

(8) The requirement to give notice may be waived by or on behalf of a member before or at a meeting.

(9) In calculating the number of days mentioned in subsections (5) and (6), Saturdays and general holidays are to be excluded.".

44. Section 207 amended (constitution and proceedings of committee of inspection)

(1) Section 207, heading—

Repeal

"**Constitution and proceedings**"

Substitute

"**Proceedings**".

(2) Section 207—

Repeal subsections (1) and (2).

(3) Section 207(3)—

Repeal

"The committee"

Substitute

"A committee of inspection".

(4) Section 207(6)—

Repeal

"an ordinary resolution"

Substitute

"a resolution".

(5) Section 207(7)—

Repeal

"On a vacancy"

Substitute

"Subject to subsections (7A) and (7B), on a vacancy".

(6) Section 207(7), English text—

Repeal

"by resolution"

Substitute

"by a resolution".

(7) Section 207(7)—

Repeal the colon

Substitute a full stop.

(8) Section 207(7)—

Repeal the proviso.

(9) After section 207(7)—

Add

"(7A) If the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy in the committee to be filled, the liquidator may apply to the court and the court may make an order that the vacancy—

(a) does not have to be filled; or

(b) does not have to be filled except in the circumstances specified in the order.

(7B) The vacancy does not have to be filled if—

(a) the liquidator and a majority of the continuing members of the committee agree that, having regard to the position in the winding up, it is unnecessary for the vacancy to be filled; and

(b) the total number of continuing members of the committee is not reduced—

(i) to less than 3; or

(ii) if the court has varied the minimum number of members, to less than the minimum number ordered by the court.".

(10) Section 207—

Repeal subsection (8)

Substitute

"(8) The continuing members of the committee may continue to act despite any vacancy in the committee if the total number of continuing members of the committee is not reduced—

(a) to less than 3; or

(b) if the court has varied the minimum number of members, to less than the minimum number ordered by the court.".

45. Sections 207A to 207L added

After section 207—

Add

"**207A. Representatives of members of committee of inspection**

(1) Subject to subsection (5), a member of the committee of inspection may, in relation to the business of the committee, be represented by a person authorized by the member for that purpose.

(2) A person is authorized by a member only if the person holds—

(a) a general power of attorney from the member; or

(b) a letter of authority that—

(i) entitles the person to act as the member's representative (either generally or specifically); and

(ii) is signed by or on behalf of the member.

(3) A proxy given by a member of a committee of inspection in relation to a meeting of the creditors, of the members or of the contributories is treated as a letter of authority to act generally as the member's representative in relation to the committee, unless the proxy contains a statement to the contrary.

(4) The chairperson of a meeting of the committee may—

(a) call on a person claiming to act as a member's representative to produce the person's general power of attorney or letter of authority; and

(b) exclude the person from the meeting if it appears that the person's authority is deficient.

(5) A member of the committee must not be represented by a body corporate, an undischarged bankrupt or a person who is subject to a voluntary arrangement with the person's creditors.

(6) A person must not—

(a) on the same committee, act as the representative of more than one member at any time; or

(b) act both as a member of the committee and as the representative of another member.

(7) If the representative of a member signs a document on behalf of the member, the representative must state below the signature whether the representative is signing under a general power of attorney or under a letter of authority.

(8) The acts of the committee are valid despite any defect in the authorization or qualifications of a member's representative.

207B. Remote attendance at meetings of committee of inspection

(1) This section applies to a meeting of a committee of inspection held under this Ordinance, except a meeting held under rule 74 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

(2) If the liquidator considers it appropriate, the meeting may be held and conducted in a manner that enables persons who are not present together at the same place to attend it.

(3) If the meeting is held and conducted in the manner referred to in subsection (2), a person attends the meeting if the person is able to exercise any rights of the person to speak and vote at the meeting.

(4) For the purposes of this section—

(a) a person is able to exercise the right to speak at a meeting if the person, during the meeting, is in a position to communicate to all those

attending the meeting, any information or opinion the person has on the business of the meeting; and

(b) a person is able to exercise the right to vote at a meeting if—

(i) the person is able to vote, during the meeting, on resolutions or determinations put to the vote at the meeting; and

(ii) in determining whether such resolutions or determinations are passed, the person's vote can be taken into account at the same time as the votes of all the other persons attending the meeting.

(5) If the meeting is to be held and conducted in the manner referred to in subsection (2), the liquidator must make the arrangements the liquidator considers appropriate to—

(a) enable those attending the meeting to exercise their rights to speak and vote;

(b) verify the identity of the persons attending the meeting; and

(c) ensure the security of any technology used to enable attendance.

(6) The requirement under section 206A(6) for notice to be given of a specified place for a meeting may be satisfied by specifying the arrangements the liquidator proposes to enable persons to exercise their rights to speak and vote if, in the reasonable opinion of the liquidator—

(a) a meeting will be attended by persons who will not be present together at the same place; and

(b) it is not necessary or expedient to specify a place for the meeting.

(7) In making the arrangements mentioned in subsection (5) and in forming the opinion mentioned in subsection (6)(b), the liquidator must have regard to the legitimate interests of the members of the committee or their representatives attending the meeting in the efficient conduct of the business of the meeting.

(8) The liquidator must specify a place for the meeting if—

(a) the notice of the meeting under section 206A(6) does not specify a place for the meeting; and

(b) at least one member of the committee requests the liquidator to specify a place for the meeting in accordance with section 207C.

207C. Procedure for requests that place for meeting should be specified under section 207B

(1) This section applies to a request under section 207B(8)(b) to specify a place for the meeting.

(2) The request must be made at least 5 days before the date of the meeting that is stated in the notice of the meeting given by the liquidator under section 206A(6).

(3) If the liquidator considers that the request has been made in accordance with this section, the liquidator must—

(a) give written notice to all the persons who were given notice of the meeting under section 206A(6)—

(i) that the meeting is to be held at a specified place; and

(ii) as to whether the date and time are to remain the same or not;

(b) set a date for the meeting, which must not be later than 7 days after the original date, and a time and place for it; and

(c) give 5 days' notice of the date, time and place to all the persons who were given notice of the meeting under section 206A(6).

(4) The notices required by subsection (3)(a) and (c) may be given at the same time or at different times.

(5) If the liquidator has specified a place for the meeting in response to a request to which this section applies, the liquidator, or a person appointed by the liquidator in writing, must attend the meeting in person at that place.

(6) In calculating the number of days mentioned in subsections (2) and (3), Saturdays and general holidays are to be excluded.

207D. Written resolution of committee of inspection

(1) Anything that may be done by a resolution passed at a meeting of the committee of inspection may be done, without a meeting and without any previous notice being required, by a written resolution of the committee.

(2) A reference to the date of passing a resolution or the date of a meeting is, in relation to a written resolution of the committee, the date on which the written resolution is passed under section 207G(1).

(3) A written resolution of the committee has effect as if passed by members of the committee at a meeting of the committee.

(4) Subsection (1) does not apply to a resolution sanctioning the making of calls by a liquidator under section 226.

(5) A resolution of the committee may be proposed as a written resolution only by the liquidator.

207E. Circulation of written resolution

(1) A liquidator may seek to obtain the agreement of the members of the committee of inspection to a proposed written resolution by sending to every member of the committee a copy of the resolution.

(2) The liquidator may send a copy of the resolution under subsection (1)—

(a) by sending a copy to every member at the same time so far as reasonably practicable;

(b) if it is possible to do so without undue delay, by sending—

(i) the same copy to each member in turn; or

(ii) separate copies to each of a number of members in turn; or

(c) by sending copies to some members at the same time and sending a copy or copies to the other members in accordance with paragraph (b).

(3) For the purposes of this section, a copy of the proposed written resolution may be sent to a representative of a member designated for that purpose instead of the member and it is to be regarded as a copy sent to the member.

(4) The liquidator must ensure that the copy of the proposed written resolution sent under this section contains, or is accompanied by, the following information—

(a) how to signify agreement to the resolution under section 207G;

(b) the date by which the resolution must be passed if it is not to lapse under section 207H(1);

(c) the right of the member to request a meeting under section 207F(1); and

(d) the date by which the request must be received by the liquidator under section 207F(2).

(5) The validity of the resolution, if passed, is not affected by a contravention of subsection (4).

207F. Request for summoning meeting to consider resolution

(1) A member of the committee of inspection or the representative of a member may request the liquidator to summon a meeting of the committee to consider the matters raised by the resolution sent under section 207E.

(2) The request—

(a) must be in writing; and

(b) must be received by the liquidator within 7 business days from the circulation date.

(3) A request made in accordance with this section takes effect as a request made under section 206A(3).

207G. Procedure for signifying agreement to proposed written resolution

(1) A written resolution is passed when—

(a) all the members of the committee of inspection have signified their agreement to it; or

(b) a majority of the members of the committee have signified their agreement to it, and a period of 7 business days beginning on the circulation date has ended without any request to summon a meeting having been made under section 207F(1).

(2) A member of the committee signifies agreement to a proposed written resolution when the liquidator receives from the member or the member's representative a written document—

(a) identifying the resolution to which it relates; and

(b) indicating the member's agreement to the resolution.

(3) A member's agreement to a written resolution, once signified, may not be revoked.

207H. Period for agreeing to proposed written resolution

(1) A proposed written resolution lapses if—

(a) it is not passed before the end of the period of 28 days beginning on the circulation date; or

(b) the liquidator receives from a member of the committee of inspection or the representative of a member a request made in accordance with section 207F to summon a meeting.

(2) The agreement of a member of the committee to a proposed written resolution is ineffective if signified after the resolution lapses under subsection (1).

207I. Liquidator's duty to notify members of committee of inspection that written resolution has been passed

(1) If a written resolution of the committee of inspection is passed, the liquidator must, within 15 days after the resolution is passed, send a notice of this fact to every member of the committee.

(2) A notice under this section may be sent to the representative of a member designated for that purpose instead of the member.

207J. Liquidator's duty to keep record of written resolution that has been passed

A liquidator must keep—

(a) a copy of every resolution passed as a written resolution of the committee of inspection; and

(b) a note that all or a majority of the members of the committee have signified agreement to the relevant written resolution.

207K. Communication with liquidator by electronic means for the purpose of written resolution

(1) If the conditions in subsection (2) are satisfied, a member of a committee of inspection may send to a liquidator by electronic means—

(a) a request under section 207F(1); or

(b) a document signifying agreement to a proposed written resolution referred to in section 207G(2).

(2) The conditions are that—

(a) the liquidator—

(i) has agreed, generally or specifically that a document may be sent to the liquidator by electronic means; and

(ii) has not revoked the agreement; or

(b) the liquidator is to be regarded as having so agreed as described in subsection (4).

(3) For the purposes of subsection (1), a document is sent to a liquidator by electronic means if—

(a) the document is sent to an electronic address—

(i) specified for the purpose by the liquidator generally or specifically; or

(ii) regarded under subsection (4) as having been so specified for the purpose;

(b) the document is sent in a form, and by a means, that, in the reasonable opinion of the member, will enable the liquidator to—

(i) read the document, or, to the extent that it consists of images, to see the document with the naked eye or with a suitable corrective lens; and

(ii) retain a copy of the document;

(c) the document is sent in the manner as described in section 205A(3)(a) or (b); and

(d) the document is authenticated in one of the following ways—

(i) the identity of the member is confirmed in a manner specified by the liquidator;

(ii) if the manner has not been specified, the communication contains, or is accompanied by, a statement of the identity of the member, the truth of which the liquidator has no reason to doubt.

(4) If the liquidator has given an electronic address in any document containing or accompanying a proposed written resolution of the committee, the liquidator is to be regarded as having agreed, subject to any conditions or limitations that the liquidator may have specified in the document, that any document relating to that resolution may be sent by electronic means to that address.

(5) For the purposes of subsection (2)(a)(ii), an agreement to allow sending documents by electronic means is only to be regarded as having been revoked if the liquidator has given the member of the committee a notice of revocation of at least—

(a) 7 days; or

(b) the period specified for the purpose in any agreement between the liquidator and the members,

whichever is the longer.

(6) If a document is sent to the liquidator in accordance with this section, unless the contrary is proved, it is to be regarded as having been received by the liquidator at the end of the following period after it is sent—

(a) the period specified for the purpose in any agreement between the member of the committee and the liquidator; or

(b) if no period has been specified, 48 hours.

(7) In calculating the period mentioned in subsection (6)(b), any part of a day that is not a business day is to be disregarded.

(8) In this section, a reference to a member of a committee of inspection includes a representative of a member.

207L. Travelling expenses of members of committee of inspection

(1) The liquidator must defray as an expense of the winding up any reasonable expenses incurred directly by a member of the committee of inspection or the representative of a member in respect of travelling within Hong Kong—

(a) to attend the committee's meetings; or

(b) on the committee's business.

(2) The payment by the liquidator mentioned in subsection (1) is subject to the order of priority prescribed in this Ordinance.".

46. Heading before section 209 substituted

Heading before section 209—

Repeal the heading

Substitute

"**Subdivision 8—General Powers of Court in case of Winding Up by Court**".

47. Section 209A amended (power of court to order winding up to be conducted as creditors' voluntary winding up)

(1) Section 209A(2)(b), after "statement of affairs"—

Add

", or an affidavit of concurrence (if required),".

(2) Section 209A(2)(g), after "statement of affairs"—

Add

", or an affidavit of concurrence (if required),".

48. Section 209B amended (consequences of an order under section 209A)

Section 209B(e), after "of the company"—

Add

", and any affidavit of concurrence in relation to that statement,".

49. Section 210 amended (settlement of list of contributories and application of assets)

Section 210(1), after "Ordinance"—

Add

"or the Companies Ordinance (Cap. 622)".

50. Sections 221, 222 and 222A repealed

Sections 221, 222 and 222A—

Repeal the sections.

51. Heading before section 227A substituted

Heading before section 227A—

Repeal the heading

Substitute

"**Subdivision 9—Winding Up by Court with Regulating Order**".

52. Section 227A amended (court may make a regulating order)

Section 227A(1), after "Official Receiver,"—

Add

"provisional liquidator or".

53. Section 227B amended (appointment of liquidator and committee of inspection)

(1) Section 227B(1)—

Repeal

"on the application of the Official Receiver"

Substitute

", on the application of the Official Receiver or provisional liquidator,".

(2) Section 227B(1)—

Repeal paragraphs (b) and (c)

Substitute

"(b) appoint one or more persons that the court thinks fit as a liquidator or liquidators; and

(c) as regards a committee of inspection—

(i) appoint any qualified persons that the court thinks fit as a committee of inspection;

(ii) remove any member of the committee; and

(iii) fill any vacancy in the committee.".

(3) After section 227B(1)—

Add

"(1A) The court may, on the application of the liquidator, by order—

(a) appoint any qualified persons that the court thinks fit as a committee of inspection;

(b) remove any member of the committee; and

(c) fill any vacancy in the committee.".

(4) Section 227B(2), after "subsection (1)"—

Add

"or (1A)".

(5) Section 227B(2)—

Repeal

"194(b) or 206(1) and (2) or 207(6) and (7)"

Substitute

"194(1)(b) or 206(1) and (2) or 207(6), (7), (7A) and (7B)".

54. Section 227C amended (informing creditors and contributories and ascertaining their wishes and directions)

Section 227C(d), after "Official Receiver"—

Add

"or liquidator".

55. Section 227E amended (proof of debts)

Section 227E(3)—

Repeal

everything after "***relevant date*** (有關日期)"

Substitute

"means the date of the winding-up order.".

56. Heading before section 227F substituted

Heading before section 227F—

Repeal the heading

Substitute

"**Subdivision 10—Winding Up by Court by way of Summary Procedure**".

57. Headings before section 228 substituted

Headings before section 228—

Repeal the headings

Substitute

"**Division 3—Voluntary Winding Up**

Subdivision 1—Resolutions for and Commencement of Voluntary Winding Up".

58. Section 228 amended (circumstances in which company may be wound up voluntarily)

(1) Section 228(1)—

Repeal paragraph (c).

(2) Section 228(1)(d)—

Repeal

"section 228A(1)"

Substitute

"section 228A".

(3) Section 228(2)—

Repeal

"subsection (1)(a), (b) or (c)"

Substitute

"subsection (1)(a) or (b)".

59. Section 228A amended (special procedure for voluntary winding up of company in case of inability to continue its business)

(1) Section 228A(1)—

Repeal

everything after "the opinion that the company cannot by reason of its liabilities continue its business"

Substitute

"—

(a) pass a resolution to the effect that—

(i) the company cannot by reason of its liabilities continue its business;

(ii) they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; and

(iii) meetings of the company and of its creditors will be summoned for a date not later than 28 days after the delivery of a winding-up statement to the Registrar;

(b) cause a meeting of the company to be summoned for a date not later than 28 days after the delivery of a winding-up statement to the Registrar; and

(c) appoint a person as the provisional liquidator in the winding up of the company with effect from the commencement of the winding up.".

(2) After section 228A(1)—

Add

"(1A) 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.

(1B) The winding-up statement delivered to the Registrar must—

(a) be in the specified form;

(b) be signed by one of the directors; and

(c) contain a statement by the director signing the winding-up statement certifying that—

(i) a resolution has been passed under subsection (1);

(ii) a meeting of the company has been summoned for the date and time stated in the winding-up statement; and

(iii) a provisional liquidator of the name and address stated in the winding-up statement has been appointed and that the appointment will take effect from the commencement of the winding up.".

(3) Section 228A(2)—

Repeal

"paragraph (b)"

Substitute

"paragraph (a)(ii)".

(4) Section 228A(4)—

Repeal

"Any director of a company signing"

Substitute

"A director of a company who signs".

(5) Section 228A(4)(a)—

Repeal

"or".

(6) Section 228A(4)(b)—

Repeal the comma

Substitute

"; or".

(7) After section 228A(4)(b)—

Add

"(c) for certifying any of the matters referred to in subsection (1B)(c),".

(8) Section 228A(5)(a)—

Repeal the semicolon

Substitute

"; and".

(9) Section 228A(5)—

Repeal paragraph (b).

(10) Section 228A(5)(c)—

Repeal

"meetings of the company and of its creditors"

Substitute

"a meeting of the creditors of the company".

(11) Section 228A(6)—

Repeal

everything after "comply with"

Substitute

"subsection (5)(c) commits an offence and is liable on conviction to a fine.".

(12) Section 228A—

Repeal subsection (7)

Substitute

"(7) The provisional liquidator appointed under subsection (1)(c) may—

(a) summon a meeting of the company if the directors have not, prior to the delivery of the winding-up statement to the Registrar, caused a meeting of the company to be summoned under subsection (1)(b); and

(b) summon a meeting of the creditors of the company if the directors fail to comply with subsection (5)(c).".

(13) Section 228A(8)—

Repeal

"No person shall be appointed as a provisional liquidator under subsection (5)(b)"

Substitute

"Without limiting section 262A, no person may be appointed as, or act as, a provisional liquidator under subsection (1)(c)".

(14) Section 228A(8)(a), English text—

Repeal

"he"

Substitute

"that person".

(15) Section 228A(8)(a), English text—

Repeal

"such appointment"

Substitute

"the appointment".

(16) Section 228A(8)(b), English text—

Repeal

"he"

Substitute

"that person".

(17) After section 228A(8)—

Add

"(8A) An appointment that is made in contravention of subsection (8) is void.".

(18) Before section 228A(9)—

Add

"(8B) A person who acts as a provisional liquidator in contravention of subsection (8) commits an offence and is liable on conviction to a fine.".

(19) Section 228A(9)—

Repeal

everything before "the directors"

Substitute

"(9) Within 14 days after the commencement of the winding up of the company,".

(20) After section 228A(9)—

Add

"(9A) A director who fails to comply with subsection (9) commits an offence and is liable on conviction to a fine and, for continued default, to a daily default fine.".

(21) Section 228A(10)—

Repeal

"subsection (5)(b)"

Substitute

"subsection (1)(c)".

(22) Section 228A(10)—

Repeal

"date of his appointment"

Substitute

"commencement of the winding up of the company".

(23) Section 228A(11)—

Repeal

"subsection (5)(b)"

Substitute

"subsection (1)(c)".

(24) Section 228A(13)—

Repeal

"shall be liable"

Substitute

"commits an offence and is liable on conviction".

(25) Section 228A(14)—

Repeal

"subsection (5)(b)"

Substitute

"subsection (1)(c)".

(26) Section 228A—

Repeal subsection (15)

Substitute

"(15) All the powers of the directors cease during the period of the provisional liquidator's appointment except—

(a) so far as may be necessary for enabling the directors to comply with this section; or

(b) if the court sanctions the continuance of those powers for any other purpose.".

(27) Section 228A—

Repeal subsection (16).

(28) Section 228A(17)(a)(i)—

Repeal

"subsection (1)"

Substitute

"subsection (1)(a)".

(29) Section 228A(17)(a)(i)—

Repeal

"the words "of the company""

Substitute

"the words "under section 228A(1)(b)"".

(30) Section 228A(17)(a)—

Repeal subparagraph (ii)

Substitute

"(ii) the advertisement of the meeting of creditors required by subsection (2) of that section must occur at least 7 days before the meeting of creditors; and".

(31) Section 228A(18)(b)—

Repeal

"required under subsection (1)".

(32) After section 228A(19)—

Add

"(20) In this section—

winding-up statement (清盤陳述書) means the winding-up statement described in subsection (1B).".

60. Section 228B added

After section 228A—

Add

"**228B. Other powers, duties and liabilities of provisional liquidator appointed under section 228A**

(1) Subject to subsection (2), a provisional liquidator appointed under section 228A(1)(c)—

(a) has, for the period of the provisional liquidator's appointment, the like powers as a liquidator in a creditors' voluntary winding up;

(b) is, for that period, subject to the like duties as such a liquidator; and

(c) is subject to the like liabilities as such a liquidator.

(2) Except as provided in subsection (3), the provisional liquidator may exercise a power conferred by subsection (1)(a) only with the sanction of the court.

(3) The provisional liquidator may, without sanction of the court—

(a) take into the provisional liquidator's custody, or under the provisional liquidator's control, all the property and things in action to which the company is or appears to be entitled;

(b) dispose of perishable goods and other goods that are likely to diminish in value if not immediately disposed of; and

(c) do anything that may be necessary to protect the company's assets.

(4) The court has the same jurisdiction and powers over a provisional liquidator appointed under section 228A(1)(c) as it has over a liquidator in a creditors' voluntary winding up.

(5) A provisional liquidator who, without reasonable excuse, exercises a power conferred by subsection (1)(a) in contravention of subsection (2) commits an offence and is liable on conviction to a fine.

(6) A provisional liquidator appointed under section 228A(1)(c) must—

(a) attend the meeting of the creditors of the company summoned under section 228A; and

(b) report to the meeting on any exercise of the provisional liquidator's powers, whether or not those powers are exercised under this section.

(7) A provisional liquidator who, without reasonable excuse, fails to comply with subsection (6) commits an offence and is liable on conviction to a fine.".

61. Section 229 amended (notice of resolution to wind up voluntarily)

Section 229(1)—

Repeal

"14 days"

Substitute

"15 days".

62. Heading before section 231 substituted

Heading before section 231—

Repeal the heading

Substitute

"**Subdivision 2—Consequences of Voluntary Winding Up**".

63. Heading before section 233 substituted

Heading before section 233—

Repeal the heading

Substitute

"**Subdivision 3—Certificate of Solvency**".

64. Heading before section 234 substituted

Heading before section 234—

Repeal the heading

Substitute

"**Subdivision 4—Provisions Applicable to Members' Voluntary Winding Up**".

65. Section 234 amended (provisions applicable to members' winding up)

Section 234—

Repeal

"239A"

Substitute

"239".

66. Section 237A amended (duty of liquidator to call creditors' meeting in case of insolvency)

(1) Section 237A, heading—

Repeal

"**call creditors' meeting**"

Substitute

"**summon creditors' meeting, etc.**".

(2) Section 237A—

Repeal subsection (1)

Substitute

"(1) This section applies if the liquidator of a company is of the opinion that the company will not be able to pay its debts in full within the period stated in the certificate of solvency.".

