

Amend the Companies Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Companies (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for

Financial Services by notice in the Gazette.

2. Interpretation

Section 2 of the Companies Ordinance (Cap. 32) is amended---

(a) in subsection (1), by adding---

""liquidator" (清盤人) includes a provisional liquidator holding such office by virtue of section 194;";

(b) by adding---

"(10) In this Ordinance, unless the context otherwise requires, the terms "former provisional supervisor" (前任臨時監管人), "former supervisor" (前任監管人), "provisional supervisor" (臨時監管人), "supervisor" (監管人) and "voluntary arrangement" (自願償債安排) have the meanings respectively assigned to them in section 168U.

(11) In this Ordinance, unless the context otherwise requires, the terms "former responsible person" (前任負責人), "insolvent trading" (在無力償債情況下營商) and "responsible person" (負責人) have the meanings respectively assigned to them in section 295A."

3. Power to dispense with certain words

in name of charitable and other companies

Section 21(6)(a) is repealed.

4. Relaxation of section 47A for unlisted companies

Section 47E is amended by adding---

"(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B giving approval under subsection (4) or (5), section 47G(11)(a) shall not apply, but the declaration referred to in subsection (6) shall be supplied---

(a) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and

(b) at or before the time at which the resolution is supplied to the member for signature.

[cf. 1985 c. 6 Sch. 15A, Pt. II, item 4 U.K.]".

5. Authority for purchase by unlisted company

Section 49D is amended by adding---

"(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B---

(a) conferring authority to make a purchase of the company's shares under subsection (2);

(b) varying, revoking or renewing an authority under subsection (3); or

(c) conferring authority to vary a contract for a purchase of the company's shares under subsection (6), then---

(i) subsection (4) shall not apply but, for the purposes of section 116B(1), a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote;

(ii) subsection (5) shall not apply but the documents referred to in that subsection and, where that subsection applies by virtue of subsection (6), the further documents referred to in subsection (6), shall be supplied---

(A) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and

(B) at or before the time at which the resolution is supplied to the member for signature.

(8) Subsection (7) shall also have effect in relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B in relation to which the provisions of subsections (3) to (6) apply by virtue of section 49E(3) or 49F(2).

[cf. 1985 c. 6 Sch. 15A, Pt. II, item 5, U.K.]".

6. Conditions for payment out of capital

Section 49K is amended by adding---

"(7) In relation to a resolution agreed to, or proposed to be agreed to, in accordance with section 116B giving approval under subsection (2), then---

(a) section 49L(2) shall not apply but, for the purposes of section 116B(1), a member holding shares to which the resolution relates shall not be regarded as a member who would be entitled to attend and vote;

(b) section 49L(4) shall not apply but the documents referred to in that section shall be supplied---

(i) to each member by whom, or on whose behalf, the resolution is required to be signed in accordance with section 116B; and

(ii) at or before the time at which the resolution is supplied to the member for signature.

[cf. 1985 c. 6 Sch. 15A, Pt. II, item 6, U.K.]".

7. Approval of company required for allotment of shares by directors

Section 57B(5) is repealed.

