

立法會
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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 April 2016

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

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 20 April 2016. Subject to the Bill receiving Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury to move proposed amendments to the Bill at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Angela LIN)
for Clerk to the Legislative Council

Encl.

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

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
16	<p>In the proposed section 168IB—</p> <p>(a) in the heading, by adding “direction or” after “in relation to”;</p> <p>(b) in subsection (1), by adding “direction or” after “complying with a”;</p> <p>(c) in subsection (3), by deleting everything after “charged with” and substituting—</p> <p>“any of the following offences in respect of the affidavit or answer—</p> <p>(a) an offence under section 349;</p> <p>(b) an offence under Part V of the Crimes Ordinance (Cap. 200).”.</p>
20	<p>In the proposed section 170A(5), by deleting “Section 170 does” and substituting “The limitations under section 170 on any liability to contribute do”.</p>
30(6)	<p>In the proposed section 190(2A), by deleting everything after “submit” and substituting “to the provisional liquidator or liquidator a supplementary affidavit stating that the person concurs in the statement.”.</p>
30(6)	<p>In the proposed section 190(2B), by deleting “An affidavit of concurrence” and substituting “A supplementary affidavit”.</p>

- 30(7) By deleting “affidavit of concurrence” and substituting “supplementary affidavit”.
- 30(11) In the proposed section 190(5B), by deleting “An affidavit of concurrence” and substituting “A supplementary affidavit”.
- 30(12) In the proposed section 190(6)(a), by deleting “an affidavit of concurrence” and substituting “a supplementary affidavit”.
- 31 In the proposed section 190A—
- (a) in the heading, by deleting “**affidavit of concurrence**” and substituting “**supplementary affidavit**”;
 - (b) in subsection (1), by deleting “an affidavit of concurrence” and substituting “a supplementary affidavit”.
- 36 In the proposed section 199(6), by deleting “for directions”.
- 37 In the proposed section 199A(3), by deleting “for directions”.
- 37 In the proposed section 199B(7), in the Chinese text, by deleting everything after “分擔人可” and substituting “就行使或擬行使任何上述權力，向法院提出申請。”.
- 37 In the proposed section 199B(8), in the definition of *relevant person*, in paragraph (b), by adding “, within the meaning of sections 265A(2), 265B and 265C,” after “associate”.
- 43 In the proposed section 206A(3), in the Chinese text, by deleting “在由收到該要求當日起計” and substituting “收到該要求當日後”.

- 45 By deleting the proposed section 207A(2)(b)(ii) and substituting—
- “(ii) is signed—
- (A) (if the member is a natural person) by the member; or
- (B) (in any other cases) by or on behalf of the member.”.
- 45 In the proposed section 207B(8), by deleting everything before paragraph (b) and substituting—
- “(8) Despite subsection (6), the liquidator must specify a place for the meeting if—
- (a) because of subsection (6), the notice of the meeting under section 206A(6) is given without a place specified for the meeting; and”.
- 47 By deleting “an affidavit of concurrence” (wherever appearing) and substituting “a supplementary affidavit”.
- 48 By deleting “affidavit of concurrence” and substituting “supplementary affidavit”.
- 59(19) By deleting “14” and substituting “15”.
- 59 By deleting subclause (21) and substituting—
- “(21) Section 228A(10)—
- Repeal**
- “subsection (5)(b) shall, within 14 days after the date of his appointment”
- Substitute**
- “subsection (1)(c) must, within 15 days after the commencement of the winding up of the company”.”.
- 59 By deleting subclause (22).

59 By deleting subclause (23) and substituting—

“(23) Section 228A(11)—

Repeal

“subsection (5)(b) who ceases to act as such shall, within 21”

Substitute

“subsection (1)(c) who ceases to act as such must, within 15”.’.

59 By adding—

“(23A) Section 228A(12)—

Repeal

“14”

Substitute

“15”.’.

59(25) In the Chinese text—

(a) by deleting “(5)(b)” and substituting “(5)(b)款獲”;

(b) by adding “款” after “(1)(c)”.

66(3) In the proposed section 237A(1G)(a), in the Chinese text, by deleting “法律責任” and substituting “債務”.

66 By deleting subclause (4) and substituting—

“(4) Section 237A(2)—

Repeal

everything after “meeting”

Substitute

“summoned by the liquidator under this section, appoint another liquidator in place of the liquidator.”.’.