(3) After section 237A(1)—

Add

"(1A) The liquidator must—

(a) summon a meeting of the creditors of the company for a date not later than 28 days after the day on which the liquidator formed that opinion;

(b) send notices of the meeting to the creditors at least 7 days before the date on which the meeting is to be held; and

(c) cause the notice of the meeting to be advertised—

(i) once in the Gazette; and

(ii) at least once in an English language newspaper and a Chinese language newspaper circulating in Hong Kong.

(1B) If the liquidator is not a person who would be disqualified under section 262B(3) from acting as liquidator in the winding up of the company were it a creditors' voluntary winding up, the liquidator must make a disclosure statement that complies with section 262D before notices of the meeting are sent to the creditors.

(1C) If the liquidator is a person who would be disqualified under section 262B(3) from acting as a liquidator in the winding up of the company were it a creditors' voluntary winding up, the liquidator must state in the notices of the meeting that the liquidator—

(a) would be disqualified under section 262B(3) from acting as liquidator of the company when the winding up of the company becomes a creditors' voluntary winding up under section 237B(1); and

(b) although would be allowed under section 237B(3)(a) to continue to act as liquidator of the company, he or she would cease to be the liquidator of the company immediately after the conclusion of the meeting.

(1D) At any time before the date on which the meeting is to be held, the liquidator must, as the creditors or any of them may reasonably require, provide the creditors or any of them, free of charge, with any information concerning the company's affairs so required.

(1E) The liquidator must inform the creditors, in the notice of the meeting, of the liquidator's duty to provide information as imposed by subsection (1D).

(1F) The liquidator must also—

(a) prepare a full statement of the position of the company's affairs that complies with subsection (1G); and

(b) lay that statement before the meeting.

(1G) The full statement of the position of the company's affairs must show—

(a) the particulars of the company's assets, debts and liabilities;

(b) the names of the company's creditors and the estimated amount of the claim of each of the creditors;

(c) the securities held by each of the creditors;

(d) the date on which each of the securities was given; and

(e) any further or other information as may be prescribed.

(1H) The liquidator must attend and preside at the meeting.".

(4) Section 237A(2)—

Repeal

everything after "place"

Substitute a full stop.

(5) Section 237A—

Repeal subsection (3)

Substitute

"(3) A liquidator who, without reasonable excuse, fails to comply with subsection (1A), (1B), (1C), (1D), (1E), (1F) or (1H) commits an offence and is liable on conviction to a fine.".

67. Section 237B added

After section 237A—

Add

"**237B. Conversion to creditors' voluntary winding up in case of insolvency**

(1) On the day when the meeting of the creditors of the company is held under section 237A, the winding up becomes a creditors' voluntary winding up.

(2) When the winding up becomes a creditors' voluntary winding up under subsection (1), this Ordinance

accordingly applies to the winding up of the company as a creditors' voluntary winding up as if the certificate of solvency concerned had not been issued by the directors of the company.

(3) If, when the winding up becomes a creditors' voluntary winding up under subsection (1), the person holding the office of liquidator of the company is disqualified under section 262B(3) from acting as liquidator of the company, then—

(a) despite sections 262A and 262B and rule 155 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H), the person may continue to act as liquidator of the company until the meeting is concluded, but solely for the purposes of complying with section 237A; and

(b) immediately after the conclusion of the meeting, the person ceases to be the liquidator of the company and for the purposes of this Ordinance, the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) and the Companies Ordinance (Cap. 622) is taken to have been removed from that office.".

68. Section 238 amended (duty of liquidator to call general meeting at end of each year)

Section 238(1)—

Repeal

"Subject to section 239A, in"

Substitute

"In".

69. Section 239 amended (final meeting and dissolution)

Section 239(1)—

Repeal

"Subject to 239A, as"

Substitute

"As".

70. Section 239A repealed (alternative provisions as to annual and final meetings in case of insolvency)

Section 239A—

Repeal the section.

71. Heading before section 240 substituted

Heading before section 240—

Repeal the heading

Substitute

"**Subdivision 5—Provisions Applicable to Creditors' Voluntary Winding Up**".

72. Section 240 amended (provisions applicable to creditors' winding up)

(1) Section 240—

Renumber the section as section 240(1).

(2) Section 240(1)—

Repeal

"The"

Substitute

"Subject to subsection (2), the".

(3) After section 240(1)—

Add

"(2) Sections 241, 242 and 243A do not apply in relation to a winding up that becomes a creditors' voluntary winding up under section 237B(1).".

73. Section 241 amended (meeting of creditors)

(1) Section 241(1)—

Repeal

everything after "The company shall"

Substitute

"—

(a) cause a meeting of the creditors of the company to be summoned for a date not later than 14 days after the day on which there is to be held the meeting of the company at which the resolution for voluntary winding up is to be proposed; and

(b) cause notices of the meeting of creditors to be sent by post to the creditors at least 7 days before the day on which the meeting is to be held.".

(2) Section 241(3)(a)—

Repeal

everything after "company's affairs"

Substitute

"that complies with subsection (3A) to be laid before the meeting of creditors to be held as provided in subsection (1); and".

(3) After section 241(3)—

Add

"(3A) The full statement of the position of the company's affairs must show—

(a) the particulars of the company's assets, debts and liabilities;

(b) the names of the company's creditors and the estimated amount of the claim of each of the creditors;

(c) the securities held by each of the creditors;

(d) the date on which each of the securities was given; and

(e) any further or other information as may be prescribed.".

(4) Section 241(5), after "is adjourned"—

Add

"to a date later than the day of the meeting of creditors held under subsection (1),".

(5) Section 241(5)—

Repeal

"the meeting of the creditors held in pursuance of subsection (1)"

Substitute

"that meeting of creditors".

(6) Section 241(6)(a)—

Repeal

"in complying with subsections (1) and"

Substitute

", without reasonable excuse, in complying with subsection (1) or".

(7) Section 241(6)(b), after "company"—

Add

", without reasonable excuse,".

(8) Section 241(6)(c), after "company"—

Add

", without reasonable excuse,".

(9) Section 241(6)—

Repeal

"shall be liable" (wherever appearing)

Substitute

"commits an offence and is liable on conviction".

74. Section 243 amended (appointment of committee of inspection)

(1) Section 243(1), after "section"—

Add

"237A or".

(2) Section 243(1)—

Repeal

"not more than 5 persons"

Substitute

"not less than 3, and not more than 7 persons".

(3) Section 243(1)—

Repeal

"such number of persons as they think fit to act as members of the committee not exceeding 5 in number"

Substitute

"one or more persons that they think fit to act as members of the committee, but the number of persons appointed by the creditors and the company must not in total exceed 7".

(4) After section 243(1)—

Add

"(1A) However, a liquidator may apply to the court for an order to vary the minimum or maximum number of members mentioned in subsection (1) and the court may make an order that it thinks fit.".

(5) Section 243(2)—

Repeal

"section 207 (except subsection (1)) shall"

Substitute

"sections 206A, 207, 207A, 207B, 207C, 207D, 207E, 207F, 207G, 207H, 207I, 207J, 207K and 207L".

(6) After section 243(2)—

Add

"(3) A body corporate may be a member of the committee but cannot act as a member otherwise than by a representative authorized under section 207A.".

75. Section 243A added

After section 243—

Add

"**243A. Powers and duties of liquidator nominated by company**

(1) Except as provided in subsection (2), before a meeting of the creditors of the company is held under section 241, a person who is nominated by the company to be liquidator under section 242 (***the liquidator***) may exercise a power conferred by section 251(1) only with the sanction of the court.

(2) The liquidator may, without sanction of the court—

(a) take into the liquidator's custody, or under the liquidator's control, all the property and things in action to which the company is or appears to be entitled;

(b) dispose of perishable goods and other goods that are likely to diminish in value if not immediately disposed of; and

(c) do anything that may be necessary to protect the company's assets.

(3) The liquidator must—

(a) attend the meeting of creditors held under section 241; and

(b) report to the meeting on any exercise of the liquidator's powers, whether or not those powers are exercised under this section.

(4) 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;

(b) the day on which the liquidator first became aware of the default.

(5) If section 241(2), (3) or (4) is not complied with, the liquidator may apply to the court for directions as to the manner in which the default is to be remedied.

(6) A liquidator who, without reasonable excuse, exercises a power conferred by section 251(1) in contravention of subsection (1) commits an offence and is liable on conviction to a fine.

(7) A liquidator who, without reasonable excuse, fails to comply with subsection (3) or (4) commits an offence and is liable on conviction to a fine.".

76. Section 244A added

After section 244—

Add

"**244A. Removal of liquidator**

(1) This section does not apply to the removal of a liquidator appointed by, or by the direction of, the court.

(2) If not less than one-tenth in value of the creditors of a company request in writing a liquidator of the company to convene a meeting of creditors to consider the removal of a liquidator, the liquidator who receives the request must—

(a) convene the meeting within 21 days from the date the request is received; and

(b) specify in the notice of the meeting the proposal of moving a resolution to remove a liquidator.

(3) If a meeting of creditors is not convened under subsection (2)(a), any creditor of the company may convene a meeting of creditors for considering the removal of the liquidator for which the meeting was requested to convene under subsection (2).

(4) The creditor who convenes a meeting of creditors under subsection (3) must specify in the notice of the meeting the proposal of moving a resolution to remove a liquidator.

(5) A liquidator may be removed by a resolution passed by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors convened under this section and voting on the resolution.

(6) The court may, on application by a creditor or contributory of the company, order that a liquidator whom it is proposed to remove from office under this section is not to be so removed.".

77. Section 245 amended (power to fill vacancy in office of liquidator)

Section 245—

Repeal

everything after "in the office of a liquidator"

Substitute

"—

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

(b) for any other liquidator, the creditors may appoint a person to fill the vacancy.".

78. Section 247 amended (duty of liquidator to call meetings of company and of creditors at end of each year)

After section 247(1)—

Add

"(1A) Despite subsection (1), if—

(a) a winding up becomes a creditors' voluntary winding up under section 237B(1); and

(b) the meeting of creditors under section 237A is held 3 months or less before the end of the first year from the commencement of the winding up,

then the liquidator is not required by this section to summon a meeting of creditors at the end of that year.".

79. Heading before section 249 substituted

Heading before section 249—

Repeal the heading

Substitute

"**Subdivision 6—Provisions Applicable to Voluntary Winding Up**".

80. Section 249 substituted

Section 249—

Repeal the section

Substitute

"**249. Provisions applicable to voluntary winding up**

Unless otherwise stated in a provision contained in sections 250 to 257, those sections apply to every voluntary winding up.".

81. Section 250A added

After section 250—

Add

"**250A. Directors' powers before nomination or appointment of liquidator**

(1) Except as provided in subsection (3), in a members' voluntary winding up, after the company has passed a resolution for voluntary winding up and before the appointment of a liquidator of the company, the directors may exercise their powers only with the sanction of the court.

(2) In a creditors' voluntary winding up, after the company has passed a resolution for voluntary winding up and before the nomination or appointment of a liquidator of the company, the directors—

(a) except as provided in paragraph (b) and subsection (3), may exercise their powers only with the sanction of the court; and

(b) may exercise their powers so far as may be necessary for the purpose of enabling the directors to secure compliance with section 241.

(3) The directors may, without sanction of the court—

(a) dispose of perishable goods and other goods that are likely to diminish in value if not immediately disposed of; and

(b) do anything that may be necessary to protect the company's assets.

(4) A director of the company who, without reasonable excuse, exercises a power in contravention of subsection (1) or (2) commits an offence and is liable on conviction to a fine.".

82. Section 251 amended (powers and duties of liquidator in voluntary winding up)

(1) Section 251(1)—

Repeal

"The"

Substitute

"Subject to section 243A, a".

(2) Section 251(1)—

Repeal paragraph (a)

Substitute

"(a) exercise any of the powers specified in Part 1 of Schedule 25—

(i) in the case of a members' voluntary winding up—with the sanction of a special resolution of the company; and

(ii) in the case of a creditors' voluntary winding up—with the sanction of the court or the committee of inspection or, if there is no such committee, a meeting of the creditors;".

83. Section 253 amended (notice by liquidator of his appointment or ceasing to act)

(1) Section 253(1)—

Repeal

"21 days"

Substitute

"15 days".

(2) Section 253(2)—

Repeal

"21 days"

Substitute

"15 days".

(3) Section 253(3)—

Repeal

"14 days"

Substitute

"15 days".

(4) Section 253(5)—

Repeal

"section 228A(5)(b)"

Substitute

"section 228A(1)(c)".

84. Section 255A amended (audit of liquidator's accounts in voluntary winding up)

Section 255A—

Repeal subsection (2)

Substitute

"(2) An audit under this section is not required if—

(a) for a members' voluntary winding up, the company by ordinary resolution so determines; and

(b) for a creditors' voluntary winding up—

(i) the committee of inspection so determines; or

(ii) if there is no such committee, the creditors by resolution so determine.".

85. Part V, Division 4A added

Part V—

Add

"Division 4A—Provisional Liquidator and Liquidator—Restrictions on Appointment, Disqualification, Disclosure and Validity of Acts

262A. Restrictions on appointment of provisional liquidator or liquidator, etc.

(1) A person in respect of whom the conditions specified in subsection (2) are not met—

(a) must not be appointed, or nominated for appointment, as a provisional liquidator or liquidator of a company; and

(b) must not act as a provisional liquidator or liquidator of a company.

(2) The conditions are—

(a) the person is not disqualified under section 262B; and

(b) for a person required under section 262C(2) to make a disclosure statement—

(i) the person has made a disclosure statement that complies with section 262D (***disclosure statement***); and

(ii) section 262C(2)(b) is complied with in relation to the disclosure statement.

(3) An appointment that is made in contravention of subsection (1)(a), or that is based on a nomination made in contravention of subsection (1)(a), is void.

(4) Except as provided in section 237B(3)(a), a person who acts as a provisional liquidator or liquidator in contravention of subsection (1)(b) commits an offence and is liable on conviction to a fine.

262B. Persons disqualified from being appointed etc. as provisional liquidator or liquidator

(1) This section does not apply in relation to the Official Receiver and, in addition, subsection (3) does not apply in relation to a members' voluntary winding up.

(2) The following persons are disqualified from being appointed or nominated for appointment, and from acting, as a provisional liquidator or liquidator of a company—

(a) a body corporate;

(b) an undischarged bankrupt;

(c) a person against whom a disqualification order is in force, other than such a person who has the leave of the court to be appointed or to act as the provisional liquidator or liquidator of the company;

(d) a person who has been found under the Mental Health Ordinance (Cap. 136) to be incapable, by reason of mental incapacity, of managing and administering the person's property and affairs;

(e) a person who is subject to a guardianship order made under Part IVB of the Mental Health Ordinance (Cap. 136).

(3) Subject to subsection (1), except with the leave of the court, the following persons are disqualified from being appointed or nominated for appointment, and from acting, as a provisional liquidator or liquidator of a company—

(a) a creditor of the company;

(b) a debtor of the company;

(c) a director of the company, or a person who has been a director of the company;

(d) a company secretary of the company, or a person who has been a company secretary of the company;

(e) the auditor of the company, or a person who was the auditor of the company at any time on or after the starting day of 2 years before the commencement of the winding up (***former auditor***);

(f) a receiver or manager of the property of the company.

(4) For the purposes of subsection (3)(a), a person is not a creditor of the company only because a debt is owed to the person by the company in the person's capacity as a provisional liquidator or liquidator of the company.

(5) For the purposes of subsection (3)(e)—

(a) if the auditor or the former auditor is a firm, the disqualification under that subsection extends to the following persons—

(i) a person who was a partner in the firm when the firm was appointed as the auditor;

(ii) a person who became a partner in the firm after the firm had been appointed as the auditor (whether or not the firm had ceased to be the auditor when the person became the firm's partner); and

(b) if the auditor or the former auditor is a corporate practice as defined by section 2(1) of the Professional Accountants Ordinance (Cap. 50), the disqualification under that subsection extends to the following persons—

(i) a person who was a director of the corporate practice when the corporate practice was appointed as the auditor;

(ii) a person who became a director of the corporate practice after the corporate practice had been appointed as the auditor (whether or not the corporate practice had ceased to be the auditor when the person became its director).

(6) In this section—

court (法院) has the meaning given by section 168R(5);

disqualification order (取消資格令) has the meaning given by section 168R(5);

firm (商號) means a firm as from time to time constituted.

262C. Disclosure statement

(1) This section does not apply in relation to—

(a) a members' voluntary winding up;

(b) the Official Receiver; or

(c) a person who is appointed as provisional liquidator by the Official Receiver under section 194(1A).

(2) Subject to subsection (3), before a person may be appointed, or nominated for appointment, as a provisional liquidator or liquidator—

(a) the person must make a disclosure statement that complies with section 262D (***disclosure statement***); and

(b) the disclosure statement must be—

(i) for an appointment by the court—delivered to the court before the appointment;

(ii) for an appointment or nomination at a meeting of the company, of the creditors or of the contributories—tabled at the meeting before the appointment or nomination (as the case requires); and

(iii) for an appointment by the directors of the company under section 228A—delivered to the directors before the appointment or tabled at a meeting of directors considering the appointment before the appointment.

(3) If a person—

(a) has been appointed as a provisional liquidator under section 193; and

(b) continues to hold the office of provisional liquidator by virtue of section 194(1)(aa),

then the disclosure statement made by the person for the appointment under section 193 (as supplemented by any supplementary statement that the person may have made under section 262F) is to be taken for the purposes of this Division as the disclosure statement made by the person in respect of the person's office under section 194(1)(aa), and subsection (2)(b) is taken to have been complied with.

(4) To avoid doubt, a provisional liquidator of a company who seeks to be appointed, or nominated for appointment, as the liquidator in the winding up of the company must make a disclosure statement under subsection (2) in respect of the office of liquidator.

262D. Matters to be disclosed in disclosure statement

(1) A disclosure statement must—

(a) contain a confirmation by the person making the statement—

(i) that the person is not disqualified under section 262B; or

(ii) if the person would have been disqualified under section 262B(2)(c) or (3) but for the leave of the court, that the leave of the court has been obtained; and

(b) disclose—

(i) whether any of the relationships set out in subsection (2) exists; and

(ii) if such a relationship exists—

(A) the details of the relationship; and

(B) the person's reasons for believing that the existence of the relationship would not result in the person having a conflict of interest or duty.

(2) The relationships are—

(a) the person making the statement is, or was at any time within 2 years before making the statement—

(i) a member of the company, its holding company or its subsidiary;

(ii) a creditor or debtor of the company, its holding company or its subsidiary;

(iii) a director or company secretary of the company, its holding company or its subsidiary;

(iv) an employee of the company, its holding company or its subsidiary;

(v) an auditor of the company;

(vi) a receiver or manager of the property of the company;

(vii) a provisional liquidator or liquidator of the company;

(viii) a legal advisor of the company, its holding company or its subsidiary; or

(ix) a financial advisor of the company, its holding company or its subsidiary;

(b) the person making the statement is an immediate family member of an individual who is, or was at any time within 2 years before the making of the statement, a person mentioned in paragraph (a)(iii), (v), (vi) or (vii);

(c) if the person making the statement is a partner in a firm—

(i) the firm or any other partner in the firm is, or was at any time within 2 years before the making of the statement, a person mentioned in a subparagraph of paragraph (a);

(ii) any other partner in the firm is an immediate family member of an individual who is, or was at any time within 2 years before the making of the statement, a person mentioned in paragraph (a)(iii), (v), (vi) or (vii);

(d) if the person making the statement is a director of a body corporate—

(i) the body corporate, or any other director or any company secretary of the body corporate, is, or was at any time within 2 years before the making of the statement, a person mentioned in a subparagraph of paragraph (a);

(ii) any other director or any company secretary of the body corporate is an immediate family member of an individual who is, or was at any time within 2 years before the making of the statement, a person mentioned in paragraph (a)(iii), (v), (vi) or (vii).

(3) For the purposes of subsection (2)(a)(ii), a person is not a creditor of the company only because a debt is owed to the person by the company in the person's capacity as provisional liquidator or liquidator of the company.

(4) A person who, in a disclosure statement omits to state any relationship required to be disclosed under subsection (1)(b) commits an offence and is liable on conviction to a fine.

(5) If a person is charged with an offence under subsection (4) for omitting to state a relationship, it is a defence for the person to prove that the person, after having made all reasonable enquiries, had no reasonable grounds for believing that the relationship existed.

(6) In this section—

firm (商號) means a firm as from time to time constituted;

immediate family member (家人), in relation to an individual, means a spouse, parent, child, sibling, grandparent or grandchild of the individual.

262E. Convenor's duty concerning disclosure statement

(1) Subject to subsection (2), the convenor of a meeting at which the appointment, or nomination for appointment, of a provisional liquidator or liquidator is to be considered must ensure that subsections (3) and (4) are complied with.

(2) Subsection (1) does not apply in relation to a members' voluntary winding up unless the convenor of the meeting is a liquidator who is required to summon a meeting of the creditors under section 237A.

(3) Notice of the meeting referred to in subsection (1) must—

(a) be accompanied by—

(i) a copy of the disclosure statement made under section 262C by each person who is proposed to be appointed, or nominated for appointment, as the provisional liquidator or liquidator; and

(ii) if the meeting is summoned under section 237A and the liquidator is required to make a disclosure statement under section 237A(1B), a copy of the disclosure statement made under section 237A(1B); and

(b) state that a member, director, creditor or contributory (as the case requires) who wishes to propose a person (other than being a person mentioned in paragraph (a)) for appointment, or for nomination for appointment, as the provisional liquidator or liquidator must, before the meeting, send to the convenor a

disclosure statement made by that other person under section 262C.

(4) The disclosure statements mentioned in subsection (3)(a) and all other disclosure statements received before the meeting must be tabled at the meeting.

(5) A convenor who contravenes subsection (1) commits an offence and is liable on conviction to a fine.

(6) In this section—

convenor (召集人) means any person who summons a meeting of—

(a) the company;

(b) the directors of the company;

(c) the creditors of the company; or

(d) the contributories of the company.

262F. Updating disclosure statement

(1) This section applies to a provisional liquidator or liquidator who has made a disclosure statement under section 262C(2) or 237A(1B).

(2) If a provisional liquidator or liquidator of a company becomes aware of—

(a) a relationship referred to in section 262D(2) that has not been disclosed in the subsisting disclosure statement made by the provisional liquidator or liquidator in respect of his or her office of provisional liquidator or liquidator of the company;

(b) a change in any of the facts or relationships confirmed or disclosed in the subsisting disclosure statement; or

(c) an error in the subsisting disclosure statement,

the provisional liquidator or liquidator must, within 14 days from the day when he or she becomes aware of the relationship, change or error, make a supplementary statement that complies with subsection (3) and take the steps as required under subsection (4), (5) or (6).

(3) The supplementary statement must provide details of the relationship, change or error referred to in subsection (2).

(4) In the case of a provisional liquidator appointed under section 193, and in the case of such a provisional liquidator who continues to act under section 194(1)(aa), the provisional liquidator must—

(a) submit the subsisting disclosure statement and the supplementary statement to the court; and

(b) apply to the court for directions.

(5) In the case of a provisional liquidator appointed under section 228A, the provisional liquidator must send a copy of the subsisting disclosure statement and the supplementary statement to each director of the company.

(6) In the case of a liquidator, the liquidator must send a copy of the subsisting disclosure statement and the supplementary statement to each creditor of the company.

(7) A provisional liquidator or liquidator who contravenes subsection (2) commits an offence and is liable on conviction to a fine.

(8) In this section—

subsisting disclosure statement (存續披露陳述書) means a disclosure statement made under section 262C(2) or 237A(1B) and includes any supplementary statement that may have been made under this section in respect of the disclosure statement.

262G. Validity of acts of provisional liquidator and liquidator

(1) The acts of a person acting as a provisional liquidator or liquidator are valid even if it is afterwards discovered that—

(a) there was a defect in the appointment or nomination for appointment of the person as a provisional liquidator or liquidator;

(b) the person was not qualified to hold office as a provisional liquidator or liquidator or was disqualified from holding office as a provisional liquidator or liquidator; or

(c) the person had ceased to be a provisional liquidator or liquidator.