8. Documents relating to rights of holders of special classes of shares to be filed with Registrar
Section 64A(b) and (c) is repealed.
9. Annual return to be made by company
Section 107 is amended---
 - (a) by repealing subsection (3) and substituting---
 - "(3) A company (not being a private company having a share capital) need not make a return under subsection (1) in the year of its incorporation or, if it is not required by section 111 to hold an annual general meeting during the following year, in that year.
 - (3A) A private company having a share capital need not make a return under subsection (1) in the year of its incorporation.
 - (3B) A private company having a share capital which was incorporated in any of the months from July to December inclusive in the year immediately preceding the year in which section 9 of the Companies (Amendment) Ordinance 2000 (of 2000) commenced need not make a return under subsection (1) in the year immediately following the year of its incorporation.";
 - (b) in subsection (5), by repealing "director and" and substituting "director or".
10. General provisions as to annual returns
Section 109 is amended---
 - (a) in subsection (1), by repealing "both by a director and" and substituting "by a director or";
 - (b) in subsection (1A)---
 - (i) by repealing ", subject to subsection (1B),";
 - (ii) by repealing "both by a director and" and substituting "by a director or";
 - (c) by repealing subsection (1B).
11. Certificates to be sent by private company with annual return
Section 110 is amended by repealing "director and" and substituting "director or".
12. Annual general meeting
Section 111 is amended by adding---
 - "(6) A company is not required to hold a meeting in accordance with subsection (1) if---
 - (a) everything that is required or intended to be done at the meeting (by resolution or otherwise) is done by a resolution or resolutions in accordance with section 116B; and
 - (b) a copy of each document (including any accounts or records) which under this Ordinance would be required to be laid before the company at the meeting or otherwise produced at the meeting is provided to each member of the company---
 - (i) by whom or on whose behalf the resolution or resolutions, as the case may be, is or are required to be signed under that section; and
 - (ii) before or at the same time as the resolution or resolutions, as the case may be, is or are provided to the member."
13. Convening of extraordinary general meeting on requisition
Section 113(1) is amended by repealing "one-tenth" where it twice appears and substituting "one-twentieth".
14. Sections substituted
Section 116B is repealed and the following substituted---

"116B. Written resolutions of companies

 - (1) Anything which in the case of a company may be done---
 - (a) by resolution of the company in general meeting; or
 - (b) by resolution of a meeting of any class of members of the company, may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting.
 - (2) The signatures need not be on a single document provided each is on a document which accurately states the terms of the resolution.
 - (3) The date of the resolution means when the resolution is signed by or on behalf of the last member to sign.
 - (4) A resolution agreed to in accordance with this section has effect as if passed---
 - (a) by the company in general meeting; or
 - (b) by a meeting of the relevant class of members of the company, as the case may be; and any reference in any enactment to a meeting at which a resolution is passed or to members voting in favour of a resolution shall be construed accordingly.
 - (5) Any reference in any enactment to---
 - (a) the date of passing of a resolution is, in relation to a resolution agreed to in accordance with this section, a reference to the date of the resolution;
 - (b) the date of a meeting is, in relation to a resolution agreed to in accordance with this section without the meeting, a reference to the date of the resolution.
 - (6) A resolution may be agreed to in accordance with this section which would otherwise be required to be passed as a special resolution; and any reference in any enactment to a special resolution includes such a resolution.
 - (7) This section shall not apply to---

- (a) a resolution under section 131 removing an auditor before the expiration of his term of office;
- (b) a resolution under section 157B removing a director before the expiration of his period of office.

[cf. 1985 c. 6 s. 381A U.K.]

116BA. Duty to notify auditors of proposed written resolution

- (1) If a director or secretary of a company---
 - (a) knows that it is proposed to seek agreement to a resolution in accordance with section 116B; and
 - (b) knows the terms of the resolution,he shall, if the company has auditors, secure that a copy of the resolution is sent to them, or that they are otherwise notified of its contents, at or before the time the resolution is supplied to a member for signature.

(2) A director or secretary who fails to comply with subsection (1) shall be liable to a fine.

- (3) In any proceedings for an offence under this section it is a defence for the defendant to prove---

(a) that the circumstances were such that it was not practicable for him to comply with subsection (1); or

(b) that he believed on reasonable grounds that a copy of the resolution had been sent to the company's auditors or that they had otherwise been informed of its contents.

(4) Nothing in this section affects the validity of any resolution.

[cf. 1985 c. 6 s. 381B U.K.]

116BB. Written resolutions: supplementary provisions

(1) Sections 116B and 116BA shall have effect notwithstanding any provision of the company's memorandum or articles, but do not prejudice any power conferred by any such provision.

(2) Nothing in sections 116B and 116BA shall affect any enactment or rule of law as to---

- (a) things done otherwise than by passing a resolution; or
- (b) cases in which a resolution is treated as having been passed, or a person is precluded from alleging that a resolution has not been duly passed.

[cf. 1985 c. 6 s. 381C U.K.]