69 In the English text, by deleting “239A” and substituting “section 239A”.

- 73(3) In the proposed section 241(3A)(a), in the Chinese text, by deleting “法律責任” and substituting “債務”.
- 101 In the proposed section 286D(3), by deleting everything after “charged with” and substituting—
 “any of the following offences in respect of the answer or affidavit—
 (a) an offence under section 349;
 (b) an offence under Part V of the Crimes Ordinance (Cap. 200).”.
- 105 In the proposed section 296D(8), by deleting “subsection (7)” and substituting “subsection (7)(b)”.
- 120 By deleting subclause (2).
- 120(3) (a) By deleting the proposed definition of *affidavit of concurrence*.
 (b) By adding in alphabetical order to the proposed definitions—
 “*supplementary affidavit* (補充誓章) means a supplementary affidavit required to be made under section 190(2A) of the Ordinance;”.
- 126 By deleting “an affidavit of concurrence” and substituting “supplementary affidavit”.
- 127 In the proposed rule 35(2), by deleting everything after “duty of” and substituting “a person who is or may be liable to make the statement of affairs of the company, or a supplementary affidavit 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 By deleting “AFFIDAVIT OF CONCURRENCE” and substituting
“SUPPLEMENTARY AFFIDAVIT”.

129 In the proposed rule 39—

- (a) in the heading, by deleting “**affidavit of concurrence**” and substituting “**supplementary affidavit**”;
- (b) in paragraph (4), by deleting “An affidavit of concurrence” and substituting “A supplementary affidavit”;
- (c) in paragraph (5)(b), by deleting “an affidavit of concurrence” and substituting “a supplementary affidavit”;
- (d) by deleting paragraph (6) and substituting—
 - “(6) The Official Receiver, provisional liquidator or liquidator may, for the purpose of investigating the company’s affairs, hold interviews from time to time with a person who is or may be liable to make the statement of affairs of the company or a supplementary affidavit in relation to that statement.”.

130 In the proposed rule 40—

- (a) in the heading, by deleting “**affidavit of concurrence**” and substituting “**supplementary affidavit**”;
- (b) by deleting “an affidavit of concurrence” and substituting “supplementary affidavit”.

131(1) By deleting “**affidavit of concurrence**” and substituting
“**supplementary affidavit**”.

131(2) By deleting “an affidavit of concurrence” and substituting
“supplementary affidavit”.

134(1) By deleting “**affidavit of concurrence**” and substituting “**supplementary affidavit**”.

134(2) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.

137 By deleting the clause and substituting—

“137. Rules 51A and 51B added

After rule 51—

Add

“51A. Further report confidential if public examination ordered

(1) If the court, after consideration of a further report made under section 191(2) of the Ordinance, makes an order under section 286A(1) of the Ordinance pursuant to paragraph (a) of that section, the further report is not open to inspection.

(2) Despite paragraph (1)—

(a) a person in respect of whom the order is made may apply to the court to see all or part of the further report; and

(b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the further report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.

51B. Evidence in support of application for public examination

(1) If an application for an order of the court under section 286A(1) of the Ordinance (***public examination order***) is made pursuant to paragraph (b) of that section—

(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 not open to inspection.

(2) Despite paragraph (1)(b)—

- (a) a person in respect of whom the application is made may (whether or not the application has been disposed of) apply to the court to see all or part of the report; and
- (b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.”.”.

143 By deleting “51A” and substituting “51B”.

144 By deleting the proposed rule 58A(4) and (5) and substituting—

“(4) If an application for a section 286B order is made—

- (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 not open to inspection.

(5) Despite paragraph (4)(b)—

- (a) a person in respect of whom the application is made may (whether or not the application has been disposed of) apply to the court to see all or part of the report; and
- (b) the court may allow the person, subject to any condition that it thinks fit, to see all or part of the report if the person satisfies the court that it would be unfair to the person not to be allowed to see it.”.

152 By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.

- 153(2) By deleting “affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.
- 153(3) By deleting “affidavit of concurrence” and substituting “supplementary affidavit in relation to that statement”.
- 154 By deleting subclause (1) and substituting—
“(1) Rule 114(2), after “statement of affairs of the company”—
Add
“or a supplementary affidavit in relation to that statement”.”.
- 158 By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.
- 165 By deleting “affidavit of concurrence” and substituting “supplementary affidavit in relation to that statement”.
- 169(1) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit”.
- 169(3) In the proposed rule 179—
(a) in paragraph (2), by deleting “considered and”;
(b) in paragraph (2)(c), in the Chinese text, by deleting “獲該” and substituting “獲”.
- 173(2)(b) By deleting the proposed Note and substituting—
*“Note—As the Official Receiver or provisional liquidator (**interviewer**) may require, it is the duty of a person who is or may be liable to make the statement of affairs of the company, or a supplementary affidavit 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.”.*