(2) Subsection (1) applies even if the appointment of the person as a provisional liquidator or liquidator is void under section 228A(8A) or 262A(3).".

86. Headings before section 263 substituted

Headings before section 263—

Repeal the headings

Substitute

"**Division 5—Provisions Applicable to Every Mode of Winding Up**

Subdivision 1—Proof and Ranking of Claims".

87. Heading before section 266 substituted

Heading before section 266—

Repeal the heading

Substitute

"**Subdivision 2—Effect of Winding Up on Antecedent and Other Transactions**".

88. Sections 265A to 265E added

Before section 266—

Add

"**265A. Interpretation of Subdivision 2**

(1) For the purposes of this Subdivision, the question of whether a person is an associate of another person is to be determined in accordance with sections 265B and 265C.

(2) In sections 265B and 265C, a provision that a person is an associate of another person means that they are associates of each other.

(3) For the purposes of this Subdivision, a person is connected with a company if that person is—

(a) an associate of a director or shadow director of the company; or

(b) an associate of the company.

(4) For the purposes of this Subdivision, a company goes into liquidation when—

(a) the company passes a resolution for voluntary winding up;

(b) a winding-up statement is delivered to the Registrar for registration under section 228A for the company; or

(c) (if the company has not gone into liquidation because of paragraph (a) or (b)) the court makes a winding-up order in respect of the company.

(5) A note located in the text of this Subdivision is provided for information only and has no legislative effect.

265B. Meaning of *associate*

(1) A person is an associate of another person if that person is—

(a) a spouse or cohabitant of that other person;

(b) a relative of that other person, or of that spouse or cohabitant; or

(c) a spouse or cohabitant of that relative.

(2) A person is an associate of another person if that person is in partnership with—

(a) that other person; or

(b) a spouse, cohabitant or relative of that other person.

(3) A person in the capacity as trustee of a trust is an associate of another person if—

(a) the beneficiaries of the trust include that other person or an associate of that other person; or

(b) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person.

(4) In this section—

(a) a reference to a spouse includes a former spouse and a reputed spouse; and

(b) a reference to a cohabitant includes a former cohabitant.

(5) For the purposes of this section—

(a) a person is a cohabitant of another person if that person and that other person (whether they are of the same sex or opposite sex) live together as a couple in an intimate relationship; and

(b) a person is a relative of another person if that person is a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant of that other person.

(6) For the purposes of subsection (5)(b)—

(a) a relationship of the half blood is treated as a relationship of the whole blood;

(b) a stepchild or adopted child of a person is treated as that person's child; and

(c) a child born out of wedlock is treated as the legitimate child of that child's mother and reputed father.

265C. Meaning of *associate*: further provisions

(1) A person is an associate of another person if that person—

(a) employs that other person; or

(b) is employed by that other person.

(2) A person is an associate of a company if that person is a director, shadow director or other officer of the company.

(3) A company is an associate of another company if—

(a) the same person has control of both;

(b) a person has control of one and—

(i) persons who are associates of that person; or

(ii) that person and persons who are associates of that person,

have control of the other; or

(c) a group of 2 or more persons has control of each company, and both groups—

(i) consist of the same persons; or

(ii) would consist of the same persons if (in one or more cases) a member of either group were replaced by a person who is an associate of that member.

(4) A company is an associate of another person if—

(a) that person has control of the company; or

(b) that person and persons who are associates of that person together have control of the company.

(5) For the purposes of this section—

(a) a person has control of a company if—

(i) any or all of the directors of the company, or of another company which has control of it, are accustomed to act in accordance with that person's directions or instructions; or

(ii) that person is entitled to exercise, or control the exercise of, more than 30% of the voting power at any general meeting of the company or of another company which has control of it; and

(b) if 2 or more persons together satisfy either subparagraph (i) or (ii) of paragraph (a), they have control of the company.

(6) For the purposes of this section, ***company*** (公司) includes a body corporate (whether incorporated in Hong Kong or elsewhere), and references to directors, shadow directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.

265D. Transactions at an undervalue voidable in certain circumstances

(1) This section applies in relation to a company if the company goes into liquidation.

(2) If the company has at a relevant time (within the meaning of section 266B) entered into a transaction with a person at an undervalue, the liquidator may apply to the court for an order under subsection (3).

(3) Subject to section 266C, on an application under subsection (2), 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.

(4) The court must not make an order under subsection (3) if it is satisfied that—

(a) the company entered into the transaction in good faith and for the purpose of carrying on its business; and

(b) at the time the company did so, there were reasonable grounds for believing that the transaction would benefit the company.

265E. Meaning of *transaction at an undervalue*

A company enters into a transaction with a person at an undervalue if—

(a) the company makes a gift to that person, or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration; or

(b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.".

89. Sections 266, 266A and 266B substituted

Sections 266, 266A and 266B—

Repeal the sections

Substitute

"**266. Unfair preferences voidable in certain circumstances**

(1) This section applies in relation to a company if the company goes into liquidation.

(2) If the company has at a relevant time (within the meaning of section 266B) given an unfair preference to a person, the liquidator may apply to the court for an order under subsection (3).

(3) Subject to section 266C, on an application under subsection (2), 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 given that unfair preference.

(4) The court must not make an order under subsection (3) unless the company was influenced, in deciding to give that unfair preference, by a desire to produce in relation to that person the effect mentioned in section 266A(1)(b).

(5) A company which has given an unfair preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the unfair preference was given is presumed, unless the contrary is shown, to have been influenced, in deciding to give it, by the desire mentioned in subsection (4).

266A. Meaning of *unfair preference*

(1) A company gives an unfair preference to a person if—

(a) that person is—

(i) one of the company's creditors; or

(ii) a surety or guarantor for any of the company's debts or other liabilities; and

(b) the company does anything or suffers anything to be done which has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done.

(2) For the purposes of subsection (1)(b), a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(3) The fact that something has been done pursuant to the order of any court does not, without more, prevent the doing or suffering of that thing from constituting the giving of an unfair preference.

266B. ***Relevant time*** **under sections 265D and 266**

(1) Subject to subsections (2) and (3), the time at which a company enters into a transaction at an undervalue or gives an unfair preference is a relevant time for the purposes of sections 265D(2) and 266(2) if the transaction is entered into, or the unfair preference given—

(a) for a transaction at an undervalue—at a time in the period of 5 years ending with the day on which the winding up of the company commences;

(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; 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.

Note—

1. For the time at which a winding up by the court commences, see section 184.

2. For the time at which a voluntary winding up commences, see sections 209B(a)(i), 228A(5)(a) and 230.

(2) The time mentioned in subsection (1)(a), (b) or (c) is not a relevant time for the purposes of sections 265D(2) and 266(2) unless either of the following conditions is satisfied—

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

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

(3) The conditions under subsection (2)(a) and (b) are presumed to be satisfied, unless the contrary is shown, in relation to a transaction at an undervalue which is entered into by a company with a person connected with the company (otherwise than by reason only of being its employee).".

90. Sections 266C and 266D added

After section 266B—

Add

"**266C. Orders under sections 265D and 266**

(1) Without limiting sections 265D(3) and 266(3), an order under either of those sections with respect to a transaction at an undervalue entered into by a company, or an unfair preference given by a company, may do one or more of the following—

(a) require any property transferred as part of the transaction, or in connection with the giving of the unfair preference, to be vested in the company;

(b) require any property to be vested in the company if it represents in any person's hands the application of—

(i) the proceeds of sale of property so transferred; or

(ii) money so transferred;

(c) release or discharge (in whole or in part) any security given by the company;

(d) 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;

(e) provide for a surety or guarantor whose obligations to a person were released or discharged (in whole or in part) under the transaction, or by the giving of the unfair preference, to be under any new or revived

obligations to that person as the court thinks appropriate;

(f) provide—

(i) for security to be provided for the discharge of any obligation imposed by or arising under the order;

(ii) for such an obligation to be charged on any property; and

(iii) for the security or charge to have the same priority as a security or charge released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference;

(g) provide for the extent to which a person—

(i) whose property is vested by the order in the company; or

(ii) on whom obligations are imposed by the order,

is to be able to prove in the winding up of the company for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under the transaction or by the giving of the unfair preference.

(2) An order under section 265D(3) or 266(3) may affect the property of, or impose an obligation on, any person whether or not that person is the person with whom the company entered into the transaction or, as the case may be, the person to whom the unfair preference was given.

(3) Despite subsection (2)—

(a) the order must not prejudice—

(i) any interest in property which was acquired from a person other than the company and was acquired in good faith and for value; or

(ii) any interest deriving from such an interest; and

(b) the order must not require a person who received a benefit from the transaction or unfair preference in good faith and for value to pay a sum to the liquidator, except where that person was a party to the transaction or the payment is to be in respect of an unfair preference given to that person at a time when that person was a creditor of the company.

(4) If a person (***third party***) has acquired an interest in property from a person other than the company, or has received a benefit from the transaction or unfair preference, then unless the contrary is shown, it is presumed for the purposes of subsection (3)(a) and (b) that the interest was acquired or the benefit was received otherwise than in good faith if, at the time of the acquisition or receipt—

(a) the third party had notice of—

(i) the relevant circumstances; and

(ii) the relevant proceedings; or

(b) the third party—

(i) was connected with the company; or

(ii) was connected with, or was an associate of, the person with whom the company entered into the transaction or to whom the company gave the unfair preference.

(5) For the purposes of subsection (4)(a)(i), the relevant circumstances are—

(a) for a transaction at an undervalue—the fact that the company entered into the transaction at an undervalue; or

(b) for an unfair preference—the circumstances which amounted to the giving of the unfair preference by the company.

(6) For the purposes of subsection (4)(a)(ii), a third party had notice of the relevant proceedings if—

(a) in the case of the company going into liquidation on the making of a winding-up order on a petition—that party had notice of the fact that—

(i) the petition had been presented; or

(ii) the company had gone into liquidation;

(b) in the case of the company going into liquidation on the delivery of a winding-up statement to the Registrar under section 228A—that party had notice of the fact that—

(i) a resolution had been passed under section 228A(1)(a) in respect of the company; or

(ii) the company had gone into liquidation; or

(c) in any other case—that party had notice of the fact that the company had gone into liquidation.

266D. Application of sections 265D to 266C

Sections 265D, 265E, 266, 266A, 266B and 266C apply without limiting the availability of any other remedy, even in relation to a transaction which the company had no

power to enter into, or an unfair preference which the company had no power to give.".

91. Section 267 substituted

Section 267—

Repeal the section

Substitute

"**267. Effect of floating charge**

(1) This section applies in relation to a company if the company goes into liquidation.

(2) If the company creates a floating charge on its undertaking or property at a relevant time (within the meaning of section 267A), the charge is invalid except to the extent of the amount specified in subsection (3).

(3) The amount is the aggregate of—

(a) the value of so much of the consideration for the creation of the charge that consists of—

(i) money paid to the company at the same time as, or after, the creation of the charge;

(ii) money paid at the direction of the company at the same time as, or after, the creation of the charge; or

(iii) property or services supplied to the company at the same time as, or after, the creation of the charge; and

(b) the amount of any interest that is payable on the amount mentioned in paragraph (a)(i), (ii) or (iii) pursuant to the charge or consideration agreement, at—

(i) the rate specified in the charge or consideration agreement; or

(ii) the rate of 12% per annum,

whichever is the lesser.

(4) For the purposes of subsection (3)(a)(iii), the value of any property or services supplied as consideration for a floating charge is the amount in money which, at the time they were supplied, could reasonably have been expected to be obtained—

(a) for supplying the property or services in the ordinary course of business; and

(b) on the same terms (apart from the consideration) as those on which they were supplied to the company.

(5) In this section—

consideration agreement (代價協議)—

(a) in relation to the value mentioned in subsection (3)(a)(i), means the agreement pursuant to which the money was paid to the company;

(b) in relation to the value mentioned in subsection (3)(a)(ii), means the agreement pursuant to which the money was paid at the direction of the company; or

(c) in relation to the value mentioned in subsection (3)(a)(iii), means the agreement pursuant to which the property or services were supplied to the company;

floating charge (浮動押記) means a charge which, when created, was a floating charge.".

92. Section 267A added

After section 267—

Add

"**267A. *Relevant time* under section 267**

(1) For a floating charge created in favour of a person who is connected with the company, the time at which the charge is created is a relevant time for the purposes of section 267(2) if it is created at a time in the period of 2 years ending with the day on which the winding up of the company commences.

(2) For a floating charge created in favour of any person other than a person connected with the company, the time at which the charge is created is a relevant time for the purposes of section 267(2) if—

(a) it is created at a time in the period of 12 months ending with the day on which the winding up of the company commences; and

(b) the company—

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

(ii) becomes unable to pay its debts (within the meaning of section 178) in consequence of the transaction under which the charge is created.

Note—

1. For the time at which a winding up by the court commences, see section 184.

2. For the time at which a voluntary winding up commences, see sections 209B(a)(i), 228A(5)(a) and 230.".

93. Heading before section 271 substituted

Heading before section 271—

Repeal the heading

Substitute

"**Subdivision 3—Offences Antecedent to or in Course of Winding Up**".

94. Section 274 amended (liability where proper accounts not kept)

(1) Section 274, heading—

Repeal

"**accounts**"

Substitute

"**records**".

(2) Section 274(1)—

Repeal

"proper books of account were not kept by the company throughout"

Substitute

"the company has not kept accounting records that comply with section 373(2) and (3) of the Companies Ordinance (Cap. 622) for any part of the shorter of".

(3) Section 274(1), English text—

Repeal

"whichever is the shorter,".

(4) Section 274(1), English text—

Repeal

"shall, unless he shows that he"

Substitute

"is, unless the officer shows that the officer".

(5) Section 274(1), English text—

Repeal

"be guilty"

Substitute

"guilty".

(6) Section 274—

Repeal subsection (2).

95. Section 276 amended (power of court to assess damages against delinquent officer, etc.)

(1) Section 276(1)—

Repeal

"person who has taken part in the formation or promotion of the company, or any past or present officer or liquidator or receiver of the company,"

Substitute

"of the persons specified in subsection (1A)".

(2) Section 276(1)—

Repeal

"or breach of duty"

Substitute

", breach of duty or breach of trust".

(3) Section 276(1)—

Repeal

"the promoter, officer, liquidator or receiver, and compel him"

Substitute

"the person, and compel the person".

(4) Section 276(1), after "retainer, misfeasance,"—

Add

"breach of duty".

(5) After section 276(1)—

Add

"(1A) The following persons are specified for subsection (1)—

(a) a person who is or has been an officer of the company;

(b) a person who is or has acted as a provisional liquidator or liquidator of the company;

(c) a person who is or has acted as a receiver or manager of the property of the company;

(d) a person, other than a person falling within paragraph (a), (b) or (c), who is or has been concerned, or is taking or has taken part, in the promotion, formation or management of the company.

(1B) If the person has acted as a liquidator of the company and has been released under section 205, the right of the Official Receiver, or of the liquidator, or of any creditor or contributory to make an application under subsection (1) in respect of the

person is only exercisable with the leave of the court.".

96. Heading before section 278 substituted

Heading before section 278—

Repeal the heading

Substitute

"**Subdivision 4—Supplement Provisions as to Winding Up**".

97. Section 278 repealed (disqualification for appointment as liquidator)

Section 278—

Repeal the section.

98. Section 278A substituted

Section 278A—

Repeal the section

Substitute

"**278A. Inducement affecting appointment etc. as provisional liquidator or liquidator**

(1) A person who gives, or agrees or offers to give, to any other person valuable consideration with a view to—

(a) securing his or her own appointment or nomination as the provisional liquidator or liquidator of a company; or

(b) securing or preventing the appointment or nomination of some person other than himself or herself as the provisional liquidator or liquidator of a company,

commits an offence and is liable on conviction to a fine.

(2) Subsection (1) does not apply—

(a) if—

(i) the person who gives, or agrees or offers to give, the valuable consideration is a practice unit;

(ii) the person who is given, or agreed or offered to be given, the valuable consideration is an employee of the practice unit; and

(iii) under an arrangement between the practice unit and the employee, the employee's remuneration is based in whole or in part on introductions obtained for the practice unit through the employee's efforts; or

(b) if the appointment or nomination of a person as the provisional liquidator or liquidator of a company is the result of—

(i) a transfer or sale of the business, or a part of the business, of a practice unit; or

(ii) a change in composition of a practice unit within the meaning of section 32I(1) of the Professional Accountants Ordinance (Cap. 50).

(3) In this section—

practice unit (執業單位) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).".

99. Section 285A added

After section 285—

Add

"**285A. Representation of corporation at meetings of creditors**

(1) A corporation that is a creditor (including a holder of debentures) of a company may, by resolution of its directors or other governing body, authorize any person that the corporation thinks fit to act as its representative at any meeting of any creditors of the company held under—

(a) this Ordinance; or

(b) any rules made under this Ordinance.

(2) A person authorized under subsection (1) is entitled to exercise the same powers on behalf of the corporation as the corporation could exercise if it were an individual creditor of the company.".

100. Heading before section 287 substituted

Heading before section 287—

Repeal the heading

Substitute

"**Subdivision 5—Supplementary Powers of Court**".

101. Sections 286A to 286E added

Before section 287—

Add

"**286A. Power to order public examination of promoters, directors, etc.**

(1) If an order has been made for the winding up of a company by the court, the court may—

(a) after consideration of a further report made under section 191(2); or

(b) on the application of the Official Receiver or the liquidator of the company,

direct by order any of the persons specified in subsection (2) to attend before the court, on a day appointed by the court, and be publicly examined as to any of the matters specified in subsection (3).

(2) The persons who may be subject to an order under subsection (1) are—

(a) a person who is or has been an officer of the company;

(b) a person who is or has acted as a provisional liquidator or liquidator of the company;

(c) a person who is or has acted as a receiver or manager of the property of the company; and

(d) a person, other than a person falling within paragraph (a), (b) or (c), who is or has been concerned, or is taking or has taken part, in the promotion, formation or management of the company.

(3) The matters specified for subsection (1) are—

(a) the promotion, formation or management of the company;

(b) the conduct of the business and affairs of the company; and

(c) the conduct or dealings of the person examined in relation to the company.

(4) The Official Receiver or liquidator who made the further report under section 191(2) or application under subsection (1)(b)—

(a) must take part in the examination; and

(b) for that purpose may, if specially authorized by the court in that behalf, employ a solicitor with or without counsel.

(5) The following persons may also take part in the examination either personally or by solicitor with or without counsel—

(a) the Official Receiver or liquidator, if not being the person who made the further report or application; and

(b) any creditor or contributory of the company.

(6) The court may put to the person examined any questions that it thinks fit.

(7) The person examined is to be examined on oath, and must answer all questions that the court may put or allow to be put to the person.

(8) The person examined may at the person's own cost employ a solicitor with or without counsel, who may—

(a) put to the person any questions that the court thinks just for the purpose of enabling the person to explain or qualify any answers given by the person; and

(b) make representations on the person's behalf.

(9) Notes of the examination must be taken down in writing, and the notes must be read over to or by, and signed by, the person examined.

(10) The notes of the examination taken down under subsection (9)—

(a) may be used in evidence against the person examined; and

(b) must be open to inspection by any creditor or contributory of the company at all reasonable times.

(11) The court may, if it thinks fit, adjourn the examination from time to time.

286B. Powers to order examination of persons concerned with company's property, etc. and provision of information, etc.

(1) At any time after the occurrence of an event specified in subsection (3) in respect of a company, the court may require by order any of the persons specified in subsection (4) to do one or more of the following—

(a) attend before the court;

(b) be examined under section 286C;

(c) submit to the court an affidavit containing either or both of the following—

(i) an account of the person's dealings with the company;

(ii) information concerning the promotion, formation, trade, dealings, affairs or property of the company;

(d) produce any books and papers in the person's custody or power relating to the company or the promotion, formation, trade, dealings, affairs or property of the company.

(2) The court may make an order under subsection (1) of its own motion or on the application of—

(a) the provisional liquidator or liquidator of the company; or

(b) in the case of a winding up by the court where a winding up order has been made, the Official Receiver as well.

(3) An event specified for subsection (1) is—

(a) the appointment of a provisional liquidator;

(b) the making of a winding-up order; or

(c) the commencement of voluntary winding up.

(4) The persons who may be subject to an order under subsection (1) are—

(a) an officer of the company;

(b) a person known or suspected to have in the person's possession any property of the company;

(c) a person supposed to be indebted to the company; and

(d) a person whom the court thinks capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(5) If a person is required to attend before the court under subsection (1)(a), but, after a reasonable sum has been tendered to the person for the person's expenses for attending before the court—

(a) the person fails to attend before the court at the time appointed; and

(b) at the time of the court's sitting, no lawful impediment to the attendance is made known to the court and allowed by it,

the court may, by warrant, cause the person to be apprehended and brought before the court.

(6) If a person claims any lien on the books or papers produced by the person in accordance with subsection (1)(d)—

(a) the production is without prejudice to that lien; and

(b) the court has jurisdiction in the winding up to determine all questions relating to that lien.

286C. Examination of persons concerned with company's property, etc.

(1) For an examination required under section 286B(1)(b), the court may examine the person on oath as to the promotion, formation, trade, dealings, affairs or property of the company by word of mouth or on written interrogatories.

(2) The person must answer all questions that the court may put or allow to be put to the person.

(3) The person may at the person's own cost employ a solicitor with or without counsel, who may—

(a) put to the person any questions that the court thinks just for the purpose of enabling the person to explain or qualify any answers given by the person; and

(b) make representations on the person's behalf.

(4) The court may cause notes of the examination to be taken down in writing and require the person examined to sign the notes.

(5) The court may, if it thinks fit, adjourn the examination from time to time.

286D. Self-incrimination in relation to direction or requirement under section 286A, 286B or 286C

(1) A person is not excused from complying with a direction or requirement imposed on the person under section 286A, 286B or 286C only on the ground that to do so might tend to incriminate the person.

(2) Despite anything in this Ordinance, if—

(a) a person is required to—

(i) answer a question under section 286A or 286C; or

(ii) submit an affidavit under section 286B; and

(b) the answer or affidavit might tend to incriminate the person,

the requirement and the question and answer, or affidavit, are not admissible in evidence against the person in criminal proceedings other than those specified in subsection (3).

(3) The proceedings are those in which the person is charged with an offence in respect of the answer or affidavit—

(a) under section 349;

(b) under Part V of the Crimes Ordinance (Cap. 200); or

(c) for perjury.

(4) To avoid doubt, a question or answer not admissible under subsection (2) includes—

(a) a record of the question or answer contained in the notes of the examination taken down under section 286A(9) or 286C(4); and

(b) in the case of an examination under section 286C, a record of the question or answer contained in any notes of the examination taken under rule 62(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

286E. Jurisdiction of Registrar

(1) Unless otherwise ordered by the court in a particular case, the Registrar may exercise and perform the powers and duties conferred or imposed on the court by sections 168IA, 286A, 286B and 286C.

(2) In exercising the jurisdiction conferred by this section, the Registrar may—

(a) refer any examination for hearing by a judge; and

(b) at any time adjourn an examination for further hearing before a judge.

(3) If an examination is referred to a judge under subsection (2)(a), the judge may hear the examination, or refer it back to the Registrar for hearing by the Registrar.

(4) If an examination is adjourned under subsection (2)(b) for further hearing before a judge, the judge may—

(a) continue the examination;

(b) at any time direct that the examination be continued before the Registrar; and

(c) make any other order or give any directions that the judge considers proper.

(5) In this Ordinance, a reference to the court includes the Registrar exercising the jurisdiction conferred by this section.

(6) Despite subsection (5), the Registrar, in exercising the jurisdiction conferred by this section, does not have power to make an order for the committal of a person for contempt of court.

(7) In this section—

Registrar (司法常務官) means any one of the following—

(a) the Registrar of the High Court;

(b) a Senior Deputy Registrar of the High Court;

(c) a Deputy Registrar of the High Court;

(d) an Assistant Registrar of the High Court appointed by the Chief Justice for the purposes of this section.".

102. Heading before section 290 substituted

Heading before section 290—

Repeal the heading

Substitute

"**Subdivision 6—Provisions as to Dissolution**".