15. Resignation of director or secretary

Section 157D is amended---

- (a) in subsection (2), by repealing ", subject to subsection (3)(c)";
- (b) by repealing subsection (3)(b) and (c).

16. Disqualification orders: general

Section 168D(1) is amended by adding---

- "(aa) be the provisional supervisor of a company;
- (ab) be the supervisor of a voluntary arrangement in respect of a company;"

17. Disqualification for fraud, etc.,

in winding up

Section 168G(1)(b) is repealed and the following substituted---

"(b) has otherwise been guilty, while an officer, provisional supervisor or liquidator of the company, or the supervisor of a voluntary arrangement in respect of the company or receiver or manager of its property, of any fraud in relation to the company or of any breach of his duty as such officer, provisional supervisor, liquidator, supervisor, receiver or manager."

18. Duty of court to disqualify unfit

directors of insolvent companies

Section 168H(2)(b) is amended by adding "provisional supervisor or" after "a".

19. Applications to court under section 168H:

reporting provisions

Section 168I is amended---

- (a) in subsection (1)---
 - (i) in paragraph (a), by repealing "in any case";
 - (ii) in paragraph (b), by repealing "in the case of a person who is or has been a director of a company that is being wound up";

(b) in subsection (2)---

- (i) in paragraph (a), by repealing ", 228A";
- (ii) by repealing paragraph (b) and substituting---

"(b) in respect of which a provisional supervisor has been appointed or that goes into receivership, with the day on which the provisional supervisor or receiver, as the case may be, vacated his office.";

(c) in subsection (3)---

(i) by adding before paragraph (a)---

- "(aa) the provisional supervisor of a company;
- (ab) the supervisor of a voluntary arrangement in respect of a company;"

(ii) by repealing ", or in cases not involving the winding up of the company shall,";

(d) in subsection (4), by repealing "liquidator or receiver of a company, or the former liquidator or receiver of a company" and substituting "provisional supervisor, liquidator or receiver of a company, the supervisor of a voluntary arrangement in respect of a company, or the former provisional supervisor, liquidator or receiver of a company, or the former supervisor of a voluntary arrangement in respect of a company".

20. Section added

The following is added---

"168IA. Power to order public examination

(1) The court may, on the application of the Official Receiver by a report stating that in his opinion a prima facie case exists against any person that would render him liable to a disqualification order under this Part, direct that the person shall attend before the court on a day appointed by the court for that purpose and be publicly examined as to the conduct of the business of a company or as to his conduct and dealings as a director.

(2) The court may require a person referred to in subsection (1) to submit an affidavit to the court containing an account of the conduct of the business of the company or his conduct and dealings as a director of the company, or to produce any documents in his possession or under his control relating to the conduct of the business of the company or his conduct and dealings as a director of the company.

(3) Where an application has been made under subsection (1), the court may require any person, other than a person referred to in subsection (1), whom the court deems capable of giving information concerning the conduct of the business of the company concerned or as to the conduct and dealings of directors of the company to produce any documents in his possession or under his control relating to the conduct of the business of the company or as to the conduct and dealings of directors of the company.

(4) The Official Receiver shall take part in the examination, and for that purpose may employ a solicitor with or without counsel.

(5) The court may put such questions to the person examined as the court thinks fit.

(6) The person examined shall be examined on oath, and shall answer all such questions as the court may put or allow to be put to him.

(7) A person ordered to be examined under this section shall, before his examination, be furnished with a copy of the Official Receiver's report, and may at his own cost employ a solicitor with or without counsel, who shall be at liberty to put to him such questions as the court may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(8) There shall be made in writing such record of examination as the court thinks proper and the record shall be read over to or by the person examined, signed by him, and verified by affidavit at a venue fixed by the court.

(9) The verified notes of the examination of each person who was examined shall, subject to any order or direction of the court as to the manner and extent in and to which the notes shall be used, be admissible in evidence against any person against whom an order for examination has been made in any proceedings under this Part."

21. Fraudulent trading, etc.

Section 168L(1) is amended by adding "or a declaration under section 295C(1) that a person is liable for insolvent trading," after "company,".