- 173(3)(b) By deleting the proposed Note and substituting—
- “Note—As the Official Receiver, provisional liquidator or liquidator (**interviewer**) may require, it is the duty of a person who is or may be liable to make the statement of affairs of the company, or a supplementary affidavit 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.”.*
- 173(4)(c) By deleting “affidavit of concurrence” and substituting “supplementary affidavit in relation to that statement”.
- 173(5)(b) By deleting “affidavit of concurrence” and substituting “supplementary affidavit in relation to that statement”.
- 173(10)(b) In the Chinese text, by deleting “to be appointd” and substituting “to be appointed”.
- 173(16) In the proposed Form 44, in the Chinese text, by deleting “，[述明” and substituting “[述明”.
- 173(23)(a) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.
- 173(24)(b) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.
- 173(24)(c) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.
- 173(25)(b) By deleting “an affidavit of concurrence” and substituting “a supplementary affidavit in relation to that statement”.

- 173 By adding—
 “(25A) Appendix, Form 98—
 Repeal
 “19”
 Substitute
 “20”.’.
- 173(26) In the English text, by deleting “*material fact.*” and substituting “*material fact.*”’.
- 173(27)(a) By deleting “, if applicable, affidavit of concurrence” and substituting “any supplementary affidavit in relation to that statement”.
- 173(27)(b) By deleting “affidavit of concurrence” and substituting “supplementary affidavit”.
- 177 In the proposed Schedule 26, in section 2(3)(b), by deleting “51A” and substituting “51B”.
- 177 In the proposed Schedule 26, in section 8, by deleting “section 205(3)” and substituting “section 205(3)(a)”.
- 177 In the proposed Schedule 26, in section 15(3)(b), by deleting “rule 51A” and substituting “rules 51A and 51B”.
- 177 In the proposed Schedule 26, in section 18—
 (a) by renumbering the section as section 18(1);
 (b) in subsection (1)(a), by adding “subject to subsections (2) and (3),” before “the former section 228A”;
 (c) by adding—

- “(2) Section 228A(11) applies if a provisional liquidator appointed under the former section 228A(5)(b) ceases to act as such on or after the commencement date.
 - (3) Section 228A(12) applies to a notice of appointment delivered under the former section 228A(10) if, on or after the commencement date, any change occurs in the particulars in that notice.”.
- 177 In the proposed Schedule 26, in section 31(2), by deleting “the first one of the company’s financial years that begin” and substituting “the company’s first financial year that begins”.
- 179 In the proposed Schedule, in section 8(2), by deleting “an affidavit of concurrence” and substituting “a supplementary affidavit”.
- Part 8 In Division 2, in the heading, by adding “**Companies**” after “**Insurance**”.
- 181 In the heading, by deleting “**authorized**”.
- 182 In the heading, by deleting “**authorized**”.
- 182(3) In the proposed section 49A(2A)—
- (a) by deleting “authorized insurer” and substituting “insurer mentioned in subsection (1) or (2)”;
 - (b) by deleting “subsections (1) and (2) apply as if the references to section 266B of CWUMPO in those subsections were references” and substituting “that subsection applies as if the reference to section 266B of CWUMPO in that subsection were a reference”.
- 182(3) In the proposed section 49A(2B)—
- (a) by deleting “authorized insurer” and substituting “insurer

mentioned in subsection (1) or (2)”;

- (b) by deleting “subsections (1) and (2) apply as if the references to section 267A of CWUMPO in those subsections were references” and substituting “that subsection applies as if the reference to section 267A of CWUMPO in that subsection were a reference”.

Part 8 In Division 6, in the heading, by deleting “**Clearing and Settlement Systems**” and substituting “**Payment Systems and Stored Value Facilities**”.

- 189 (a) In the heading, by deleting “**60**” and substituting “**61**”.
- (b) By deleting “**60.**” and substituting “**61.**”.
- (c) In the English text, by adding “the” after “(Cap. 32) before”.

Part 8 By adding—

“Division 7—Amendments to Companies (Winding Up and Miscellaneous Provisions) (Amendment Ordinance 2016 (of 2016)

190. Part 8, Division 2 heading amended (amendments to Insurance Companies Ordinance (Cap. 41))

Part 8, Division 2, heading—

Repeal

“Companies”.

191. Section 181 heading amended (section 46 amended (continuation of long term business of insurer in liquidation))

Section 181, heading, before “**insurer**”—

Add

“authorized”.

192. Section 182 heading amended (section 49A amended (winding up of insurer subject to direction under section 35(2)(b)))

Section 182, heading, before “**insurer**”—

Add

“authorized”.