103. Heading before section 293 substituted

Heading before section 293—

Repeal the heading

Substitute

"**Subdivision 7—Central Accounts**".

104. Heading before section 296 substituted

Heading before section 296—

Repeal the heading

Substitute

"**Subdivision 8—Rules and Fees**".

105. Part V, Division 6 added

After section 296—

Add

"Division 6—Electronic Communications by Liquidators

296A. Interpretation of Division 6

(1) In this Division—

address (地址) includes an electronic address;

applicable provision (適用條文) means a provision of this Ordinance or the Winding-up Rules that authorizes or requires a document or information to be sent or supplied by a liquidator or provisional liquidator to another person, whether the document or information is authorized or required to be sent or supplied by post or otherwise, and whether or not in writing or printed form;

Winding-up Rules (《清盤規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

(2) In this Division—

(a) a reference to sending a document includes supplying, delivering, forwarding or producing the document and, in the case of a notice, giving the document;

(b) a reference to supplying information includes sending, delivering, forwarding or producing the information; and

(c) a document or information is sent or supplied in hard copy form if it is sent or supplied—

(i) in paper form; or

(ii) in a similar form capable of being read.

296B. Application of Division 6

(1) Subject to subsection (2), this Division applies to every mode of winding up.

(2) This Division does not apply to—

(a) the serving of any document;

(b) the sending or supplying of any document or information under an order or direction of the court;

(c) the sending or supplying of the following documents or information—

(i) the notes of an examination conducted under section 286C;

(ii) a notice of intention to use the notes of a public examination under rule 59 of the Winding-up Rules;

(iii) a notice to a creditor under section 227E(1), or rule 93 or 96 of the Winding-up Rules;

(iv) oaths, affidavits, declarations or documents that are required to be certified in writing, or verified on oath or by affidavit under this Ordinance;

(v) a sanction required or authorized to be given by the liquidator or provisional liquidator under this Ordinance;

(vi) Forms 10, 31, 38C, 39, 40, 41, 42, 45, 47, 65, 67, 70, 71, 73, 79 and 90 in the Appendix to the Winding-up Rules, including documents purporting to be such Forms;

(vii) the Cash Book under rule 159 of the Winding-up Rules;

(viii) any order, summons, petition, warrant or process of any kind (including any notice issued by the court) and their office copies

that are required to be sealed under rule 11 of the Winding-up Rules; or

(d) the sending or supplying of a document or information to—

(i) the court (including the Registrar of the High Court, the bailiff of the court and any assistant bailiff);

(ii) the Financial Secretary;

(iii) the Secretary for Justice;

(iv) the Land Registry;

(v) the Official Receiver; or

(vi) the Registrar of Companies.

(3) Nothing in this Division affects the obligation of the liquidator or provisional liquidator to comply with a requirement under this Ordinance to give any notice by advertisement in the Gazette or a newspaper.

296C. Communication by liquidator by electronic means

(1) Subject to subsection (2), this section applies if a document or information is sent or supplied by electronic means by a liquidator or provisional liquidator to another person.

(2) This section does not apply if the document or information is sent or supplied by the liquidator or provisional liquidator to that other person by making it available on a website.

(3) For the purposes of an applicable provision, a document or information is sent or supplied to another person if—

(a) that other person has agreed, generally or specifically, that the liquidator or provisional liquidator may send or supply the document or information to the person by electronic means;

(b) that other person has not revoked the agreement;

(c) that other person has specified, generally or specifically, an electronic address for receiving the document or information;

(d) the document or information is sent or supplied to that other person by electronic means to the electronic address mentioned in paragraph (c);

(e) the document or information is sent or supplied in a form, and by a means, that, in the reasonable opinion of the liquidator or provisional liquidator, will enable the recipient—

(i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with a suitable corrective lens; and

(ii) to retain a copy of the document or information;

(f) the document or information is authenticated in one of the following ways—

(i) the identity of the liquidator or provisional liquidator is confirmed in a manner specified by that other person;

(ii) if the manner has not been specified, the communication contains, or is accompanied by, a statement of the

identity of the liquidator or provisional liquidator, the truth of which the other person has no reason to doubt; and

(g) the document or information contains, or is accompanied by, a statement that—

(i) the recipient may request the document or information in hard copy form; and

(ii) a postal address and an electronic address specified by the liquidator or provisional liquidator as provided in the statement may be used to request the document or information in hard copy form.

(4) For the purposes of subsection (3)(b), the person is only to be regarded as having revoked the agreement if the person has given the liquidator or provisional liquidator a notice of revocation of at least—

(a) 7 days; or

(b) the period specified for the purpose in any agreement between the liquidator or provisional liquidator and the person,

whichever is the longer.

(5) If the document or information is sent or supplied to that other person in accordance with this section, unless the contrary is proved, the document or information is to be regarded as having been received by the person at the end of the following period after it is sent or supplied—

(a) the period specified for the purpose in any agreement between the liquidator or provisional liquidator and the person; or

(b) if no period has been specified, 48 hours.

(6) In calculating the period mentioned in subsection (5)(b), any part of a day that is not a business day is to be disregarded.

296D. Communication by liquidator by means of website

(1) This section applies if a document or information is sent or supplied by a liquidator or provisional liquidator to another person by making it available on a website.

(2) For the purposes of an applicable provision, a document or information is sent or supplied to another person if—

(a) that other person has agreed, generally or specifically, that the liquidator or provisional liquidator may send or supply the document or information to the person by making it available on a website;

(b) that other person has not revoked the agreement;

(c) the document or information is sent or supplied in a form, and by a means, that, in the reasonable opinion of the liquidator or provisional liquidator, will enable the recipient—

(i) to read the document or information, or, to the extent that it consists of images, to see the document or information, with the naked eye or with a suitable corrective lens; and

(ii) to retain a copy of the document or information;

(d) that other person has provided an address for receiving the notification mentioned in paragraph (e);

(e) the liquidator or provisional liquidator has sent a notification to the address notifying that other person of—

(i) the matters specified in subsection (5);

(ii) the right of the recipient to request the document or information in hard copy form; and

(iii) the fact that a postal address and an electronic address specified by the liquidator or provisional liquidator as provided in the notification may be used to request the document or information in hard copy form; and

(f) subject to subsection (3), the liquidator or provisional liquidator has made the document or information available on a website throughout the 3 months beginning on the date on which the notification is sent to that other person in accordance with paragraph (e).

(3) If the liquidator makes available on the website a copy of a proposed written resolution mentioned in section 207E(1), the copy must be available throughout the period—

(a) beginning on the circulation date; and

(b) ending on—

(i) the date on which the resolution lapses under section 207H(1); or

(ii) the date on which the resolution is passed under section 207G(1).

(4) For the purposes of subsection (2)(b), the person is only to be regarded as having revoked the agreement if the person has given the liquidator or provisional liquidator a notice of revocation of at least—

(a) 7 days; or

(b) the period specified for the purpose in any agreement between the liquidator or provisional liquidator and the person,

whichever is the longer.

(5) The matters specified for the purposes of subsection (2)(e)(i) are—

(a) the presence of the document or information on the website;

(b) if the document or information is not available on the website on the date of the notification, the date on which it will be so available;

(c) the address of the website;

(d) the place on the website where the document or information may be accessed; and

(e) how to access the document or information.

(6) For the purposes of subsections (2)(f) and (3), a failure to make the document or information available on a website throughout the period mentioned in those subsections is to be disregarded if—

(a) the document or information is made available on the website for part of that period; and

(b) the failure is wholly attributable to circumstances that it would not be reasonable to have expected the liquidator or provisional liquidator to prevent or avoid.

(7) If the document or information is sent or supplied by a liquidator or provisional liquidator to that other person in accordance with subsection (2)—

(a) the document or information is to be regarded as having been sent or supplied on whichever is the later of the following—

(i) the date on which the document or information is first made available on the website;

(ii) the date on which a notification under subsection (2)(e) is sent; and

(b) the document or information is to be regarded as having been received by that other person at the end of the period specified in subsection (8) after whichever is the later of the following—

(i) the time when the document or information is first made available on the website;

(ii) the time when that other person receives a notification under subsection (2)(e).

(8) The period specified for the purpose of subsection (7) is—

(a) the period specified for the purpose in any agreement between the liquidator or provisional liquidator and that other person; or

(b) if no period has been specified, 48 hours.

(9) In calculating the period mentioned in subsection (8)(b), any part of a day that is not a business day is to be disregarded.

296E. Certain persons may require hard copy

(1) A person who has received a document or information by electronic means under section 296C may request the liquidator or provisional liquidator to send or supply to the person the document or information in hard copy form. The request must be made within 28 days after the date of receiving the document or information.

(2) A person who has received a notification under section 296D(2)(e) that a document or information is made available on a website, may request the liquidator or provisional liquidator to send or supply to the person the document or information in hard copy form. The request must be made within 28 days after the date of receiving the notification.

(3) The request may be sent to the postal address or electronic address of the liquidator or provisional liquidator specified in the relevant statement or notification.

(4) If a request is sent to the electronic address of the liquidator or provisional liquidator in accordance with subsection (3), the request is to be regarded as having been received by the liquidator or provisional liquidator at the end of 48 hours after it is sent, unless the contrary is proved.

(5) In calculating the period mentioned in subsection (4), any part of a day that is not a business day is to be disregarded.

(6) The liquidator or provisional liquidator must send or supply the document or information in hard copy form to the person making the request free of charge within 5 business days after the date of receiving the request.

(7) A liquidator or provisional liquidator who contravenes subsection (6) commits an offence and is liable on conviction to a fine.".

106. Section 297B added

After section 297A—

Add

"**297B. Inducement affecting appointment etc. as receiver or manager**

(1) A person who gives, or agrees or offers to give, to any other person valuable consideration with a view to—

(a) securing his or her own appointment or nomination as the receiver or manager of the property of a company; or

(b) securing or preventing the appointment or nomination of some person other than himself or herself as the receiver or manager of the property of a company,

commits an offence and is liable on conviction to a fine.

(2) Subsection (1) does not apply—

(a) if—

(i) the person who gives, or agrees or offers to give, the valuable consideration is a practice unit;

(ii) the person who is given, or agreed or offered to be given, the valuable consideration is an employee of the practice unit; and

(iii) under an arrangement between the practice unit and the employee, the employee's remuneration is based in whole or in part on introductions obtained for the practice unit through the employee's efforts; or

(b) if the appointment or nomination of a person as the receiver or manager of the property of a company is the result of—

(i) a transfer or sale of the business, or a part of the business, of a practice unit; or

(ii) a change in composition of a practice unit within the meaning of section 32I(1) of the Professional Accountants Ordinance (Cap. 50).

(3) In this section—

practice unit (執業單位) has the meaning given by section 2(1) of the Professional Accountants Ordinance (Cap. 50).".

107. Section 300A amended (provisions as to information where receiver or manager is appointed)

Section 300A(1)(b)—

Repeal

"made out"

Substitute

"made".

108. Section 300B amended (special provisions as to statement submitted to receiver)

(1) Section 300B(2), before "submitted"—

Add

"made and".

(2) Section 300B(2), English text, after "may require to"—

Add

"make,".

109. Section 327 amended (winding up of unregistered companies)

(1) Section 327(4)—

Repeal paragraph (a)

Substitute

"(a) if—

(i) a creditor, by assignment or otherwise, to whom the company is indebted in a sum then due that equals or exceeds the specified amount, has served on the company a written demand in the

prescribed form requiring the company to pay the sum so due—

(A) by leaving the demand at the principal place of business of the company;

(B) by delivering the demand to any officer of the company; or

(C) by otherwise serving the demand in any manner that the court may approve or direct; and

(ii) the company has for 3 weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;".

(2) Section 327(4)(c)—

Repeal the semicolon

Substitute

"; or".

110. Headings before section 349 substituted

Headings before section 349—

Repeal the headings

Substitute

"**Part XIII**

Miscellaneous

Division 1—Miscellaneous Offences".

111. Heading before section 350B substituted

Heading before section 350B—

Repeal the heading

Substitute

"**Division 2—Injunctions**".

112. Heading before section 351 substituted

Heading before section 351—

Repeal the heading

Substitute

"**Division 3—General Provisions as to Offences**".

113. Heading after section 355 substituted

Heading after section 355—

Repeal the heading

Substitute

"**Division 4—Legal Proceedings**".

114. Heading before section 359A substituted

Heading before section 359A—

Repeal the heading

Substitute

"**Division 5—General Provisions as to Chief Executive in Council**".

115. Section 360G amended (certain sections to apply)

Section 360G—

Repeal

"to 175, 190, 211, 221, 263 to 277, 281 to 283 and 285"

Substitute

", 170A, 171, 172, 173, 174, 190, 190A, 211, 263, 264, 264A, 264B, 265, 265A, 265B, 265C, 265D, 265E, 266, 266A, 266B, 266C, 266D, 267, 267A, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 281, 282, 283, 285, 286B, 286C and 286D".

116. Twelfth Schedule amended (punishment of offences under this Ordinance)

(1) Twelfth Schedule—

Repeal

"[s. 351]"

Substitute

"[s. 351 & Sch. 26]".

(2) Twelfth Schedule, entry relating to section 228A(4), under heading "General nature of offence", after "the Ordinance"—

Add

", or for certifying that a resolution has been passed, a meeting of the company has been summoned and a provisional liquidator has been appointed".

(3) Twelfth Schedule—

Repeal the entry relating to section 228A(6) (relating to subsection (5)(b)).

(4) Twelfth Schedule, entry relating to section 228A(6) (relating to subsection (5)(c)), under heading "Section creating offence"—

Repeal

"(relating to subsection (5)(c))".

(5) Twelfth Schedule, entry relating to section 228A(6), under heading "General nature of offence"—

Repeal

"meetings of the company or creditors to be summoned within"

Substitute

"meeting of the creditors to be summoned for a date not later than".

(6) Twelfth Schedule, after entry relating to section 228A(6)—

Add

"228A(8B)	Person acting as provisional liquidator without having consented to the appointment, or not being a solicitor or certified public accountant	Summary	$150,000	—

228A(9A)	Director failing to give notice in the Gazette of the commencement of winding up and appointment of a provisional liquidator	Summary	level 3	$300".

(7) Twelfth Schedule, after entry relating to section 228A(13) (relating to subsection (12))—

Add

"228B(5)	Provisional liquidator exercising a power without the sanction of the court	Summary	level 5	—
228B(7)	Provisional liquidator failing to attend a meeting of the creditors or report on the exercise of powers	Summary	level 5	—".

(8) Twelfth Schedule, entry relating to section 237A(3), under heading "Section creating offence", after "237A(3)"—

Add

"(relating to subsection (1A))".

(9) Twelfth Schedule, entry relating to section 237A(3) (relating to subsection (1A)), under heading "General nature of offence"—

Repeal

everything after "Liquidator"

Substitute

", on forming the opinion that a company in voluntary winding up will not be able to pay its debts in full within the period stated in the certificate of solvency, failing to summon meeting of creditors, or send notice of the meeting to the creditors, or cause notice of the meeting to be advertised".

(10) Twelfth Schedule, after entry relating to section 237A(3) (relating to subsection (1A))—

Add

"237A(3) (relating to subsection (1B))	Liquidator failing to make a disclosure statement if not disqualified under section 262B(3)	Summary	level 3	—
237A(3) (relating to subsection (1C))	Liquidator failing to inform creditors that he or she would be disqualified under section 262B(3), etc.	Summary	level 3	—
237A(3) (relating to subsection (1D))	Liquidator failing to provide creditors with information concerning the company's affairs	Summary	level 3	—
237A(3) (relating to subsection (1E))	Liquidator failing to inform creditors of the liquidator's duty to provide information in notice of meeting of creditors	Summary	level 3	—

237A(3) (relating to subsection (1F))	Liquidator failing to prepare full statement of the position of the company's affairs or lay that statement before the meeting of creditors	Summary	level 3	—
237A(3) (relating to subsection (1H))	Liquidator failing to attend or preside at meeting of creditors	Summary	level 3	—".

(11) Twelfth Schedule, after entry relating to section 241(6)—

Add

"243A(6)	Liquidator exercising a power without the sanction of the court	Summary	level 5	—
243A(7) (relating to subsection (3))	Liquidator failing to attend meeting of creditors or report on the exercise of powers	Summary	level 5	—
243A(7) (relating to subsection (4))	Liquidator failing to apply for court's directions when the company fails to cause meeting of creditors to be summoned or notices of the meeting to be sent to creditors	Summary	level 5	—".

(12) Twelfth Schedule, after entry relating to section 248(6)—

Add

"250A(4)	Director exercising a power without the sanction of the court	Summary	level 5	—".

(13) Twelfth Schedule, after entry relating to section 253(4) (relating to subsection (3))—

Add

"262A(4)	Person acting as provisional liquidator or liquidator without meeting the conditions specified in section 262A(2)	Summary	$150,000	—
262D(4)	Person omitting to disclose a relationship that is required to be disclosed	Summary	level 3	—
262E(5)	Convenor failing to ensure that notices of meeting comply with certain requirements or disclosure statements are tabled	Summary	level 3	—
262F(7)	Provisional liquidator or liquidator failing to update disclosure statement or give notice, etc. of the update	Summary	level 3	—".

(14) Twelfth Schedule, entry relating to section 274(1), under heading "General nature of offence"—

Repeal

"books for the 2 years"

Substitute

"proper records for a specified period".

(15) Twelfth Schedule—

Repeal the entry relating to section 278.

(16) Twelfth Schedule, entry relating to section 278A, under heading "Section creating offence"—

Repeal

"278A"

Substitute

"278A(1)".

(17) Twelfth Schedule, entry relating to section 278A(1), under heading "General nature of offence"—

Repeal

everything after "Person"

Substitute

"inducing appointment etc. of provisional liquidator or liquidator".

(18) Twelfth Schedule, after entry relating to section 290(2)—

Add

"296E(7)	Liquidator or provisional liquidator failing to send or supply a free copy of document or information given by electronic means within 5 business days after receipt of the request	Summary	level 3	—".

(19) Twelfth Schedule, after entry relating to section 297A—

Add

"297B(1)	Person inducing appointment etc. of receiver or manager of the property of a company	Summary	$150,000	—".

117. Fifteenth Schedule amended (matters for determining unfitness of directors)

(1) Fifteenth Schedule—

Repeal

"[s. 168K]"

Substitute

"[s. 168K & Sch. 26]".

(2) Fifteenth Schedule, Part II, paragraph 3—

Repeal

"preference, being a transaction or preference liable to be set aside under section 182 or 266"

Substitute

"unfair preference, being a transaction or unfair preference liable to be set aside under section 182, 265D or 266".

118. Schedule 25 added

At the end of the Ordinance—

Add

"Schedule 25

[ss. 199, 199A, 199B & 251 & Sch. 26]

Powers of liquidator in winding up

Part 1

1. Pay a class of creditors in full.

2. Make a compromise or arrangement with—
   (a) creditors or persons claiming to be creditors; or
   (b) persons having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or for which the company may be rendered liable.

3. To—
   (a) compromise, on such terms as are agreed—
      (i) calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and claims (present or future, certain or contingent, ascertained or sounding only

in damages) subsisting or supposed to subsist between the company and—

(A) a contributory;

(B) an alleged contributory; or

(C) any other debtor or person apprehending liability to the company; and

(ii) questions in any way relating to or affecting the assets or the winding up of the company; and

(b) take any security for the discharge of any call, debt, liability or claim, and give a complete discharge in respect of it.

Part 2

1. Bring or defend any action or other legal proceedings in the name and on behalf of the company.

2. Carry on the business of the company, so far as may be necessary for its beneficial winding up.

Part 3

1. Sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole of the property and things in action to any person or company, or to sell them in parcels.

2. Do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use, when necessary, the company's seal.

3. Prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory, for any balance against the contributory's estate, and receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent, and rateably with the other separate creditors.

4. Draw, accept, make, and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business.

5. Raise on the security of the assets of the company any money requisite.

6. Take out in the official name of the liquidator letters of administration to any deceased contributory, and do in the official name of the liquidator any other act necessary for obtaining payment of any money due from a contributory or the estate of the contributory that cannot be conveniently done in the name of the company. In all such cases the money due is deemed, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, to be due to the liquidator.

7. Appoint an agent to do any business that the liquidator is unable to do in person.

8. Employ a solicitor to assist the liquidator in performing the liquidator's duties.

9. Do all other things as may be necessary for winding up the affairs of the company and distributing its assets.".

Part 3

Amendment to Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C)

119. Schedule 2 amended

Schedule 2, item 3—

Repeal

"by a liquidator"

Substitute

"under section 205 of the Ordinance".

Part 4

Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)

120. Rule 2 amended (interpretation of terms)

(1) Rule 2—

Renumber the rule as rule 2(1).

(2) Rule 2(1), Chinese text, definition of ***蓋章***—

Repeal the full stop

Substitute a semicolon.

(3) Rule 2(1)—

Add in alphabetical order

"***affidavit of concurrence*** (贊同誓章) means an affidavit of concurrence required to be made under section 190(2A) of the Ordinance;

statement of affairs (資產負債狀況說明書)—

(a) means a statement as to the affairs of a company required to be made under section 190(1) of the Ordinance; and

(b) includes the affidavit verifying the statement as required by that section;".

(4) After rule 2(1)—

Add

"(2) In these rules, where there is a reference to a Form followed by a number or a combination of a number and a letter, and not in conjunction with the title or short title of any Ordinance, it is to be construed as the Form that is—

(a) followed by that number or that combination of the number and letter; and

(b) in the Appendix.".

121. Rule 3 amended (use of forms in Appendix)

(1) Rule 3—

Renumber the rule as rule 3(1).

(2) Rule 3(1)—

Repeal

"The forms"

Substitute

"Subject to paragraph (2), the forms".

(3) After rule 3(1)—

Add

"(2) If any notice, document or information referred to in rule 20A is required to be given, sent or supplied in a form in the Appendix, the form may be used with any necessary variations so that it complies with that rule.".

122. Cross-heading and rules 3A, 3B and 3C added

After rule 3—

Add

"STATUTORY DEMAND

3A. Interpretation of rules 3B and 3C

In rules 3B and 3C—

statutory demand (法定要求償債書) means the written demand referred to in section 178(1)(a) or 327(4)(a) of the Ordinance.

3B. Form and content of statutory demand

(1) A statutory demand—

(a) must be in Form 1A;

(b) must state—

(i) the amount of the debt; and

(ii) the consideration for the debt, or if there is no such consideration, the way in which the debt arises;

(c) must be dated; and

(d) must be signed by—

(i) the creditor; or

(ii) a person authorized by the creditor.

(2) If a statutory demand is signed by a person authorized by the creditor, the signature must be accompanied by a statement that the person is authorized to make the demand on the creditor's behalf.

(3) Subject to paragraph (4), if the amount of the debt claimed in a statutory demand includes—

(a) any charge by way of interest not previously notified to the company as a liability of the company; or

(b) any other charge accruing from time to time,

the charge (whether expressed in an amount or by reference to a rate) must be separately identified, and the grounds on which the charge is claimed must be stated, in the demand.

(4) The amount of the debt claimed must be limited to that which has accrued due as at the date of the demand.

3C. Information to be given in statutory demand

A statutory demand must include the following content—

(a) the purpose of the demand;

(b) the methods of compliance with the demand;

(c) a statement to the effect that—

(i) if the company does not comply with the demand within 3 weeks after the service of the demand on the company, a petition for the winding up of the company may be presented to the court; and

(ii) if the company disputes the demand in whole or in part, it may institute any legal proceedings that it thinks fit to respond to the demand, including applying to the court for an injunction to restrain the creditor from presenting or advertising a petition for the winding up of the company;

(d) the name of at least one individual whom the company may, if it wishes, contact with a view to securing or compounding for the debt to the satisfaction of the creditor; and

(e) the address and telephone number (if any) of any such individual.".

123. Rule 5 amended (matters in court to be heard in court and chambers)

(1) Rule 5(1), English text, after "section 180A"—

Add

"of the Ordinance".

(2) Rule 5—

Repeal paragraph (2)

Substitute

"(2) Where a person is required under section 286B of the Ordinance to attend before the court and be examined under section 286C of the Ordinance, the examination is to be held in court or in chambers as the court directs.".