22. Personal liability for company's debts

where person acts while disqualified

Section 168O is amended---

(a) by adding---

"(1A) A person is personally responsible for all the debts of a company if---

(a) at any time in contravention of a disqualification order or of section 156 he is involved in the management of the company;

(b) a declaration under section 295C(1) is made that the person is liable for insolvent trading in respect of the company; and

(c) that insolvent trading occurred (whether in whole or in part) during the time referred to in paragraph (a).";

(b) in subsection (2), by adding "or all the debts" after "relevant debts".

23. Register of disqualification orders

Section 168R is amended---

"(5) For the purposes of this section---

"court" (法院) includes a magistrate and the Tribunal within the meaning of section 2 of the Securities (Insider Dealing) Ordinance (Cap. 395);

"disqualification order" (取消資格令) means an order of the court under---

(a) section 168E, 168F, 168G, 168H, 168J or 168L; or

(b) section 23(1)(a) or 24(1) of the Securities (Insider Dealing) Ordinance (Cap. 395)."

24. Part added

The following is added---

"Part IVB

Provisional Supervision and Voluntary

Arrangements

168U. Interpretation

(1) In this Part, unless the context otherwise requires---

"approved scale of fees" (核准收費表) means the scale of fees approved under section 168ZM(1);

"costs" (訟費、費用) include expenses;

"former provisional supervisor" (前任臨時監管人), in relation to a company, means a person who was formerly a provisional supervisor of the company;

"former supervisor" (前任監管人), in relation to a company, means a person who was formerly the supervisor of a voluntary arrangement in respect of the company;

"High Court Registry" (高等法院登記處) means any Registry of the High Court;

"Hong Kong Society of Accountants" (香港會計師公會) means the Hong Kong Society of Accountants

incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50);

"moratorium" (暫止期), in relation to a company, means the period during which the provisions of section 168ZD(3) apply to and in relation to the company by virtue of section 168ZD(1);

"panel" (備選團) means the panel appointed under section 168W(1);

"practicable" (切實可行) means reasonably practicable;

"professional accountant" (專業會計師) means a professional accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

"property" (財產) includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property;

"proposal" (方案) means a proposal referred to in section 168Z(1);

"provisional supervisor" (臨時監管人), in relation to a company, means the qualified person appointed under section 168Y(1) or 168ZO(4)(ii) to be the provisional supervisor of the company;

"qualified person" (合資格人士), in relation to a company, means a person who may be appointed to be the provisional supervisor of the company by virtue of section 168X;

"relevant creditor" (有關債權人), in relation to a company to which section 168ZD(3) applies, means a creditor of the company who is affected by the moratorium in his capacity as such a creditor;

"relevant date" (有關日期), in relation to a company, means the date on which the last document required to be filed under section 168ZA in respect of the company is filed;

"relevant meeting of creditors" (有關債權人會議), in relation to a company, means a meeting of relevant creditors of the company called under section 168ZR(1) by the provisional supervisor of the company, and includes any adjournment thereof;

"relevant purpose" (有關目的) means a purpose specified in section 168Z(1);

"solicitor" (律師) means a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159);

"specified" (指明), in relation to a form, means specified under section 168ZZ (or, if no such form is so specified, in such form as is appropriate for the provision of this Part to which the form relates);

"supervisor" (監管人), in relation to a voluntary arrangement in respect of a company, means the person appointed under that arrangement to be the supervisor thereof;

"voluntary arrangement" (自願償債安排), in relation to a company, means an arrangement set out in writing and providing for---

- (a) either---
 - (i) a composition in satisfaction of the company's debts; or
 - (ii) a scheme of arrangement of the company's affairs;
- (b) a supervisor of the arrangement;
- (c) the removal and resignation of the supervisor and his replacement in the event of his removal or resignation, or of his death, mental incapacity or ineligibility to act as the supervisor; and
- (d) the events the occurrence of which shall cause the arrangement to cease to have effect;

"working day" (工作天) means any day other than---

- (a) a public holiday; or
- (b) a black rainstorm warning day or a gale warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) It is hereby declared that the power under section 168Y(1) or 168ZO(4)(ii) to appoint a qualified person as the provisional supervisor of a company may be exercised in such a way as to appoint 2 or more qualified persons to be the provisional supervisor of the company and, in any such case, the provisions of this Ordinance shall be read and have effect with such modifications as are necessary to take into account such an appointment.

