Companies (Amendment) Bill 2000

Comments made by the HK Society of Accountants & the Law Society of HK in their submissions to the Bills Committee

Technical amendments other than Corporate Rescue and Insolvent Trading

Clause No & Subject	Comments		Administration's Response
	HK Society of Accountants	Law Society of HK	
Clause 14 – s.116B – written resolutions of companies		! Questioned whether there is presently doubts that the existing s.116B may not enable a company to pass a resolution without holding a meeting if all shareholders agree. ! Consequently, question whether clause 14 and the consequently amendments in clauses 4, 5, 6, 12 and 51 are necessary.	! The proposed new section 116B enables written resolutions without a meeting even though certain sections such as 47(E)(4), 50(1)(a), 53(2) and 57(B)(1) require one. The present section is considered ineffective in these instances.
Clause 19 – s.168I – Application to court under s.168H: reporting provisions	! In clause 19(C)(i) para. "(aa)" should be inserted after instead of before para (a), s.168I(3).		! Clause 19(c)(i) which is related to corporate rescue procedure will be deleted by a CSA.

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Clause 20 – s.168IA – Power to order public examination		! Does not object to the clause but questioned its usefulness in practice.	! In order to properly perform his regulatory function and to prosecute for directors' disqualification, the Official Receiver has to have power to investigate and to publicly examine promoters and directors of companies wound-up by the court. ! At present, such power is provided for in s.222(1)(b), but for technical reasons relating to the submission of a further report under s.191(2), the Official Receiver has difficulty in practice exercising that power. ! S.168IA is simply a transfer of the power given to the Official Receiver under s.222(1)(b) but without linking it to the requirement of a further report under s.191(2).
Clause 27 – s.191 Report by Official Receiver or liquidator	! Subsection (2) – may not be appropriate to retain the word "also" as the first reference to "Official Receiver" in this section is repealed under para. (a).		! The existence of the word "also" does not change the meaning of the section. No change is necessary.

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Clause 30 – s.194 Appointment, style, etc of liquidators	! Rationale for repealing para (d) of subsection (1) under (a)(iii). ! "$200,000" be followed by "or such figure as Secretary for Financial Services may specify by notice in the Gazette".		(1) S.194(d) is proposed to be repealed to avoid the uncertainties particularly relating to outside liquidators on their date of appointment and the fixing of their remuneration. The repeal of s.194(d) would mean that all appointments of liquidator would have to be made by the court. It is arguable that the other provisions in s.194 may not have empowered the court to appoint a liquidator in cases of there being no resolution passed or no quorum at the meetings. For the sake of clarity, it is suggested that the following be added by a CSA in place of the repealed s.194(d) "the court may make any appointment and order as the court may think fit if the meetings of the creditors and contributories of the company pass no resolution; or if the creditors and contributories do

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			not meet;" (2) The figure $200,000 is tied with s.227F and can be changed by amending the Ordinance. No need to put in the extra flexibility as suggested.
Clause 32 and Clause 33 – General provision as to liquidators and powers of liquidators	! Para (b) of clause 32 and para (a) of clause 33 suggests the term "liquidator" in s.196(2) and 199(1) and (2) is being used to cover both liquidators and provisional liquidators. Inconsistent with para (a) of clause 32 and elsewhere. ! "$100,000" should be replaced by a provision whereby the Secretary for Financial Services may specify such sum by notice in the Gazette.		(1) There is no inconsistency between para (a) of clause 32 and para (b) of clause 32 and para (a) of clause 33. (2) The figure $100,000 was recommended by the SCCLR. The purpose of putting a limit is to curtail the power of provisional liquidators appointed under s.194(1A). This limit should not be changed easily.
Clause 36 – s.222 Power to order public examination of promoters, directors etc	! Rationale for repealing one of the two grounds which would render a person liable to a disqualification order.		! The power to publicly examine a promoter or director of a company wound-up by the court on the ground of a prima facie case for directors' disqualification has been transferred to under s.168IA.

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Clause 37 – s.227F Application of Ordinance to small winding-up	! "$200,000" be followed by "or such figures as Secretary for Financial Services may specify by notice in the Gazette".		! The figure $200,000 can be changed by amending the Ordinance. No need to put in the extra flexibility as suggested.
Clauses 38 to 41, 42(b)(iii) and 43 – s.228A Special procedure for voluntary winding up in case of inability to continue its business	! Do not agree with the proposal to repeal s.228A. ! S.228A serves a useful function: provides directors with an expeditious way to commence winding up procedures especially against the background of the proposed insolvent trading provision. ! Directors should be permitted to petition for a compulsory winding up.	! s.228A has the safeguard of a full creditors meeting where the appointment of the provisional liquidator can be questioned. ! Against the background of the proposed insolvent trading provision, s.228A which allows a company be placed under liquidation with relative ease and speed has a reason to be retained. ! Does not object to clause 39 which repeals s.228A but like to seek clarification on why this amendment is considered appropriate.	! The proposal to repeal s.228A was made pursuant to the recommendation of the SCCLR and the LRC. ! Information on the rationale of the SCCLR and the LRC for the proposed repeal has been sent already to the Bills Committee on 7 March 2000. ! The whole purpose of the s.228A "special procedure" is to speed up the appointment of a liquidator in emergency cases. Despite the 1993 amendments, this "special procedure" in emergency cases can still be abused, as under s.228A, there is no mechanism to monitor whether the requirement under subsection (1)(b) has in fact been

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			satisfied, namely that there are "good and sufficient" reasons for using the "special procedure" instead of the normal procedure under s.228(1) and s.241. ! The reference to "good and sufficient" reasons envisages circumstances which makes it impractical, if not impossible, to use one of the other provisions for winding-up. In Bozell Asia (Holdings) Ltd. v. CAL International Ltd. [1997] HKLRD 1, the judge doubted whether the directors had good and sufficient reasons within subsection (1)(b). ! Circumstances in which a company may be wound up by the court are set out in s.177(1). There seems nothing to stop a director from presenting a compulsory winding-up petition to the court if he is able to come under any one or more of those circumstances.