124. Rule 20A added

After rule 20—

Add

"**20A. Person giving notice, etc. to provide contact details**

(1) If a person gives a notice or sends a document in accordance with a provision of Part V or X of the Ordinance or of these rules, the notice or document must, as far as practicable—

(a) clearly state the name and address of the person; or

(b) if the person is represented by a solicitor or agent, clearly state the name of the person and the name and address of the solicitor or agent.

(2) If a person supplies any information in accordance with a provision of Part V or X of the Ordinance or of these rules—

(a) the name and address of the person must, as far as practicable, be provided together with the information; or

(b) if the person is represented by a solicitor or agent, the name of the person and the name and address of the solicitor or agent must, as far as practicable, be provided together with the information.

(3) The notice, document or information may, as far as practicable, contain—

(a) other contact information relating to the person that the person considers appropriate; or

(b) other contact information relating to the solicitor or agent that the solicitor or agent respectively considers appropriate.

(4) Paragraphs (1), (2) and (3) do not apply if it is provided otherwise—

(a) in any other provision of this Ordinance or a provision under any other Ordinance; or

(b) in a form specified or prescribed under this Ordinance or any other Ordinance.".

125. Rule 22 amended (form of petition)

Rule 22—

Repeal

"in the Appendix".

126. Rule 28 amended (appointment of provisional liquidator)

Rule 28(4), after "statement of affairs"—

Add

"or an affidavit of concurrence".

127. Rule 35 amended (drawing up and contents of winding-up order)

Rule 35—

Repeal paragraph (2)

Substitute

"(2) An order to wind up a company, or for the appointment of a provisional liquidator before the making of a winding-up order, must contain at its foot a notice stating that, as the Official Receiver, provisional liquidator or liquidator (***interviewer***) may require, it is the duty of—

(a) a person who is, on the date of the order to wind up or appointment, a director of the company;

(b) a person who is on that date a company secretary of the company; and

(c) those persons who are, as the provisional liquidator or liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement,

to attend on the interviewer according to the day, time and place the interviewer appoints and to give the interviewer all information that the interviewer requires.".

128. Cross-heading before rule 39 amended (statement of affairs)

Cross-heading before rule 39, after "AFFAIRS"—

Add

"AND AFFIDAVIT OF CONCURRENCE".

129. Rule 39 substituted

Rule 39—

Repeal the rule

Substitute

"**39. Preparation of statement of affairs and affidavit of concurrence**

(1) A statement of affairs must be in Form 23.

(2) A statement of affairs must be made and submitted in duplicate, one copy of which must be verified by affidavit.

(3) If the provisional liquidator or liquidator has, under section 190(2) of the Ordinance, required a person to make, submit and verify a statement of affairs, the provisional liquidator or liquidator must furnish the

person with forms and instructions for the preparation of the statement.

(4) An affidavit of concurrence must be submitted together with a copy of that affidavit.

(5) The provisional liquidator or liquidator must cause to be filed with the Registrar the following documents submitted to the provisional liquidator or liquidator—

(a) the verified copy of a statement of affairs; and

(b) the original of an affidavit of concurrence.

(6) The Official Receiver, provisional liquidator or liquidator may from time to time hold interviews with any of the following persons for the purpose of investigating the company's affairs—

(a) a person who is, on the relevant date within the meaning of section 190(8) of the Ordinance, a director of the company;

(b) a person who is on that date a company secretary of the company;

(c) those persons who are, as the provisional liquidator or liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement.

(7) If a person is required by the Official Receiver, provisional liquidator or liquidator (***interviewer***) to attend interviews under paragraph (6), the person must attend on the interviewer according to the day, time and place the interviewer appoints and give the interviewer all information that the interviewer requires.".

130. Rule 40 substituted

Rule 40—

Repeal the rule

Substitute

"**40. Extension of time for submitting statement of affairs or affidavit of concurrence**

If a person requires an extension of time for submitting a statement of affairs or an affidavit of concurrence, the person may apply to the provisional liquidator or liquidator, who may, if thought fit, extend the time by written notice.".

131. Rule 41 amended (information subsequent to statement of affairs)

(1) Rule 41, heading, after "**affairs**"—

Add

"**or affidavit of concurrence**".

(2) Rule 41—

Repeal

"the statement of affairs of a company"

Substitute

"a statement of affairs or an affidavit of concurrence".

(3) Rule 41—

Repeal

"it shall be the duty of each person who has made or concurred in making it"

Substitute

", it is the duty of each person who has made the statement or affidavit".

(4) Rule 41—

Repeal

everything after "answer all"

Substitute

"questions put to the person, and give all further information required of the person, by the Official Receiver, provisional liquidator or liquidator in relation to the statement or affidavit.".

132. Rule 42 amended (default)

Rule 42—

Repeal the comma.

133. Rule 43 repealed (expenses of statement of affairs)

Rule 43—

Repeal the rule.

134. Rule 44 amended (dispensing with statement of affairs)

(1) Rule 44, heading, after "**affairs**"—

Add

"**or affidavit of concurrence**".

(2) Rule 44(2), after "statement of affairs"—

Add

"or an affidavit of concurrence".

135. Cross-heading before rule 45 amended (appointment of liquidator in a winding up by the court)

Cross-heading before rule 45, after "LIQUIDATOR"—

Add

"AND COMMITTEE OF INSPECTION".

136. Rule 45 amended (appointment of liquidator on report of meetings of creditors and contributories)

(1) Rule 45, heading, after "**liquidator**"—

Add

"**and committee of inspection**".

(2) Rule 45(2)—

Repeal

"Upon"

Substitute

"Subject to section 206 of the Ordinance, upon".

(3) After rule 45(7)—

Add

"(8) In paragraphs (4A), (5), (6) and (7)—

liquidator (清盤人) does not include a provisional liquidator holding office by virtue of section 194(1)(a) or (aa) or (1A).".

137. Rule 51A added

After rule 51—

Add

"**51A. Evidence in support of application for public examination**

(1) For the purposes of an application for an order of the court under section 286A(1) of the Ordinance (***public examination order***)—

(a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a public examination order is needed; and

(b) a report under subparagraph (a) is confidential.

(2) Despite paragraph (1)(b)—

(a) a person who is the subject of a public examination order being applied for may apply to the court to see all or part of the report; and

(b) if the person satisfies the court that it would be unfair to the person not to see it, the court may allow the person to see all or part of the report subject to any condition that it thinks fit.".

138. Rule 52 amended (order for public examination)

(1) Rule 52—

Repeal

"222"

Substitute

"286A(1)".

(2) Rule 52—

Repeal

everything after "examination"

Substitute

"must be in Form 29.".

139. Rule 54 amended (appointment of time and place for public examination)

(1) Rule 54, heading, before "**time**"—

Add

"**day,**".

(2) Rule 54, after "day" (wherever appearing)—

Add

", time".

140. Rule 55 amended (notice of public examination to creditors and contributories)

Rule 55(1), before "time and place"—

Add

"day,".

141. Rule 56 amended (default in attending)

Rule 56(1), before "time" (wherever appearing)—

Add

"day,".

142. Rule 57 amended (notes of examination to be filed)

Rule 57—

Repeal

"222(7)"

Substitute

"286A(9)".

143. Rule 57A amended (application of certain rules where report is made under section 168IA of Ordinance)

Rule 57A—

Repeal

"to 54 and 56 and 57 inclusive shall apply"

Substitute

", 50, 51, 51A, 52, 53, 54, 56 and 57 apply, with the necessary modifications,".

144. Rules 58A and 58B added

After rule 58—

Add

"**58A. Application for order under section 286B of Ordinance**

(1) An application for an order of the court under section 286B of the Ordinance (***section 286B order***) in respect of a person must—

(a) be in writing;

(b) sufficiently identify the person; and

(c) state as the purpose of the application what the person is to be ordered to do.

(2) For paragraph (1)(c), the purpose of the application must be stated as one or more of the following—

(a) that the person is to attend before the court;

(b) that the person is to be examined under section 286C of the Ordinance;

(c) that the person is to submit an affidavit;

(d) that the person is to produce books and papers.

(3) If the purpose of the application includes a purpose specified in paragraph (2)(b), (c) or (d), the application must also specify—

(a) for a purpose specified in paragraph (2)(b)—

(i) the particulars of the matters in respect of which the person is required to be examined; and

(ii) whether the person is to be examined by word of mouth or on written interrogatories;

(b) for a purpose specified in paragraph (2)(c), the particulars of the matters to which the person is required to swear; and

(c) for a purpose specified in paragraph (2)(d), the items of books and papers required to be produced.

(4) For the purposes of an application for a section 286B order—

(a) evidence in support of the application may be in the form of a report to the court setting out the reasons why a section 286B order is needed; and

(b) a report under subparagraph (a) is confidential.

(5) Despite paragraph (4)(b)—

(a) a person who is the subject of a section 286B order being applied for may apply to the court to see all or part of the report; and

(b) if the person satisfies the court that it would be unfair to the person not to see it, the court may allow the person to see all or part of the report subject to any condition that it thinks fit.

58B. Order under section 286B of Ordinance and notice for attendance

(1) An order made under section 286B(1) of the Ordinance must be in Form 38B.

(2) If an order is made under section 286B(1) of the Ordinance to require a person to attend before the court and be examined under section 286C of the Ordinance, the Official Receiver, provisional liquidator or liquidator who applied for the order must give notice of the day, time and place appointed for the person to attend before the court.

(3) A notice under paragraph (2) must be—

(a) in Form 38C; and

(b) sent in a registered letter addressed to the usual or last known address of the person.".

145. Rule 59 amended (use of depositions taken at public examinations)

(1) Rule 59—

Repeal

"222" (wherever appearing)

Substitute

"286A".

(2) Rule 59—

Repeal

"verified"

Substitute

"signed".

146. Rule 62 amended (depositions at private examinations)

(1) Rule 62(1), after "Official Receiver"—

Add

", provisional liquidator".

(2) Rule 62(1)—

Repeal

"221"

Substitute

"286C".

(3) Rule 62(1)—

Repeal

"on whosesoever application the same has been ordered"

Substitute

"whether or not the examination was ordered on the application of the Official Receiver, provisional liquidator or liquidator".

(4) Rule 62(2)—

Repeal

"221"

Substitute

"286C".

(5) Rule 62(2)—

Repeal

"222"

Substitute

"286A".

147. Rule 63 amended (disclaimer)

Rule 63(2)—

Repeal

"in the Appendix".

148. Rule 67A added

Before rule 68—

Add

"**67A. Interpretation of rules 67A to 73**

In this rule and rules 68, 69, 70, 71, 72 and 73—

notice of provisional list of contributories (分擔人臨時列表通知) means a notice required by rule 69(1)(b) to be served on a person included in a provisional list of contributories made under rule 69(1)(a);

notice to contributory (致分擔人通知) means a notice required by rule 71(1) to be served on a person included in a list of contributories finally settled under rule 70;

notice to objector (致反對人通知) means a notice of the liquidator's determination of an objection as required by rule 69(7)(b);

objection (反對), in relation to a notice of provisional list of contributories served on a person, means an objection by the person under rule 69(6);

objection period (反對期), in relation to a notice of provisional list of contributories served on a person, means the period of 21 days from the date of service of the notice on the person, as referred to in rule 69(6).".

149. Rules 68 to 71 substituted

Rules 68, 69, 70 and 71—

Repeal the rules

Substitute

"**68. Liquidator to settle list of contributories**

(1) The duties imposed on the court by section 210(1) of the Ordinance with regard to the settlement of the list of contributories of a company are to be performed by the liquidator as an officer of the court subject to the control of the court.

(2) Unless the court dispenses with the settlement of a list of contributories, the liquidator must, with all convenient speed after the liquidator's appointment, settle the list of contributories of the company.

(3) The list of contributories must—

(a) contain a statement of—

(i) the address of each contributory;

(ii) the number of shares, or extent of interest, to be attributed to each contributory; and

(iii) the amount called up, and the amount paid up, in respect of such shares or interest; and

(b) distinguish the different classes of contributories.

(4) In the list of contributories, the liquidator must, as far as practicable, distinguish between—

(a) persons who are contributories in their own right; and

(b) persons who are contributories as being representatives of, or liable for the debts of, others.

69. Provisional list of contributories and objection by person included in the list

(1) For the purposes of settling the list of contributories of a company as required by rule 68, the liquidator must—

(a) make a provisional list of contributories; and

(b) as soon as reasonably practicable after making the provisional list, serve a notice on each person included in the provisional list.

(2) The provisional list of contributories must be in Form 42.

(3) A notice of provisional list of contributories must—

(a) notify the person on whom the notice is served that the person is included in the provisional list of contributories of the company;

(b) state—

(i) in what character, and for what number of shares or extent of interest, the person is included in the provisional list; and

(ii) what amount has been called up, and what amount has been paid up, in respect of such shares or interest;

(c) inform the person that—

(i) the liquidator will settle the list of contributories of the company based on the provisional list;

(ii) the person will be included in the settled list unless, on considering an objection or otherwise, the liquidator decides to exclude the person from the list when settling it; and

(iii) in relation to any shares or interest not fully paid up, the inclusion of the person in the settled list may result in the unpaid capital being called; and

(d) inform the person of the effect of paragraph (6).

(4) In addition, a notice of provisional list of contributories must be in Form 43.

(5) An affidavit in Form 44 is, unless the contrary is proved, sufficient evidence that a notice of provisional list of contributories has been served on each of the persons included in the provisional list of contributories.

(6) If a person on whom a notice of provisional list of contributories is served objects to the inclusion of the person in the settled list of contributories, the person may inform the liquidator of the objection in writing within 21 days from the date of service of the notice on the person.

(7) On receiving an objection from a person, the liquidator must—

(a) determine the objection; and

(b) give notice of the determination to the person—

(i) within 14 days from the date of receipt of the objection; or

(ii) within any further period allowed by the court.

70. Settlement of list of contributories

(1) Subject to paragraph (2), after a provisional list of contributories of a company has been made under rule 69, the liquidator must finally settle the list of contributories of the company.

(2) The liquidator may finally settle the list of contributories only if—

(a) all notices of provisional list of contributories have been served; and

(b) for each of the notices—

(i) no objection to the notice has been received by the liquidator within the objection period; or

(ii) if an objection to the notice has been received by the liquidator within the objection period—the liquidator has determined the objection and given the notice to objector.

(3) The list of contributories must be finally settled by a certificate in Form 45, and the list, when so settled, is the list of contributories of the company.

71. Notice to contributory

(1) After the list of contributories of a company has been finally settled under rule 70, the liquidator must immediately serve a notice on each person included in the list.

(2) A notice to contributory must—

(a) notify the person on whom the notice is served that—

(i) the liquidator has finally settled the list of contributories of the company; and

(ii) the person is included in the list;

(b) state—

(i) in what character, and for what number of shares or extent of interest, the person is included in the list; and

(ii) what amount has been called up, and what amount has been paid up, in respect of such shares or interest; and

(c) inform the person that any application for excluding the person from the list, or for a variation of the list, must be made to the court by summons—

(i) within 21 days from the date of service of the notice on the person; or

(ii) within any further period as the court may extend or allow under rule 72(1).

(3) In addition, a notice to contributory must be in Form 46.

(4) An affidavit in Form 48 is, unless the contrary is proved, sufficient evidence that a notice to contributory has been served on each of the persons included in the list of contributories.".

150. Rule 72 amended (application to the court to vary the list)

Rule 72(1)—

Repeal

everything after "any person"and before "(See"

Substitute

"included in the list of contributories as finally settled by the liquidator for excluding the person from the list, or for a variation of the list, is to be entertained after the expiry of 21 days from the date of service of a notice to contributory on the person.".

151. Rule 74 amended (calls by liquidator)

Rule 74—

Repeal

"214"

Substitute

"213".

152. Rule 93 amended (notice to creditors to prove)

Rule 93(1), after "statement of affairs" (wherever appearing)—

Add

"or an affidavit of concurrence".

153. Rule 111 amended (summary of statement of affairs)

(1) Rule 111, heading, after "**statement of affairs**"—

Add

"**, etc.**".

(2) Rule 111(1), after "mentioned in the company's statement of affairs"—

Add

"or affidavit of concurrence".

(3) Rule 111(1), after "a summary of the company's statement of affairs"—

Add

"and any affidavit of concurrence".

154. Rule 114 amended (summoning of meetings)

(1) Rule 114(2), after "statement of affairs"—

Add

"or an affidavit of concurrence".

(2) Rule 114(3)—

Repeal

"under section 245"

Substitute

"summoned for the purposes of section 245(b)".

155. Rule 117 amended (costs of calling meeting)

Rule 117—

Repeal

"under sections 241 and 245"

Substitute

"summoned under section 241 or summoned for the purposes of section 245(b)".

156. Rule 119 heading amended (ordinary resolution of creditors and contributories)

Rule 119, heading—

Repeal

"**Ordinary resolution**"

Substitute

"**Resolution**".

157. Rule 131 amended (proxies)

Rule 131—

Repeal

"section 115"

Substitute

"section 285A".

158. Rule 142 amended (dividends to creditors)

Rule 142(1) and (4), after "statement of affairs"—

Add

"or an affidavit of concurrence".

159. Rule 148 amended (dealings with assets)

Rule 148, after "member" (wherever appearing)—

Add

"(or the representative of a member)".

160. Rule 150 amended (committee of inspection not to make profit)

Rule 150, after "member"—

Add

"(or the representative of a member)".

161. Rule 152 amended (sanction of payments to committee)

(1) Rule 152, after "to a member" (wherever appearing)—

Add

"(or the representative of a member)".

(2) Rule 152—

Repeal

"by him" (wherever appearing)

Substitute

"by the member (or the representative)".

162. Rule 154 substituted

Rule 154—

Repeal the rule

Substitute

"**154. Resignation of liquidator in winding up by court**

(1) If a liquidator in a winding up by the court wishes to resign from the office of liquidator, the liquidator must summon separate meetings of the creditors and contributories of the company to decide whether or not the resignation is to be accepted.

(2) If the creditors and contributories both by resolutions agree to accept the resignation, the liquidator must—

(a) file with the Registrar a memorandum of the resignation; and

(b) send notice of the filing to the Official Receiver.

(3) The resignation takes effect upon the liquidator complying with paragraph (2).

(4) If paragraph (2) does not apply, the liquidator must—

(a) report to the court the result of the meetings; and

(b) send a report on the result of the meetings to the Official Receiver.

(5) If paragraph (4) is complied with, the court may, on application by the liquidator or the Official Receiver—

(a) determine whether or not to accept the resignation; and

(b) give any directions and make any orders that the court thinks necessary.".

163. Rules 154A and 154B added

After rule 154—

Add

"**154A. Resignation of liquidator in creditors' voluntary winding up**

(1) If a liquidator in a creditors' voluntary winding up wishes to resign from the office of liquidator, the liquidator must summon a meeting of the creditors of the company to decide whether or not the resignation is to be accepted.

(2) The creditors may by resolution agree to accept the resignation.

(3) The resignation takes effect on the passing of the resolution.

(4) If the creditors do not accept the resignation, the liquidator must report to the court the result of the meeting.

(5) If paragraph (4) is complied with, the court may, on application by the liquidator—

(a) determine whether or not to accept the resignation; and

(b) give any directions and make any orders that the court thinks necessary.

154B. Resignation of liquidator in members' voluntary winding up

(1) If a liquidator in a members' voluntary winding up wishes to resign from the office of liquidator, the liquidator must summon a general meeting of the company to decide whether or not the resignation is to be accepted.

(2) The members of the company may by an ordinary resolution agree to accept the resignation.

(3) The resignation takes effect on the passing of the resolution.

(4) If the members do not accept the resignation, the liquidator must report to the court the result of the meeting.

(5) If paragraph (4) is complied with, the court may, on application by the liquidator—

(a) determine whether or not to accept the resignation; and

(b) give any directions and make any orders that the court thinks necessary.".

164. Rule 155 substituted

Rule 155—

Repeal the rule

Substitute

"**155. Cessation of office of liquidator**

If a person appointed as a provisional liquidator or liquidator of a company is disqualified under section 262B of the Ordinance, then as soon as the person is disqualified—

(a) the person immediately ceases to be the provisional liquidator or liquidator of the company; and

(b) for the purposes of the Ordinance, these rules and the Companies Ordinance (Cap. 622), the person is taken to have been removed from that office.".

165. Rule 162 amended (Official Receiver's audit of liquidator's accounts)

Rule 162(1), after "statement of affairs"—

Add

"and any affidavit of concurrence".

166. Rule 167 amended (proceedings on resignation, &c., of liquidator)

After rule 167(1)—

Add

"(1A) Paragraphs (1B) and (1C) apply if a liquidator has passed away and the personal representative of the deceased liquidator has applied to the court for the release of the deceased liquidator.

(1B) On the grant of the release, the personal representative must deliver over to the Official Receiver, or (if a new liquidator has been appointed) to the new liquidator—

(a) all books kept by the deceased liquidator immediately before his or her death; and

(b) all other books, documents, papers, and accounts relating to the office of the deceased liquidator in the possession of the deceased liquidator immediately before his or her death.

(1C) The release does not take effect unless and until paragraph (1B) has been complied with.".

167. Rule 175 amended (certificate of employment)

(1) Rule 175—

Renumber the rule as rule 175(1).

(2) Rule 175(1)—

Repeal

everything after "agreed to"

Substitute a full stop.

(3) After rule 175(1)—

Add

"(2) If a bill of costs of a solicitor is produced to the taxing officer on the taxation of the bill, it must be accompanied by—

(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 proof that the requirement under section 199(4)(b) of the Ordinance has been complied with; and

(b) the instructions given to the solicitor by the liquidator.".

168. Rule 176 amended (costs and taxation)

(1) Rule 176, heading, after "**taxation**"—

Add

"**of bill exceeding $3,000**".

(2) Rule 176—

Renumber the rule as rule 176(1).

(3) Rule 176(1)—

Repeal

"If"

Substitute

"Subject to paragraph (2), if".

(4) After rule 176(1)—

Add

"(2) Taxation is not required if the bill of costs, charges and disbursements has been approved by a committee of inspection by resolution.".

169. Rule 179 amended (costs payable out of the assets)

(1) Rule 179(1)—

Repeal

"or concurs in making, the company's statement of affairs"

Substitute

"the statement of affairs of the company or an affidavit of concurrence in relation to that statement".

(2) At the end of rule 179(1)—

Add

"**Next.**—The reasonable expenses incurred directly by members of the committee of inspection or their representatives in respect of travelling within Hong Kong—

(a) to attend the committee's meetings; or

(b) on the committee's business.".

(3) Rule 179—

Repeal paragraph (2)

Substitute

"(2) A payment in respect of a bill or charges of a solicitor, manager, accountant, auctioneer, broker or other person is only allowed out of the assets of a company on proof that the payment has been considered and allowed by the Registrar, unless it is—

(a) a payment made for costs and expenses payable under section 190A of the Ordinance;

(b) a payment of a bill that has been taxed and allowed under an order made for its taxation; or

(c) a payment in respect of a bill or charges that have been approved by the committee of inspection by resolution.

(2A) Before allowing the bill or charges mentioned in paragraph (2), a taxing officer must be satisfied that—

(a) the employment of the solicitor or other person in respect of the matters mentioned in the bill or charges has been duly sanctioned; or

(b) in relation to the employment of a solicitor, proof that the requirement under section 199(4)(b) of the Ordinance has been complied with.

(2B) Despite paragraphs (2) and (2A), the Official Receiver, when acting as a liquidator, may, without taxation, pay and allow the costs and charges of a person (other than a solicitor) employed by the Official Receiver, if the costs and charges—

(a) are within the scale usually allowed by the court; and

(b) do not exceed $3,000 in total.".

170. Rule 189 amended (proceedings for release of liquidator)

(1) After rule 189(1)—

Add

"(1A) If a liquidator in a winding up by the court has passed away and the personal representative of the deceased liquidator intends to apply to the court for the release of the deceased liquidator, the personal representative must, before making the application—

(a) give notice of that intention to—

(i) all the creditors who have proved their debts; and

(ii) all the contributories; and

(b) send with the notice a summary of all receipts and payments in the winding up.".

(2) After rule 189(2)—

Add

"(3) When the court has granted the release of a deceased liquidator, a notice of the order granting the release must be published in the Gazette.

(4) The person who applied for the release must provide the necessary payment for publishing the notice of the order under paragraph (3).

(5) The payment may be charged against the company's assets.".

171. Rule 200 amended (applications under ss. 204 and 277(3) of the Ordinance)

(1) Rule 200, heading—

Repeal

"**ss. 204 and 277(3)**"

Substitute

"**section 204**".

(2) Rule 200—

Repeal paragraph (1)

Substitute

"(1) An application by the Official Receiver to the court to examine on oath the liquidator or any other person under section 204 of the Ordinance—

(a) is to be made ex parte; and

(b) is to be supported by a report to the court filed with the Registrar, stating the circumstances in which the application is made.".

172. Rule 206 amended (prison to which a person arrested is to be conveyed, and production and custody of persons arrested)

(1) Rule 206—

Repeal

"221 and 224"

Substitute

"224 and 286B".

(2) Rule 206—

Repeal

"221 or 224"

Substitute

"224 or 286B".

173. Appendix amended (forms)

(1) Appendix, after Form 1—

Add

"Form 1A [rule 3B]

Statutory Demand under Section 178(1)(a) or 327(4)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

(Title)

Warning

- This is an important document. This statutory demand **must** be dealt with within 3 weeks after its service on the company. If you do not, a winding-up order may be made in respect of the company. Please read this statutory demand and the notes carefully.
- If the company has any doubt about its position, the company should seek advice **immediately** from a solicitor.
- Please also see the Notes for Creditor.

Demand	**Notes for Creditor**
To _____ (***the company***) Address _____ _____	1. If the creditor is entitled to the debt by way of assignment, then, in addition to the date of incurrence of the debt, details of

This statutory demand is served on the company by the creditor—

Name _____

Address _____

_____

The creditor claims that the company owes the following debt—

When incurred (See Note 1)	Description of debt (See Notes 2, 3 & 5)	Amount due as at the date of this statutory demand (See Note 4)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Amount of Debt $_____

The creditor demands that the company do pay the above debt or secure or compound for it to the creditor's satisfaction.

the original creditor and any intermediary assignees should be given in Part B, including the date of each assignment to each of the assignees.

2. The amount of the debt, and the consideration for the debt (or if there is no such consideration, the way in which the debt arises) should be given.

3. If the amount of the debt includes interest not previously notified to the company as a liability of the company, details should be given, including the grounds on which the interest is charged.

4. If the amount of the debt includes interest, the amount of interest must be shown separately.

Signature _____

Name (BLOCK LETTERS) _____

_____

Date _____

* I am authorized to make this statutory demand on the creditor's behalf.

* Position with or relationship to creditor

_____

5. Any other charge accruing from time to time may be claimed. The amount or rate of the charge must be identified and the grounds on which it is claimed must be stated.

6. The amount of the debt claimed must be limited to that which has accrued due as at the date of this statutory demand.

7. If a signatory is a solicitor or an agent of the creditor, the name of the firm of the solicitor or the name of the agent should be given.

Address _____ Tel. No. _____ Ref. No. _____ **NB The person making this statutory demand must complete the whole of this statutory demand and Parts A and B.** * Delete if signed by the creditor.	

Part A

The person or persons* whom the company may contact regarding this statutory demand is/are—

Name _____

Address _____

_____

_____

Tel. No. _____

* The person or persons must be an individual or individuals.

Part B

For completion if the creditor is entitled to the debt by way of assignment

	Name	Date of Assignment
Original creditor		
Assignees		

How to comply with a statutory demand

If the company wishes to avoid a winding-up petition being presented against it to the court, it must pay the debt set out in this statutory demand within 3 weeks after the service of this statutory demand on the company. Alternatively, the company can attempt to come to a settlement with the creditor. To do this, the company should—

- immediately inform the person or persons (or one of the persons) named in Part A that it is willing and able to offer security for the debt to the creditor's satisfaction; or
- immediately inform the person or persons (or one of the persons) named in Part A that it is willing and able to compound for the debt to the creditor's satisfaction.

If the company disputes this statutory demand in whole or in part, it should—

- immediately contact the person or persons (or one of the persons) named in Part A; or
- institute any legal proceedings that it thinks fit to respond to this statutory demand (for example, applying to the court for an injunction to restrain the creditor from presenting a winding-up petition or from advertising it).

Remember: The company has only 3 weeks after service of this statutory demand to pay the debt. After the expiry of the 3-week period, the creditor may present a winding-up petition against the company.".

(2) Appendix, Form 9—

(a) **Repeal**

"19"

Substitute

"20";

(b) **Repeal the Note**

Substitute

"*Note—As the Official Receiver or provisional liquidator may require, it is the duty of—*

(a) a person who is, on the date of the above-mentioned appointment, a director of the company;

(b) a person who is on that date a company secretary of the company; and

(c) those persons who are, as the provisional liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement,

to attend on the Official Receiver or provisional liquidator according to the day, time and place the Official Receiver or provisional liquidator appoints and to give the Official Receiver or provisional liquidator all information that the Official Receiver or provisional liquidator requires.".

(3) Appendix, Form 14—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) **Repeal the Note**

Substitute

"*Note—As the Official Receiver, provisional liquidator or liquidator may require, it is the duty of—*

(a) a person who is, on the date of this order, a director of the company;

(b) a person who is on that date a company secretary of the company; and

(c) those persons who are, as the provisional liquidator or liquidator may require, liable to make the statement of affairs of the company or an affidavit of concurrence in relation to that statement,

to attend on the Official Receiver, provisional liquidator or liquidator according to the day, time and place the Official Receiver, provisional liquidator or liquidator appoints and to give the Official Receiver, provisional liquidator or liquidator all information that the Official Receiver, provisional liquidator or liquidator requires.".

(4) Appendix, Form 18—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) English text—

Repeal

"statement of the company's affairs"

Substitute

"company's statement of affairs";

(c) note (a), after "summary"—

Add

"of the statement of affairs and any affidavit of concurrence".

(5) Appendix, Form 19—

(a) **Repeal**

", 19" (wherever appearing)

Substitute

", 20";

(b) note (a), after "summary"—

Add

"of the statement of affairs and any affidavit of concurrence".

(6) Appendix, Form 29—

Repeal

everything before "THE SCHEDULE REFERRED TO"

Substitute

"Form 29 [rule 52]

Order Directing Public Examination

(Title)

[On reading the reports of the [Official Receiver/liquidator]* in the above matter, dated respectively the day of , 20 , and the day of , 20 /On the application of the [Official Receiver/liquidator]* on the day of , 20 in the above matter]*, and :

It is ordered that the persons whose names and addresses are set out in the Schedule do attend before the court, on a day and at a place to be appointed, and be publicly examined as to—

(a) the promotion, formation or management of the above-named company;

(b) the conduct of the business and affairs of the company; and

(c) their conduct or dealings in relation to the company.

* *Delete where not applicable.*".

(7) Appendix—

Repeal Form 30

Substitute

"Form 30 [rule 54]

Order Appointing Time for Public Examination

(Title)

Whereas by the order of this court dated the day of , 20 ,
[*state name and address of person to be examined*] was directed to attend before the court and be publicly examined:

On the application of the [Official Receiver/liquidator]* in the above matter, it is ordered that the public examination of the above-named be held on the day of , 20 , at [a.m./p.m.]*, at
[*state place to be attended at*].

And it is ordered that the above-named
do attend before the court according to the above-mentioned day, time and place and at any adjournment of the examination.

Dated this day of , 20 .

* *Delete where not applicable.*

Note to the above-named —Notice is hereby given that if you fail, without reasonable excuse, to attend before the court according to the above-mentioned day, time and place, or at any adjournment of the examination, you will be liable to be committed to prison without further notice. In addition, if you commit perjury during your examination, you will be liable on conviction to a fine and imprisonment for 7 years.".

(8) Appendix—

Repeal Form 31

Substitute

"Form 31 [rule 54]

Notice to Attend Public Examination

(Title)

Whereas by an order of the court, made on the day of , 20 , it was ordered that you, , should attend before the court, on a day and at a place to be appointed, and be publicly examined as to—

(a) the promotion, formation or management of the above-named company;

(b) the conduct of the business and affairs of the company; and

(c) your conduct or dealings in relation to the company:

And whereas the day of , 20 , at [a.m./p.m.]*, at [*state place to be attended at*] has been appointed as the day, time and place for holding the examination:

Notice is hereby given that you are required to attend before the court according to the above-mentioned day, time and place, and at any adjournment of the examination, and you are advised to bring with you all books, papers, and writing and other documents in your custody or power in any way relating to the company or the promotion, formation, trade, dealings, affairs or property of the company.

And take notice that if you fail, without reasonable excuse, to attend before the court according to the above-mentioned day, time and place, or at any adjournment of the examination, you will be liable to be committed to prison without further notice. In addition, if you commit perjury during your examination, you will be liable on conviction to a fine and imprisonment for 7 years.

Dated this day of , 20 .

To

Official Receiver/liquidator*

* *Delete where not applicable.*".

(9) Appendix—

Repeal Form 37.

(10) Appendix, Form 38—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) English text—

Repeal

"on a day and at a place to be named for the purpose of being publicly examined"

Substitute

", on a day and at a place to be appointed, and be publicly examined";

(c) **Repeal**

"at o'clock in the noon before the court sitting at the Courts of Justice"

Substitute

"at a.m./p.m. at the High Court of Hong Kong";

(d) English text, before "time and place" (wherever appearing)—

Add

"day,".

(11) Appendix, Form 38A—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) **Repeal**

"on a day to be named for the purpose"

Substitute

", on a day and at a place to be appointed,";

(c) **Repeal**

"at ..... o'clock in the ..... noon at the Courts of Justice, Hong Kong"

Substitute

"at ..... a.m./p.m. at the High Court of Hong Kong";

(d) **Repeal**

"at ..... o'clock respectively"

Substitute

"at ..... a.m./p.m. respectively".

(12) Appendix, after Form 38A—

Add

"Form 38B [rule 58B(1)]

Order under Section 286B of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

(Title)

[On the application of the [Official Receiver/provisional liquidator/liquidator]* on the day of , 20 in the above matter:]#

It is ordered that [*state name and address of person to be examined*] do attend before the court [on a day and at a place to be appointed/on the day of , 20 , at [a.m./p.m.]*, at [*state place to be attended at*]]*, and at any adjournment of the examination, and be examined as to the promotion, formation, trade, dealings, affairs or property of the above-named company. And the above-named is required to produce the documents mentioned in the Schedule, and all other books and papers in the custody or power of the above-named that are in any way relating to the company or the promotion, formation, trade, dealings, affairs or property of the company.

[*Revise the heading and paragraphs above as appropriate for any other requirements, e.g. submission of affidavits.*]

Dated this day of , 20 .

* *Delete where not applicable.*

Delete if no application made.

Note to the above-named —Notice is hereby given that if you fail, without lawful impediment, to attend before the court according to the above-mentioned day, time and place, or at any adjournment of the examination, the court may, by warrant, cause you to be apprehended and brought before the court. In addition, if you commit perjury during your examination, you will be liable on conviction to a fine and imprisonment for 7 years.

The Schedule above referred to

Form 38C [rule 58B(3)(a)]

Notice to Attend Examination under Section 286C of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

(Title)

Whereas by an order of the court, made on the day of , 20 in the above matter, it was ordered that you, , should attend before the court [on a day and at a place to be appointed/on the day of , 20 , at [a.m./p.m.]*, at [*state place to be attended at*]]*, and at any adjournment of the examination, and be examined as to the promotion, formation, trade, dealings, affairs or property of the above-named company:

[And whereas the day of , 20 , at [a.m./p.m.]*, at [*state place to be attended at*] has been appointed as the day, time and place for holding the examination:]#

Notice is hereby given that you are required to attend before the court according to the above-mentioned day, time and place, and at any adjournment of the examination.

And take notice that if you fail, without lawful impediment, to attend before the court according to the above-mentioned day, time and place, or at any adjournment of the examination, the court may, by warrant, cause you to be apprehended and brought before the court. In addition, if you commit perjury during your examination, you will be liable on conviction to a fine and imprisonment for 7 years.

Dated this day of , 20 .

To

Official Receiver/provisional liquidator/liquidator*

* *Delete where not applicable.*

Delete if day, time and place already specified above.".

(13) Appendix, Form 40—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) **Repeal**

"Courts of Justice"

Substitute

"High Court of Hong Kong".

(14) Appendix, Form 42—

(a) heading—

Repeal

"TO BE MADE OUT BY LIQUIDATOR";

(b) **Repeal**

"[rule 68]"

Substitute

"[rule 69(2)]";

(c) **Repeal**

"company liable to be placed on the list of contributories of the said company, made out by me from the books and papers of the said company"

Substitute

"above-named company liable to be included in the list of contributories of the company, made by me from the books and papers of the company";

(d) **Repeal**

"right are distinguished"

Substitute

"right are identified";

(e) **Repeal**

"said list, the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished"

Substitute

"list, the persons who are contributories as being representatives of, or liable for the debts of, others are identified";

(f) **Repeal**

"Serial No." (wherever appearing)

Substitute

"No. in List";

(g) **Repeal**

"LIABLE TO"

Substitute

"LIABLE FOR".

(15) Appendix, Form 43—

(a) heading—

Repeal

"NOTICE TO CONTRIBUTORIES OF APPOINTMENT TO SETTLE LIST OF CONTRIBUTORIES"

Substitute

"NOTICE OF PROVISIONAL LIST OF CONTRIBUTORIES";

(b) **Repeal**

"[rule 69]"

Substitute

"[rule 69(4)]";

(c) **Repeal**

everything after "*(Title)*" and before "Dated this"

Substitute

"Take notice that—

(a) I, , the liquidator of the above-named company, have made a provisional list of contributories of the company pursuant to the Companies (Winding Up and Miscellaneous

Provisions) Ordinance (Cap. 32) and the rules made under it;

(b) you are included in the provisional list; and

(c) the character in which and the number of shares [*or* extent of interest] for which you are included, and the amount called up and the amount paid up in respect of such shares (or interest), are stated below.

And further take notice that—

(a) I will settle the list of contributories of the company based on the provisional list;

(b) you will be included in the settled list unless, on considering an objection or otherwise, I decide to exclude you from the list when settling it; and

(c) in relation to any shares (or interest) not fully paid up, your inclusion in the settled list may result in the unpaid capital being called.

If you object to your inclusion in the settled list of contributories of the company, you must inform me, the liquidator of the company, of your objection in writing within 21 days from the date of service of this notice on you.";

(d) **Repeal**

"19"

Substitute

"20";

(e) **Repeal**

"No. on List"

Substitute

"No. in List".

(16) Appendix—

Repeal Form 44

Substitute

"Form 44 [rule 69(5)]

Affidavit of Service of Notices of Provisional List of Contributories

(Title)

I, [*state name and description of deponent*], make oath and say as follows—

1. That—

(a) On the day of , 20 , I did, in the manner mentioned below, serve on each person whose name, address and description appear in the second, third and fourth columns respectively of the provisional list of contributories of the company made by the liquidator on the day of , 20 , and now on the file of proceedings of the company, a notice in the form annexed to this affidavit, marked "A".

(b) In the tabular form at the foot of each of such notices respectively there had been inserted the number in such list, name, address, description, in what character and for what number of shares [*or* extent of interest] included, and the amount called

up and the amount paid up at the date of the commencement of the winding up in respect of such shares (or interest), of the person on whom the notice was served, in the same words and figures as those particulars are set out in the provisional list.

2. That I served the notices on each of the persons included in the provisional list by duly addressing the notices to the persons according to their respective names and addresses appearing in the provisional list and placing the notices prepaid into the post office at before a.m./p.m. on the day of , 20 .

Sworn, &c.".

(17) Appendix, Form 45—

(a) **Repeal**

"[rule 70]"

Substitute

"[rule 70(3)]";

(b) **Repeal**

everything after "*(Title)*" and before "Dated this"

Substitute

"Pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the rules made under it, I, the undersigned, being the liquidator of the above-named company, hereby certify as follows—

1. That I am satisfied by the affidavit of [*state name and description of deponent*], now on the file of proceedings of the company that a notice of

provisional list of contributories has been duly served on each of the persons included in the provisional list of contributories of the company, dated the day of , 20 , informing the person on whom the notice was served—

(a) that the person was included in the provisional list in the character, and for the number of shares [*or* extent of interest], stated in it and of the amount called up and the amount paid up in respect of such shares (or interest);

(b) that I would settle the list of contributories of the company based on the provisional list;

(c) that the person would be included in the settled list unless, on considering an objection or otherwise, I decide to exclude the person from the list when settling it;

(d) that in relation to any shares (or interest) not fully paid up, the inclusion of the person in the settled list may result in the unpaid capital being called; and

(e) that if the person objected to the inclusion of the person in the settled list, the person must inform me, the liquidator of the company, of the person's objection in writing within 21 days from the date of service of the notice on the person (***objection period***).

2. That no objection to the notices has been received by me within the objection periods.

[or 2. That objection to the notices has been received by me within the objection periods and that—

(a) for each of the notices objected to—

(i) I have determined the objection; and

(ii) a notice of my determination has been given to the person objecting; and

(b) for each of the other notices, the objection period has expired.]

3. That I have finally settled the list of contributories of the company, and the result of the final settlement, so far as the list has been settled, up to the date of this certificate, is as follows—

(a) The persons whose names are set out in the second column of the First Schedule have been included in the settled list of contributories as contributories of the company in respect of the number of shares [*or* extent of interest] set out opposite to the names of such contributories respectively in that Schedule. In particular—

(i) I have, in the first part of that Schedule, identified the persons who are contributories in their own right; and

(ii) I have, in the second part of that Schedule, identified the persons who are contributories as being representatives of, or liable for the debts of, others.

(b) The persons whose names are set out in the second column of the Second Schedule, and were included in the provisional list of contributories of the company, have been excluded from the settled list of contributories.

(c) The date when each of such persons was included in or excluded from the settled list of contributories are set out opposite to the name of that person in the sixth column of the first part of the First Schedule, the seventh column of the second part of that Schedule and the seventh column of the Second Schedule respectively.

(d) The amount called up at the date of the commencement of the winding up, and the amount paid up at that date, in respect of the shares (or interest) of each of such persons are set out opposite to the name of that person in the seventh and eighth columns of the first part of the First Schedule and the eighth and ninth columns of the second part of that Schedule respectively.";

(c) **Repeal**

"19"

Substitute

"20";

(d) English text—

Repeal

"Serial No. in List" (wherever appearing)

Substitute

"No. in List";

(e) **Repeal**

"OR LIABLE TO THE DEBTS OF"

Substitute

", OR LIABLE FOR THE DEBTS OF,".

(18) Appendix, Form 46—

(a) heading—

Repeal

"HIS NAME"

Substitute

"THE CONTRIBUTORY";

(b) **Repeal**

"[rule 71]"

Substitute

"[rule 71(3)]";

(c) **Repeal**

everything after "*(Title)*" and before "Dated this"

Substitute

"Take notice that I, , the liquidator of the above-named company, have, by certificate, dated the day of ,

20 , under my hand, finally settled the list of contributories of the company pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the rules made under it, and that you are included in the settled list. The character in which, and the number of shares [*or* extent of interest] for which, you are included, and the amount called up and the amount paid up in respect of such shares (or interest), are stated below.

Any application by you for excluding yourself from the list of contributories, or for a variation of the list of contributories, must be made by you to the court by summons within 21 days from the date of service of this notice on you, or any further period as the court may extend or allow. No such application will otherwise be entertained.

The settled list may be inspected by you at the Registry of the High Court of Hong Kong during the opening hours of the Registry.";

(d) **Repeal**

"19"

Substitute

"20".

(19) Appendix, Form 47—

(a) **Repeal**

everything after "The following is" and before "I have ascertained"

Substitute

"a supplemental list of persons who, since making the list of contributories of the above-named company, dated the day of , 20 ,";

(b) **Repeal**

"members of] the above-named company"

Substitute

"members of] the company";

(c) English text—

Repeal

"said company"

Substitute

"company";

(d) English text—

Repeal

"said supplemental"

Substitute

"supplemental";

(e) **Repeal**

"said list such of the said persons as are contributories in their own right are distinguished"

Substitute

"list, the persons who are contributories in their own right are identified";

(f) **Repeal**

"said list such of the said persons as are contributories as being representatives of, or being liable to the debts of others, are distinguished"

Substitute

"list, the persons who are contributories as being representatives of, or liable for the debts of, others are identified";

(g) **Repeal**

"*made out*"

Substitute

"*made*".

(20) Appendix—

Repeal Form 48

Substitute

"Form 48 [rule 71(4)]

Affidavit of Service of Notices to Contributory

(Title)

I, [*state name and description of deponent*], make oath and say as follows—

1. That—

(a) On the day of , 20 , I did, in the manner mentioned below, serve on each person whose name, address, and description appear in the second, third, and fourth columns respectively of the First Schedule to the list of contributories of the company finally settled by the liquidator on the day of , 20 , and now on the file of proceedings of the company, a notice in the form annexed to this affidavit, marked "A".

(b) In the tabular form at the foot of each of such notices respectively there had been inserted the number in such list, name, address, description, in what character and for what number of shares [*or* extent of interest] included, and the amount called up and the amount paid up at the date of the commencement of the winding up in respect of such shares (or interest), of the person on whom the notice was served, in the same words and figures as those particulars are set out in the above-mentioned Schedule.

2. That I served the notices on each of the persons included in the list of contributories by duly addressing the notices to the persons according to their respective names and addresses appearing in the above-mentioned Schedule and placing the notices prepaid into the post office at before a.m./p.m. on the day of , 20 .

Sworn, &c.".

(21) Appendix, Form 49—

(a) **Repeal**

"19"

Substitute

"20";

(b) **Repeal**

"name of the applicant therefrom"

Substitute

"applicant";

(c) **Repeal**

"the name of" (wherever appearing).

(22) Appendix, Form 56—

(a) **Repeal**

"High Court"

Substitute

"court";

(b) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(c) **Repeal**

"at o'clock in the noon, at the Courts of Justice"

Substitute

"at a.m./p.m. at the High Court of Hong Kong".

(23) Appendix, Form 67—

(a) after "statement of affairs"—

Add

"or an affidavit of concurrence";

(b) **Repeal**

"19" (wherever appearing)

Substitute

"20".

(24) Appendix, Form 76—

(a) **Repeal**

"19"

Substitute

"20";

(b) paragraph 1, after "statement of affairs"—

Add

"or an affidavit of concurrence";

(c) paragraph 2, after "statement of affairs of the company"—

Add

"or an affidavit of concurrence".

(25) Appendix, Form 77—

(a) **Repeal**

"19" (wherever appearing)

Substitute

"20";

(b) note (a), after "statement of affairs"—

Add

"or an affidavit of concurrence".

(26) Appendix, Form 98, Note—

Repeal

everything after "*but*"

Substitute

"*any such order*—

(a) does not prevent the exercise of the court's powers under section 276; and

(b) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.".

(27) Appendix, Form 100—

(a) after "Estimated to produce as per company's statement of affairs"—

Add

"and, if applicable, affidavit of concurrence";

(b) after "Person appointed to assist in preparation of statement of affairs"—

Add

"or affidavit of concurrence";

(c) **Repeal**

"19"

Substitute

"20".

(28) Appendix, Form 103(3)—

Repeal

"DAY APPOINTED FOR".

Part 5

Amendment to Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I)

174. Schedule 1 amended

Schedule 1, Form D.O. 1, item (1), after—

“Section 303(2)(a) of SFO	”

Add

“Section 307N(1)(a) of SFO	”.

Part 6

Amendment to Companies (Reports on Conduct of Directors) Regulation (Cap. 32 sub. leg. J)

175. Section 3 amended (return by office-holder)

Section 3(4)(b)—

Repeal

"statutory declaration"

Substitute

"winding-up statement".

Part 7

Transitional and Saving Provisions

Division 1—Transitional and Saving Arrangements for Amendments to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

176. Part XV added

The Ordinance—

Add

"**Part XV**

Transitional and Saving Provisions

368. Transitional and saving provisions relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015)

The transitional and saving provisions as set out in Schedule 26 are to have effect.".

177. Schedule 26 added

At the end of the Ordinance—

Add

"Schedule 26

[s. 368]

Transitional and Saving Provisions Relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015);

commencement date (生效日期) means the date of commencement of the Amendment Ordinance;

former (原有), when it appears in conjunction with a reference to a section described by a number or a combination of a number and a letter, means the provision of the former Ordinance that is referred to as a section described by that number or that combination of number and letter;

former Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date;

former Rules (《原有規則》) means the Winding-up Rules as in force immediately before the commencement date;

Winding-up Rules (《清盤規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

2. Public examination under section 168IA

(1) This section applies where, before the commencement date, an application has been made under the former section 168IA for the court to exercise any of its powers under that section.

(2) The following provisions and forms continue to apply in relation to the proceedings and examination arising from the application—

(a) the former section 168IA; and

(b) rules 52, 57 and 57A of, and Forms 29, 30, 31, 38 and 38A in the Appendix to, the former Rules.

(3) The following provisions do not apply in relation to the proceedings and examination arising from the application—

(a) sections 168IB and 286E; and

(b) rule 51A of the Winding-up Rules.

3. Liability to contribute under section 170A

Section 170A does not apply in relation to a payment out of capital in respect of the redemption or buy-back of a company's own shares that has taken place before the commencement date.

4. Demand to pay debts under section 178(1)(a)

If a demand was served under the former section 178(1)(a) before the commencement date, the demand continues to have effect on and after the commencement date as if that former section had not been amended by the Amendment Ordinance.

5. Statement of affairs required under section 190

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up and the appointment of a provisional liquidator in connection with the petition—

(a) the following provisions continue to apply—

(i) the former section 190; and

(ii) rules 39, 40, 41, 42, 43 and 44 of the former Rules; and

(b) section 190A does not apply.

6. Case where former sections 193, 194 and 196 apply

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up—

(a) the former sections 193, 194 and 196(1), (1A), (2), (2A), (3) and (4) continue to apply; and

(b) sections 193(4), (5), (6) and (7), 194(1)(da) and (6) and 196(1B) do not apply.

7. Powers of liquidators under section 199

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up—

(a) the former section 199 continues to apply; and

(b) sections 199A and 199B and Schedule 25 do not apply.

8. Release of liquidators under section 205

For a liquidator appointed before the commencement date, section 205(3) does not apply in relation to the release of the liquidator.

9. Meetings of creditors and contributories to consider appointment of committee of inspection; constitution of committee of inspection

(1) Subject to subsection (2), if the winding up of a company has commenced before the commencement date, the former sections 206 and 207(1) continue to apply in relation to the winding up of the company.

(2) Subject to section 11(2) of this Schedule, section 206(6) applies in relation to the membership of, and representation at a meeting of, a committee of inspection, irrespective of when the winding up of the company commenced.

10. Proceedings of committee of inspection

(1) Subject to subsections (2), (3) and (4), sections 206A and 207 apply in relation to the proceedings of a committee of inspection, irrespective of when the winding up of the company commenced.

(2) In respect of a committee of inspection appointed before the commencement date, if the first meeting of the committee has not been held before that date—

(a) the former section 207(2) continues to apply in relation to the first meeting of the committee; and

(b) section 206A(2) does not apply in relation to that committee.

(3) If the winding up of a company has commenced before the commencement date, then in relation to the proceedings of the committee of inspection—

(a) the former section 207(7) continues to apply; and

(b) section 207(7A) and (7B) does not apply.

(4) If the winding up of a company has commenced before the commencement date, the former section 207(8) continues to apply in relation to the proceedings of the committee of inspection.

11. Representatives of members of committee of inspection

(1) Subject to subsection (2), section 207A applies in relation to the representatives of the members of a committee of inspection, irrespective of when the winding up of the company commenced.

(2) If a member of the committee of inspection has validly appointed a representative before the commencement date—

(a) section 207A(1), (2), (3) and (5) does not operate to invalidate the appointment; and

(b) section 207A(4), (6) and (7) does not apply to the representative.

12. Remote attendance and written resolutions of meeting of committee of inspection, etc.

Sections 207B, 207C, 207D, 207E, 207F, 207G, 207H, 207I, 207J and 207K apply in relation to the proceedings of a committee of inspection, irrespective of when the winding up of the company commenced.

13. Travelling expenses of members of committee of inspection or representatives of members

(1) Subject to subsection (2), section 207L applies in relation to the travelling expenses of a member of a committee of inspection or the representative of a member referred to in that section, irrespective of when the winding up of the company commenced.

(2) Section 207L does not apply to any expenses incurred before the commencement date.

14. Examination under former section 221

(1) This section applies where, before the commencement date—

(a) an application has been made pursuant to the former section 221 for the court to exercise any of its powers under that section; or

(b) the court has exercised any of its powers under the former section 221.

(2) The following provisions continue to apply in relation to the proceedings and examination arising from the application or exercise of power—

(a) the former sections 221 and 222A; and

(b) rules 5(2), 62 and 206 of the former Rules.

(3) The following provisions and forms do not apply in relation to the proceedings and examination arising from the application or exercise of power—

(a) sections 286B, 286C, 286D and 286E; and

(b) rules 58A and 58B of, and Forms 38B and 38C in the Appendix to, the Winding-up Rules.

(4) Section 360G applies for the purposes of the application or exercise of power as if the references to sections 286B, 286C and 286D in it were a reference to the former section 221.

15. Public examination under former section 222

(1) This section applies where, before the commencement date, an application has been made under rule 50 of the former Rules to fix a day for the consideration of a report submitted under section 191(2).

(2) The following provisions and forms continue to apply in relation to the proceedings and examination arising from the application—

(a) the former sections 191, 222 and 222A; and

(b) rules 52, 57 and 59 of, and Forms 29, 30, 31, 38 and 38A in the Appendix to, the former Rules.

(3) The following provisions do not apply in relation to the proceedings and examination arising from the application—

(a) sections 286A, 286D and 286E; and

(b) rule 51A of the Winding-up Rules.

16. Regulating order under section 227A, etc.

(1) If the petition for the winding up of a company has been presented before the commencement date, the former sections 227A, 227B and 227E continue to apply in relation to that winding up.

(2) If the petition for the winding up of a company is presented on or after the commencement date, but the winding up has commenced before that date, section 227B(2) applies as if—

(a) the reference to section 206(1) and (2) in it were a reference to the former section 206(1) and (2); and

(b) the reference to section 207(6), (7), (7A) and (7B) in it were a reference to the former section 207(6) and (7).

17. Voluntary winding up under former section 228(1)(c)

(1) If a company has passed a special resolution under the former section 228(1)(c) before the commencement date, then—

(a) the former section 228(1) continues to apply in relation to the winding up; and

(b) in the winding up of the company, the expression ***a resolution for voluntary winding up*** continues to have the meaning given by the former section 228(2).

(2) No resolution for voluntary winding up of a company may be passed on or after the commencement date under the former section 228(1)(c) even if, before the commencement date—

(a) notices of the meeting to consider the resolution have been sent to members of the company; or

(b) the relevant written resolution has been circulated among the members.

18. Voluntary winding up under section 228A

If the winding up of a company has commenced before the commencement date, then—

(a) the former section 228A and the provisions in the Twelfth Schedule to the former Ordinance relating to that section continue to apply; and

(b) section 228B and the provisions in the Twelfth Schedule relating to section 228B do not apply.

19. Notice of resolution to wind up voluntarily under section 229

If a company has passed a resolution for voluntary winding up under the former section 228 before the commencement date, the former section 229 continues to apply in relation to the company's obligation to give notice of the resolution.

20. Cases where former section 237A and related provisions apply

(1) This section applies if—

(a) a members' voluntary winding up has commenced before the commencement date; and

(b) subsequently, the liquidator of the company is of the opinion that the company will not be able to pay its debts in full within the period stated in the certificate or declaration mentioned in the former section 237A.

(2) In relation to the winding up—

(a) the former sections 237A, 238 and 239 and the provisions in the Twelfth Schedule to the former Ordinance relating to those sections continue to apply;

(b) sections 237B and 240(2) do not apply;

(c) the former section 239A continues to apply; and

(d) section 240(1) is to be read as if it is not subject to section 240(2).

21. Provisions relating to liquidators where former section 237A applies

(1) This section applies to a members' voluntary winding up commenced before the commencement date—

(a) in relation to which the former section 237A applies because of section 20 of this Schedule; and

(b) in respect of which a meeting of the creditors summoned by the liquidator under the former section 237A is held on or after the commencement date.

(2) If the person holding the office of liquidator of the company is disqualified under section 262B(3) from acting as liquidator of the company, then—

(a) despite sections 262A and 262B and rule 155 of the Winding-up Rules, the person may continue to act as liquidator of the company until the meeting is concluded, but solely for the purposes of complying with the former section 237A; and

(b) immediately after the conclusion of the meeting, the person ceases to be the liquidator of the company and for the purposes of this Ordinance, the Winding-up Rules and the Companies Ordinance (Cap. 622) is taken to have been removed from that office.

(3) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections apply in relation to—

(a) the appointment of a liquidator made at a meeting of creditors held under the former section 237A(2) if notices of the meeting are sent on or after the commencement date; and

(b) the liquidator appointed at that meeting.

(4) The former section 278 continues to apply and sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—

(a) the appointment of a liquidator made at a meeting of creditors held under the former section 237A(2) if notices of the meeting have been sent before the commencement date; and

(b) the liquidator appointed at that meeting.

22. Provisions applicable to creditors' voluntary winding up (former section 241 and section 243A)

If notices of a meeting of the company at which a resolution for voluntary winding up is to be proposed have been sent before the commencement date and the winding up is intended to be a creditors' voluntary winding up—

(a) the former section 241 continues to apply in relation to the meeting of creditors of the company; and

(b) section 243A and the provisions in the Twelfth Schedule relating to that section do not apply in relation to the powers and duties of a person nominated by the company to be liquidator in that winding up.

23. Appointment of committee of inspection

(1) Subject to subsections (2) and (3), if the winding up of a company has commenced before the commencement date, the former section 243 continues to apply in relation to the winding up of the company.

(2) Without limiting sections 10, 11, 12 and 13 of this Schedule, section 243(2) applies in relation to a committee of inspection appointed in a creditors' voluntary winding up, irrespective of when the winding up of the company commenced.

(3) Subject to section 11(2) of this Schedule, section 243(3) applies in relation to the membership of, and representation at a meeting of, a committee of inspection, irrespective of when the winding up of the company commenced.

24. Removal of liquidator under section 244A

Section 244A does not apply to a liquidator appointed before the commencement date.

25. Directors' powers before nomination or appointment of liquidator under section 250A

(1) This section applies where—

(a) notices of a meeting of a company at which a resolution for voluntary winding up is to be proposed have been sent before the commencement date; and

(b) the resolution is passed at the meeting, irrespective of when the meeting is held.

(2) Section 250A and the provision in the Twelfth Schedule relating to that section do not apply in relation to the directors' powers before nomination or appointment of liquidator in the winding up.

26. Powers and duties of liquidator in voluntary winding up under section 251

In a voluntary winding up, if the winding up has commenced before the commencement date, then in relation to the powers and duties of the liquidator in that winding up—

(a) the former section 251 continues to apply; and

(b) Schedule 25 does not apply.

27. Notice by liquidator of appointment or ceasing to act under section 253

(1) If a liquidator was appointed before the commencement date, the liquidator is to comply with the requirements under the former section 253(1).

(2) If a person appointed as liquidator has ceased to act before the commencement date, the person is to comply with the requirements under the former section 253(2).

(3) If, before the commencement date, a change has occurred in the particulars given in a notice delivered to the Registrar under the former section 253(1)(b), the liquidator is to comply with the requirements under the former section 253(3).

(4) To avoid doubt, section 253 does not apply to a provisional liquidator appointed under the former section 228A(5)(b), just as the former section 253 did

not apply to a provisional liquidator appointed under the former section 228A(5)(b).

28. Audit of liquidator's accounts in voluntary winding up

(1) Subject to subsection (2), section 255A(2) applies in relation to the liquidator's accounts, irrespective of when the winding up of the company commenced.

(2) If a resolution has been passed in accordance with the former section 255A(2) before the commencement date, that section continues to apply in relation to the liquidator's account.

29. Application of former sections 196(5) and 278 to liquidators and their appointment

(1) The former sections 196(5) and 278 (and the provision in the Twelfth Schedule to the former Ordinance relating to the former section 278) continue to apply and sections 262A, 262B, 262C, 262D, 262E, 262F and 262G (and the provisions in the Twelfth Schedule relating to sections 262A, 262B, 262C, 262D, 262E, 262F and 262G) do not apply in relation to—

(a) the appointment of a liquidator—

(i) made before the commencement date;

(ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; or

(iii) to be made by the court on or after the commencement date in response to an application made before that date; and

(b) a liquidator appointed—

(i) before the commencement date;

(ii) at a meeting mentioned in paragraph (a)(ii); or

(iii) by the court in response to an application mentioned in paragraph (a)(iii).

(2) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—

(a) the appointment of a provisional liquidator—

(i) made before the commencement date;

(ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; or

(iii) to be made by the court on or after the commencement date in response to an application made before that date; and

(b) a provisional liquidator appointed—

(i) before the commencement date;

(ii) at a meeting mentioned in paragraph (a)(ii); or

(iii) by the court in response to an application mentioned in paragraph (a)(iii).

(3) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—

(a) the nomination for appointment of a liquidator—

(i) made before the commencement date; or

(ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; and

(b) a liquidator nominated for appointment—

(i) before the commencement date; or

(ii) at a meeting mentioned in paragraph (a)(ii).

30. Effect of transactions at an undervalue, unfair preferences and floating charges (sections 265A to 267A)

(1) Sections 265A, 265B and 265C do not apply in relation to—

(a) a transaction at an undervalue entered into by a company before the commencement date;

(b) an unfair preference given by a company before the commencement date; or

(c) a charge created on the undertaking or property of a company before the commencement date.

(2) Section 265D does not apply in relation to a transaction at an undervalue entered into by a company before the commencement date.

(3) Sections 266 and 266A do not apply in relation to anything done or suffered to be done by a company before the commencement date, and the former sections 266, 266A and 266B continue to apply in relation to that thing.

(4) Sections 266B, 266C and 266D do not apply in relation to—

(a) a transaction at an undervalue entered into by a company before the commencement date; or

(b) an unfair preference given by a company before the commencement date.

(5) Sections 267 and 267A do not apply in relation to a charge created on the undertaking or property of a company before the commencement date, and the former section 267 continues to apply in relation to the charge.

(6) Section 360G applies—

(a) for the purposes of anything done or suffered to be done by a company before the commencement date, as if the references to sections 265A, 265B, 265C, 266, 266A, 266B, 266C and 266D in it were references to the former sections 266, 266A and 266B; and

(b) for the purposes of a charge created on the undertaking or property of a company before the commencement date, as if the references to sections 265A, 265B, 265C, 267 and 267A in it were a reference to the former section 267.

(7) In paragraph 3 of Part II of the Fifteenth Schedule, the reference to section 266 includes the former section 266.

31. Liability for not keeping proper records under section 274

(1) In this section—

record keeping period (存檔期), in relation to a company being wound up, means the shorter of the following periods—

(a) the period of 2 years immediately preceding the commencement of the winding up;

(b) the period between the incorporation of the company and the commencement of the winding up.

(2) If the winding up of a company commences before the expiry of the period of 2 years beginning on the first day of the first one of the company's financial years that begin on or after the commencement date, section 274 is to have effect as provided in subsection (3).

(3) For the purposes of subsection (2), section 274 is to be read as if, for a part of the record keeping period that coincides (whether in whole or in part) with a financial year of the company that begins before the commencement date—

(a) "proper books of accounts" were substituted for "accounting records that comply with section 373(2) and (3) of the Companies Ordinance (Cap. 622)"; and

(b) the former section 274(2) had not been repealed.

32. Power of court to assess damages against delinquent officer, etc. under section 276

For a person who has acted as a liquidator of a company and who has been released under section 205, section 276(1B) does not apply in relation to an application made under section 276(1) in respect of the person if the person was appointed as liquidator before the commencement date.

33. Electronic communications by liquidators

Division 6 of Part V and the provision in the Twelfth Schedule relating to section 296E(7) apply in respect of communications by liquidators to other persons, irrespective of when the winding up of the company commenced.

34. Demand to pay debts under former section 327(4)(a)

If a demand was served under the former section 327(4)(a) before the commencement date, the demand continues to have effect on and after the commencement date as if that former section had not been amended by the Amendment Ordinance.".

Division 2—Transitional and Saving Arrangements for Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)

178. Rule 210A added

After rule 210—

Add

"**210A. Transitional and saving provisions relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015)**

The transitional and saving provisions as set out in the Schedule are to have effect.".

179. Schedule added

After rule 211—

Add

"Schedule

[r. 210A]

Transitional and Saving Provisions Relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015);

commencement date (生效日期) means the date of commencement of the Amendment Ordinance;

former (原有), when it appears in conjunction with a reference to a rule or Form described by a number or a combination of a number and a letter, means the rule or Form of that number or of that combination of number and letter of the former Rules;

former Rules (《原有規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) as in force immediately before the commencement date.

2. Contents of order for winding up or appointment of provisional liquidator (rule 35)

If the petition for the winding up of a company has been presented before the commencement date, the former rule 35(2) and the former Forms 9 and 14 continue to apply in relation to the order for the winding up and the order for the appointment of a provisional liquidator in connection with the petition.

3. Appointment of liquidator and committee of inspection on report of meetings of creditors and contributories under rule 45

(1) If the winding up of a company has commenced before the commencement date, the former rule 45(2) continues to apply in relation to that winding up.

(2) If the petition for the winding up of a company has been presented before the commencement date, rule 45(8) does not apply in relation to the appointment of a liquidator or a committee of inspection.

4. List of contributories (rules 68 to 72)

If the winding-up order of a company has been made before the commencement date, then in relation to the list of contributories of the company—

(a) the former rules 68, 69, 70, 71 and 72 and the former Forms 42, 43, 44, 45, 46, 47, 48 and 49 continue to apply; and

(b) rule 67A does not apply.

5. Vacation of office of liquidator under rule 155

The former rule 155 continues to apply in relation to a liquidator appointed before the commencement date.

6. Certificate of employment under rule 175

If the petition for the winding up of a company has been presented before the commencement date, then in relation to a bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by the Official Receiver or liquidator—

(a) the former rule 175 continues to apply; and

(b) rule 175(2) does not apply.

7. Costs and taxation

If the petition for the winding up of a company has been presented before the commencement date, then for determining whether a bill of costs, charges and disbursements of a person employed by the Official Receiver or the liquidator is to be taxed by the Registrar, the former rule 176 continues to apply.

8. Costs payable out of the assets

(1) In relation to the priority of payments in respect of the winding up of a company, subject to subsections (2) and (3), rule 179(1) applies irrespective of when the winding up of the company commenced.

(2) If the petition for the winding up of the company has been presented before the commencement date, rule 179(1) applies as if "makes or concurs in making the company's statement of affairs" were substituted for "makes the statement of affairs of the company or an affidavit of concurrence in relation to that statement".

(3) The new item in rule 179(1) does not apply in relation to any expenses incurred by a member of a committee of inspection or the representative of a member before the commencement date.

(4) If the petition for the winding up of the company has been presented before the commencement date, then in relation to the payments of bills or charges of solicitors, managers, accountants, auctioneers, brokers, or other persons out of the assets of the company, the former rule 179(2) continues to apply.

9. Requirements under former rule 200 with regard to applications under section 204 of the Ordinance

If the winding up of a company has commenced before the commencement date, the former rule 200 continues to apply in relation to an application made under section 204 of the Ordinance in respect of that winding up.

10. Giving notice to creditors and contributories of intention to apply for release by Form 98

In relation to an application for release under the former rule 189 by a liquidator appointed before the commencement date, the former Form 98 continues to apply.".

Part 8

Consequential and Related Amendments

Division 1—Amendment to Specification of Public Offices Notice (Cap. 1 sub. leg. C)

180. Schedule amended (specification of public offices)

The Schedule, entry relating to the Chief Justice specified for the purposes of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)—

Repeal

"paragraph (c) of the definition of ***Registrar*** in section 222A(7)"

Substitute

"paragraph (d) of the definition of ***Registrar*** in section 286E(7)".

Division 2—Amendments to Insurance Ordinance (Cap. 41)

181. Section 46 amended (continuation of long term business of authorized insurer in liquidation)

Section 46(7)—

Repeal

"section 199(1)(a) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) the liquidator may without either of the sanctions referred to therein"

Substitute

"that sanction is required under sections 199(2), 199A(1)(b) and 199B(1) and (2) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) for a liquidator to exercise a power to bring or defend any action or other legal proceedings in the name of the company, the liquidator may without any of the sanctions referred to in those provisions".

182. Section 49A amended (winding up of authorized insurer subject to direction under section 35(2)(b))

(1) Section 49A(1)—

Repeal

everything after "section 184(2) of" and before "deemed"

Substitute

"CWUMPO, for the purposes of sections 170, 179, 182, 183, 266B, 267A, 269 and 274, and paragraphs (d), (e), (h), (i), (j), (k), (l) and (o) of section 271(1), of CWUMPO, the winding up of the insurer by the Court is".

(2) Section 49A(2)—

Repeal

everything after "section 230 of" and before "deemed"

Substitute

"CWUMPO, for the purposes of sections 170, 232, 266B, 267A, 269 and 274, and paragraphs (d), (e), (h), (i), (j), (k), (l) and (o) of section 271(1), of CWUMPO, the voluntary winding up of the insurer is".

(3) After section 49A(2)—

Add

"(2A) For the purposes of anything done or suffered to be done by the authorized insurer before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015), subsections (1) and (2) apply as if the references to section 266B of CWUMPO in those subsections were references to section 266 of the pre-amended CWUMPO.

(2B) For the purposes of a charge created on the undertaking or property of the authorized insurer before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015), subsections (1) and (2) apply as if the references to section 267A of CWUMPO in those subsections were references to section 267 of the pre-amended CWUMPO.".

(4) Section 49A(3)—

Repeal

"the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)"

Substitute

"CWUMPO".

(5) After section 49A(3)—

Add

"(4) In this section—

CWUMPO (《公司 (清盤及雜項條文) 條例》) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

pre-amended CWUMPO (《修訂前的公司 (清盤及雜項條文) 條例》) means CWUMPO as in force immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015).".

Division 3—Amendments to Banking Ordinance (Cap. 155)

183. Section 122 amended (winding-up of authorized institutions)

(1) Section 122(1) and (2)—

Repeal

"the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)" (wherever appearing)

Substitute

"CWUMPO".

(2) Section 122(3)—

Repeal

everything after "section 184(2) of" and before "deemed"

Substitute

"CWUMPO, for the purposes of sections 170, 179, 182, 183, 266B, 267A, 269 and 274, and section 271(1)(d), (e), (h), (i), (j), (k), (l) and (o), of CWUMPO, the winding up of the institution by the Court of First Instance is".

(3) After section 122(3)—

Add

"(3A) For the purposes of anything done or suffered to be done by the authorized institution before the commencement date of the Amendment Ordinance, subsection (3) applies as if the reference to section

266B of CWUMPO in that subsection were a reference to section 266 of the pre-amended CWUMPO.

(3B) For the purposes of a charge created on the undertaking or property of the authorized institution before the commencement date of the Amendment Ordinance, subsection (3) applies as if the reference to section 267A of CWUMPO in that subsection were a reference to section 267 of the pre-amended CWUMPO.".

(4) Section 122(4) and (5)—

Repeal

"the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)"

Substitute

"CWUMPO".

(5) After section 122(7)—

Add

"(8) In this section—

Amendment Ordinance (《修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015);

CWUMPO (《公司 (清盤及雜項條文) 條例》) means the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32);

pre-amended CWUMPO (《修訂前的公司 (清盤及雜項條文) 條例》) means CWUMPO as in force immediately before the commencement date of the Amendment Ordinance.".

Division 4—Amendments to Securities and Futures Ordinance (Cap. 571)

184. Section 50 amended (adjustment of prior transactions)

(1) Section 50(1)(b), after "section"—

Add

"265D or".

(2) After section 50(2)—

Add

"(3) In subsection (1)(b), the reference to section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) includes that section as in force immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015).".

185. Section 51 amended (right of relevant office-holder to recover certain amounts arising from certain transactions)

Section 51(3), definition of ***prescribed event***, paragraph (b)—

Repeal

"228A(1)".

Substitute

"228A".

Division 5—Amendments to Deposit Protection Scheme Ordinance (Cap. 581)

186. Section 38 amended (subrogation)

(1) Section 38(5)—

Repeal paragraph (a)

Substitute

"(a) if a winding-up order has been made by the Court of First Instance in respect of a Scheme member, the date of the winding-up order made by the Court of First Instance;".

(2) Section 38(5)—

Repeal paragraph (b).

Division 6—Amendments to Clearing and Settlement Systems Ordinance (Cap. 584)

187. Section 2 amended (interpretation)

(1) Section 2, definition of ***directors' voluntary winding up statement***—

Repeal

"228A(1)".

Substitute

"228A".

(2) Section 2—

Repeal the definition of *resolution for voluntary winding up*

Substitute

"***resolution for voluntary winding up*** (自動清盤決議) means a resolution for voluntary winding up passed under section 228(1)(a) or (b) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) in respect of which a certificate of solvency has not been issued and delivered in accordance with section 233 of the Ordinance;".

188. Section 22 amended (abrogation of statutory powers relating to adjustment of prior transactions)

(1) Section 22—

Renumber the section as section 22(1).

(2) Section 22(1)(b), after "section"—

Add

"265D or".

(3) After section 22(1)—

Add

"(2) In subsection (1)(b), the reference to section 266 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) includes that section as in force immediately before the commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015).".

189. Section 60 added

Before Schedule 1—

Add

"**60. Transitional and saving provision relating to the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015**

If a participant or the principal of a participant has passed a special resolution under section 228(1)(c) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) before commencement date of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2015 (of 2015) (***Amendment Ordinance***), the definition ***resolution for voluntary winding***

up in section 2 as in force immediately before the commencement date of the Amendment Ordinance continues to apply in relation to the participant or the principal of the participant for the purposes of this Ordinance.".

Explanatory Memorandum

The purposes of this Bill are those set out in the long title. The Bill is divided into 8 Parts.

Part 1—Preliminary

2. Part 1 contains preliminary provisions. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

3. Part 2 (clauses 3 to 118) amends the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (***Ordinance***).

4. A number of the amendments in Part 2 deal with the structure of the Ordinance, they are clauses 4, 5, 7, 8, 9, 10, 11, 12, 18, 19, 22, 23, 25, 27, 28, 29, 40, 46, 51, 56, 57, 62, 63, 64, 71, 79, 86, 87, 93, 96, 100, 102, 103, 104, 110, 111, 112, 113 and 114. The purpose is to give a more modernized structure to the Ordinance with numbered Parts, Divisions and Subdivisions.

5. Clause 6 amends the interpretation section (section 2), mainly to make it clear that the definition of ***liquidator*** in the Ordinance includes a provisional liquidator holding office by virtue of section 194(1)(a) or (aa) or (1A).

6. Clause 13 amends section 168D to provide the court with a power to disqualify a person from acting as a provisional liquidator.

7. Clause 14 amends section 168G so that the court may make a disqualification order against a person if the person, while acting as a provisional liquidator, has been guilty of any fraud in relation to the company or of any breach of the person's duty as a provisional liquidator.

8. Clause 15 amends section 168IA, and clause 16 adds a new section 168IB, for public examination of a person liable to a disqualification order. In particular, the provisions concerning an examinee's right to representation (section 168IA(7)) and privilege against self-incrimination (new section 168IB) are aligned with similar provisions regarding public examination in the winding up of a company under the new sections 286A and 286D.

9. Clause 17 amends section 168R to include in the definition of ***disqualification order*** an order made under section 307N(1)(a) of the Securities and Futures Ordinance (Cap. 571).

10. Clauses 20, 21 and 26 contain provisions relating to the liability of directors and shareholders involved in a redemption or buy-back of a company's own shares out of capital to contribute to the assets of a company—

(a) Clause 20 adds a new section 170A, under which those directors and shareholders are liable to contribute if—

(i) the company is wound up on, or within 1 year after, the date on which the payment out of capital was made; and

(ii) the assets and other contributions are insufficient to meet the company's liabilities and the expenses of the winding up.

(b) Clauses 21 and 26 make related amendments to sections 171 and 179 in respect of such directors and shareholders who are liable to contribute.

11. Clause 24 amends section 178(1) to require a statutory demand to be made in the prescribed form. Clause 109 introduces this requirement to the winding up of unregistered companies by making similar amendments to section 327(4).

12. Clause 30 amends section 190 mainly to provide for the submission of an affidavit of concurrence in relation to the statement of affairs of a company. Clause 31 adds a new section 190A which merges the existing section 190(4) and rule 43 of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) (***Winding-up Rules***) to provide for costs and expenses relating to statements of affairs and affidavits of concurrence.

13. Clause 32 amends section 191 to remove the requirement for there to be a further report made under section 191(2) alleging that a fraud has been committed before a public examination may be ordered.

14. Clauses 33, 34 and 35 amend sections 193, 194 and 196 to set out more clearly the provisions on duties, remuneration and tenure of office of provisional liquidators in a court winding up.

15. Specifically, section 193 is amended to set out clearly that for a provisional liquidator appointed before a winding-up order is made, the provisional liquidator is obliged to perform the duties imposed by the court, the court has power to determine the provisional liquidator's remuneration and on application, the court has power to terminate the provisional liquidator's appointment and decide whether to accept his or her resignation.

16. Section 194 is amended, inter alia, by adding a new subsection (1)(da), to provide that if a vacancy occurs in the office of a provisional liquidator who is holding office by virtue of section 194(1)(aa) or (1A), the Official Receiver becomes the provisional liquidator. A new subsection (6) is also added to section 194 to set out clearly that a person appointed as provisional liquidator under section 193 who continues to act as the provisional liquidator under section 194(1)(aa) on a winding-up order being made, is taken to be a provisional liquidator holding office by virtue of section 194(1)(aa). The purpose of the new subsection (6) is to clarify that the provisional liquidator is no longer holding office under section 193 on a winding-up order being made.

17. A new subsection (1B) is added to section 196 to make it clear that, on a winding-up order being made, a provisional liquidator holding office by virtue of section 194(1)(aa) is to be remunerated in accordance with section 196(2).

18. Clauses 36, 37 and 118 aim to provide clearly, with the addition of a Schedule 25, the powers of different kinds of provisional liquidators and liquidators in a winding up by the court, and also the restrictions and exceptions in the exercise of those powers. Clause 36 also enables a liquidator in a winding up by the court to, without sanction, employ a solicitor to assist in performing the liquidator's duties by giving at least 7 days' advance notice to the committee of inspection or the creditors, as the case may be.

19. Clause 39—

(a) amends section 205 to provide that the personal representative of a deceased liquidator may apply to the court for the release of the deceased liquidator; and

(b) amends section 205(3) to provide that the court may exercise its power under section 276 against liquidators notwithstanding their release under section 205.

20. Clause 41 adds new sections 205A and 205B for the interpretation of certain expressions used in the new sections 205A, 207F, 207G, 207H and 207K and Division 6 of Part V.

21. Clauses 42, 43 and 44 concern the composition, meetings and proceedings of a committee of inspection in a winding up by court. In particular, clause 42 amends section 206 to provide for the minimum number and maximum number of members of the committee. Both the minimum number and maximum number can be varied by the court on application by a liquidator. Clause 43 adds a new section 206A to lay down the requirements as to when the meetings of a committee of inspection are to be held. Clause 44 amends section 207 to allow a vacancy in the committee to remain unfilled in certain circumstances. These changes are also introduced for a creditors' voluntary winding up under section 243 (clause 74).

22. Clause 45 adds new sections 207A to 207K mainly to enhance the efficiency of the proceedings of a committee of inspection in a winding up by court. For instance, a member may be represented by another person (new section 207A). Meetings of the committee of inspection may be conducted remotely (new section 207B). There are also provisions about how a committee of inspection may conduct its business by way of written resolutions, and the liquidator's duties in relation to the resolutions (new sections 207D to 207K). Clause 45 also adds a new section 207L the effect of which is to entitle a committee of inspection member to certain travelling expenses incurred in

Hong Kong. These changes are also introduced for a creditors' voluntary winding up (clause 74).

23. Clauses 47, 48, 107 and 108 make consequential amendments to sections 209A, 209B, 300A and 300B arising from the amendments to section 190.

24. Clause 49 amends section 210(1) to add a reference to the Companies Ordinance (Cap. 622).

25. Clause 50 repeals sections 221 (private examination), 222 (public examination) and 222A (jurisdiction of Registrar), which are replaced by the new sections 286A to 286E.

26. Clause 52 amends section 227A to empower the provisional liquidator to apply for a regulating order under that section. Clause 53 amends section 227B to empower the provisional liquidator and liquidator to make an application under that section after a regulating order has been made. Clause 54 amends section 227C so that an order under section 227C(d) may be directed at the liquidator as well.

27. Clause 55 amends section 227E so that in a winding up by the court with a regulating order, the date of the winding up order is treated as the date on which the debt owed by a bank to a bank depositor is to be determined for the purpose of proof of the debt.

28. Clause 58 amends section 228 to delete section 228(1)(c) as the circumstances in which a company may be wound up under section 228(1)(c) are covered by section 228(1)(b).

29. To safeguard the interests of creditors and shareholders, clause 59 amends section 228A mainly to provide additional safeguards in a voluntary winding up initiated by directors under that section. Amongst other things, the amendments impose a new requirement that directors are to summon a meeting of the company and appoint a provisional liquidator before delivering to the Registrar of Companies a winding-up statement certifying that these steps have been taken (section 228A(1A) and (1B)).

30. Clause 60 adds a new section 228B to provide that the provisional liquidator appointed under section 228A is required to obtain the sanction of the court to exercise the powers of a liquidator in a creditors' voluntary winding up, except for the following—

(a) take into custody all the property and things in action to which the company is or appears to be entitled;

(b) dispose of perishable goods and other goods that are likely to diminish in value if not immediately disposed of; and

(c) do anything necessary to protect the company's assets.

31. Clause 61 amends section 229 to extend the time limit for a company to give notice of a resolution for voluntary winding up.

32. Section 237A, as amended by clause 66, applies if the liquidator in a members' voluntary winding up is of the opinion that the company will be unable to pay its debts in full within the period stated in the certificate of solvency (section 237A(1)). The amended section 237A extends the duties of the

liquidator in a case that falls within section 237A(1). For instance—

(a) the liquidator must summon a meeting of the creditors of the company within a time limit (section 237A(1A));

(b) the liquidator must send notices of the meeting to the creditors at least 7 days before the date of the meeting and advertise the notice in the Gazette and in local newspapers (section 237A(1A));

(c) the liquidator must provide the creditors with any information on the company's affairs that the creditors may reasonably require (section 237A(1D)); and

(d) the liquidator must prepare a full statement of the position of the company's affairs in conformity with section 237A(1G) (section 237A(1F)).

33. Clause 67 adds a new section 237B to provide for conversion of a members' voluntary winding up into a creditors' voluntary winding up.

34. Clause 72 amends section 240 to provide that sections 241, 242 and 243A do not apply to a winding up that has become a creditors' voluntary winding up under the new section 237B(1).

35. Clause 73 amends section 241 mainly to enhance the protection for creditors in a creditors' winding up, particularly in relation to the first creditors' meeting in such winding up. Under the amended section 241—

(a) the meeting of the creditors of the company is deferred to a date not later than 14 days after the day on which there is to be held the meeting of the company at which a resolution for voluntary winding up is to be proposed;

(b) the company must give notice of the meeting of creditors at least 7 days before the date of the meeting; and

(c) the directors must give a full statement of the position of the company's affairs in conformity with section 241(3A).

36. Clause 75 adds a new section 243A to restrict the powers and duties of a liquidator nominated by the company under section 242.

37. Clause 76 adds a new section 244A to provide for a procedure to remove a liquidator in a creditors' voluntary winding up (except a liquidator appointed by the court).

38. Clause 77 amends section 245 to provide further that if a vacancy arises in the office of a liquidator appointed by the court, such vacancy is to be filled by the court.

39. Clause 81 adds a new section 250A to restrict the directors' powers before the nomination or appointment of a liquidator in a voluntary winding up.

40. Clause 82 amends section 251 to provide that the powers and duties of a liquidator in that section are subject to the new section 243A.

41. Clause 83 amends section 253 mainly to align the time limit for the giving of various notices under that section.

42. Clause 84 amends section 255A to clarify when an audit of liquidator's accounts may be dispensed with in different types of voluntary winding up.

43. Clause 85 adds a new Division 4A to Part V, containing new sections 262A to 262G.

44. The new section 262A provides that if certain conditions are not met, a person must not be appointed, or nominated for appointment, or act as a provisional liquidator or liquidator of the company.

45. The new section 262B provides that certain persons (including a body corporate, an undischarged bankrupt, a person subject to a disqualification order, a person with mental incapacity and a person with conflict of interest) are disqualified from being appointed or nominated for appointment, and from acting, as a provisional liquidator or liquidator.

46. The new sections 262C and 262D provide that before a person may be appointed or nominated for appointment as a provisional liquidator or liquidator, the person must make a disclosure statement. The statement must—

(a) confirm that either the person is not disqualified to act as a provisional liquidator or liquidator under the new section 262B, or if the person is disqualified, the leave of the court has been obtained; and

(b) disclose whether there is any relationship with the company that falls within those set out in the new section 262D(2). If such relationship exists, the person has to give details and the reasons for believing that the relationship would not result in a conflict of interest or duty.

47. The new section 262E provides that a convenor of a meeting at which the appointment or nomination for appointment of a provisional liquidator or liquidator is to be considered, must ensure that certain procedural requirements concerning the disclosure statements are complied with.

48. The new section 262F imposes an obligation on provisional liquidators and liquidators who are required to make disclosure statements to update the disclosure statements upon discovery of any relationship that should be disclosed or of any changes or errors.

49. The new section 262G replaces and extends the scope of section 196(5) regarding validity of acts of a liquidator.

50. The effect of winding up on antecedent and other transactions is dealt with by certain provisions in Part V. Currently, sections 266, 266A and 266B, by applying certain provisions in the Bankruptcy Ordinance (Cap. 6) with modifications, provide for the avoidance of unfair preferences given by a company in certain circumstances. Section 267 provides for the effect of floating charges created on the undertaking or property of a company prior to its winding up. There is no provision in relation to transactions at an undervalue. Clauses 88 to 92—

(a) add new provisions to empower the court to avoid transactions at an undervalue entered into by a company in certain circumstances (new sections 265D and 265E);

(b) replace sections 266 and 266A with self-contained provisions in relation to unfair preferences;

(c) replace section 266B and add new sections 266C and 266D to provide for the following matters concerning both transactions at an undervalue and unfair preferences—

(i) the meaning of ***relevant time*** under new section 265D and the amended section 266 (amended section 266B);

(ii) matters related to the orders to be made by the court (new section 266C); and

(iii) matters related to the applicability of the relevant provisions (new section 266D);

(d) replace section 267 and add a new section 267A to enhance the effectiveness and flexibility of the provisions in relation to floating charges; and

(e) make interpretation provisions (new sections 265A, 265B and 265C) for the purposes mentioned in subparagraphs (a), (b), (c) and (d).

51. Clause 94 amends section 274 to replace the concept of "proper books of account" with "accounting records", so that the scope of records required to be kept under that section is aligned with that required under section 373 of the Companies Ordinance (Cap. 622).

52. Clause 95 amends section 276 to—

(a) achieve consistency in the references to "breach of duty" and "breach of trust" within that section;

(b) align the persons subject to the misfeasance proceedings under that section with those persons who may be publicly examined under the new section 286A; and

(c) provide that an application under section 276 to assess damages against a person who has acted as a liquidator and who has been released under section 205 can only be made with the leave of the court.

53. Clause 97 repeals section 278 as disqualification for appointment as liquidators is provided in the new section 262B.

54. Clause 98 amends section 278A and clause 106 adds a new section 297B to extend the original scope of section 278A. The offence under those sections now covers the appointment or nomination of a person as—

(a) a provisional liquidator of a company; and

(b) the receiver or manager of the property of a company.

Also, the giving of valuable consideration to any person, other than to a member or creditor of a company as provided in the existing section 278A, will be caught.

55. The new section 285A added by clause 99 is originally the existing section 115. Section 115 is moved as part of the effort to rationalize the structure of the Ordinance.

56. Clause 101 adds new sections 286A to 286E to replace the existing sections 221, 222 and 222A, so as to improve the private and public examination procedures—

(a) The new section 286A replaces section 222 for the public examination procedure. Among other things, the precondition that there is a further report under section 191(2) to allege that a fraud has been committed is removed. The categories of persons who may be subject to public examination are also expanded.

(b) The new sections 286B and 286C replace section 221 for the private examination procedure. Among other things, the power of the court to order a person to submit an affidavit to provide information is added. The persons who may apply for the court to exercise its powers relating to the private examination procedure are specified.

(c) The new section 286D provides that self-incrimination is not an excuse for not complying with a requirement imposed under the new section 286A, 286B or 286C. Nevertheless, if the information given in compliance with such a requirement might tend to incriminate the person, the information is not admissible in evidence against the person in criminal proceedings, except for certain offences relating to giving false information or perjury.

(d) The new section 286E replaces section 222A to relocate the provisions on the jurisdiction of a registrar of the High Court to exercise the powers and perform the duties of the court regarding the private and public examination procedures and to include public examination under section 168IA.

57. Clause 105 adds a new Division 6 to Part V. That Division provides for the circumstances in which a liquidator may communicate with another person by electronic means or via a website in every mode of winding up.

58. Clause 116 updates the Twelfth Schedule with reference to the offences created or amended by the Bill.

Parts 3, 4, 5 and 6—Amendments to Winding-up Rules and other subsidiary legislation under the Ordinance

59. Parts 3, 5 and 6 amend certain subsidiary legislation under the Ordinance.

60. Clause 119 under Part 3 makes a consequential amendment to Schedule 2 to the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C) arising from the amendment of section 205(1) of the Ordinance.

61. Part 4 amends the Winding-up Rules.

62. Clause 120 amends rule 2 to add the definitions of ***affidavit of concurrence*** and ***statement of affairs*** and an interpretative provision for the references to the forms in the Appendix.

63. Clause 122 adds new rules 3A, 3B and 3C to prescribe the content of, and the information to be given in, a statutory demand. Clause 173(1) adds a new Form 1A to the Appendix as the prescribed form for the statutory demand required under section 178 or 327 of the Ordinance.

64. Clauses 123, 138, 142, 143, 145, 146 and 172 make consequential amendments to rules 5, 52, 57, 57A, 59, 62 and 206 arising from the replacement of sections 221 and 222 by the new sections 286A to 286D in the Ordinance. Clauses 139, 140 and 141 make minor textual amendments to rules 54, 55 and 56.

65. Clause 124 adds a new rule 20A to require a person giving notice or sending document in accordance with the Winding-up Rules, or Part V or X of the Ordinance, to provide contact details. Clause 121 amends rule 3 to provide that the forms in

the Appendix may be used with any necessary variations so that it complies with the new rule 20A.

66. Clauses 126, 127, 128, 129, 130 and 131 update rules 28, 35, 39, 40 and 41, as well as the cross-heading before rule 39, in view of the introduction of affidavits of concurrence under section 190 of the Ordinance. Clause 132 makes a minor textual amendment to rule 42, and clause 133 repeals rule 43 which is merged into the new section 190A of the Ordinance. Clauses 134, 152, 153, 154, 158, 165 and 169 make consequential amendments to rules 44, 93, 111, 114, 142, 162 and 179 arising from the introduction of affidavits of concurrence.

67. Clause 136 amends rule 45—

(a) so that the court, in exercising the power to make appointments under that rule, has to conform to the requirements relating to the composition of the committee of inspection in the amended section 206 of the Ordinance (clause 42); and

(b) to clarify the meaning of liquidator in relation to paragraphs (4A), (5), (6) and (7) of that rule.

68. Clause 137 adds a new rule 51A to make provisions concerning the evidence in support of an application under the new section 286A of the Ordinance.

69. Clause 144 adds new rules 58A and 58B—

(a) The new rule 58A requires an application under the new section 286B of the Ordinance to specify the purpose of the application and makes provisions concerning the evidence in support of such application.

(b) The new rule 58B provides for the form of an order under the new section 286B of the Ordinance and requires a notice to be sent to a person ordered to attend before the court under that section.

70. Clauses 148, 149 and 150 contain amendments relating to the settlement of the list of contributories of a company—

(a) Clause 148 adds a new rule 67A for ease of reference in that rule and rules 68 to 73.

(b) Clause 149 substitutes rules 68, 69, 70 and 71 mainly to dispense with the requirement for the liquidator to appoint a time and place for the settlement of the list of contributories. Instead, after the notice of provisional list of contributories has been sent, there is a period for objection by persons proposed to be included in the list to be settled, after which the liquidator will settle the list of contributories.

(c) Clause 150 amends rule 72 consequentially.

71. Clause 151 amends rule 74 to correct the reference to the section in the Ordinance under which the court may make calls on contributories.

72. Clauses 154, 155, 156 and 157 contain minor technical amendments to rules 114, 117, 119 and 131.

73. Clauses 159, 160 and 161 amend rules 148, 150 and 152 so that those rules also apply to a representative of a member of a committee of inspection.

74. Clause 162 amends rule 154 and clause 163 adds new rules 154A and 154B to prescribe the procedure for the resignation of liquidators in a winding up by the court, a creditors' voluntary winding up and a members' voluntary winding up.

75. Clause 164 amends rule 155 to provide that a provisional liquidator or liquidator disqualified under the new section 262B of the Ordinance ceases to hold office and is taken to have been removed.

76. Clause 166 adds new provisions to rule 167 to provide for the delivery of relevant books and documents by the personal representative of a deceased liquidator before the release of the deceased liquidator could take effect.

77. Clause 167 amends rule 175 to reflect the requirements of the amended section 199(4)(b) of the Ordinance in relation to the employment of a solicitor to assist the liquidator in a winding up by the court.

78. Clause 168 amends rule 176 to dispense with taxation by the Registrar if a bill of costs of an agent of the liquidator or the Official Receiver is approved by a committee of inspection.

79. Clause 169 amends rule 179 (which provides for costs payable out of the assets of a company) to—

(a) extend the item for payment regarding costs and expenses for the making of a statement of affairs to cover costs and expenses for the making of an affidavit of concurrence in relation to that statement;

(b) add a new item for payment regarding travelling expenses incurred by members of a committee of inspection as provided under the new section 207L of the Ordinance;

(c) allow a bill or charges of a liquidator's agents that have been approved by the committee of inspection to be paid without taxation; and

(d) reflect the requirements of the amended section 199(4)(b) of the Ordinance in relation to the employment of a solicitor to assist the liquidator in a winding up by the court.

80. Clause 170 amends rule 189 to prescribe the procedures for a deceased liquidator's personal representative to apply for the release of the deceased liquidator.

81. Clause 171 amends rule 200 to delete an obsolete reference to section 277(3) of the Ordinance.

82. Clause 173 amends various forms in the Appendix, such amendments being consequential to the amendments made to the Ordinance and the Winding-up Rules.

83. Clause 174 makes a consequential amendment to the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg. I) arising from the amendment of section 168R of the Ordinance.

84. Clause 175 amends section 3 of the Companies (Reports on Conduct of Directors) Regulation (Cap. 32 sub. leg. J) to replace the reference to statutory declaration by winding-up statement for consistency with section 228A of the Ordinance.

Parts 7 and 8—Transitional and saving provisions and consequential and related amendments

85. Part 7 contains transitional and saving provisions and Part 8 makes consequential and related amendments to other Ordinances.