(3) Subsection (2) shall, with all necessary modifications, apply to the appointment of the supervisor of a voluntary arrangement in respect of a company as it applies to the appointment of the provisional supervisor of a company.

168V. Application

- (1) This Part shall---
 - (a) subject to paragraph (b), apply to a company which---
 - (i) is incorporated under Part I;
 - (ii) is an oversea company; or
 - (iii) belongs to a class of companies declared in a notice under subsection (2)(a) to be a class of companies to which this Part shall apply;
 - (b) subject to section 168ZD(10), not apply to a company which---
 - (i) is an authorized institution within the meaning of the Banking Ordinance (Cap. 155);
 - (ii) is an authorized insurer within the meaning of the Insurance Companies Ordinance (Cap. 41);
 - (iii) is a clearing house, Exchange Company or registered person within the meaning of section 2(1) of the Securities and Futures Commission Ordinance (Cap. 24);
 - (iv) is a licensed leveraged foreign exchange trader within the meaning of section 2(1) of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451); or
 - (v) belongs to a class of companies declared in a notice under subsection (2)(b) to be a class of companies to which this Part shall not apply.
- (2) The Secretary for Financial Services may, by notice in the Gazette, declare a class of companies specified in the notice to be---
 - (a) a class of companies to which this Part shall apply;

(b) a class of companies to which this Part shall not apply.

(3) It is hereby declared that a notice under subsection (2) is subsidiary legislation.

168W. Appointment of panel, etc.

(1) The Official Receiver shall appoint to be a member of a panel any person who---

(a) is a professional accountant or solicitor;

(b) advises the Official Receiver in writing that he wishes to be a member of the panel; and

(c) satisfies the Official Receiver that he complies with such requirements as are specified by the Official Receiver, by notice in the Gazette, for membership of the panel.

(2) Without prejudice to the operation of section 168ZO (including section 168ZO(2)), a member of the panel may resign at any time by notice in writing given to the Official Receiver.

(3) The Official Receiver shall revoke the appointment of a member of the panel who---

(a) ceases to be a professional accountant or solicitor;

(b) is the subject of a bankruptcy order;

(c) is the subject of a disqualification order under Part IVA; or

(d) is a patient within the meaning of section 2(1) of the Mental Health Ordinance (Cap. 136).

(4) Any professional accountant or solicitor aggrieved by a decision of the Official Receiver to refuse to appoint him to be a member of the panel may appeal to the Administrative Appeals Board against the decision.

(5) It is hereby declared that a notice under subsection (1)(c) is not subsidiary legislation.

168X. Persons qualified to be provisional

supervisor of company

No person shall be appointed to be the provisional supervisor of a company---

(a) except---

(i) a member of the panel; or

(ii) a person in respect of whom the Official Receiver has stated in writing that he is satisfied

that the person---

(A) has particular skills which warrant him being appointed to be the provisional supervisor of the company; and

(B) is a fit and proper person to be so appointed; and

(b) unless he provides such security, and in such form, as is prescribed in regulations made under section 168ZZA.

168Y. Persons who may appoint provisional

supervisor of company

(1) Subject to sections 168Z and 168ZA, the persons who may appoint a qualified person to be the provisional supervisor of the company for the purpose of the provisional supervisor examining whether a proposal can be made to the creditors of the company for a voluntary arrangement in respect of the company and, if so, making the proposal are---

(a) before the commencement of a winding up---

(i) the directors of the company by means of a resolution passed by the majority of them for the purpose; or

(ii) the members of the company by means of an ordinary resolution passed at a meeting of the company convened for the purpose;

(b) a provisional liquidator of the company who has the approval of the court to do so;

(c) the liquidator of the company who has the approval of the court to do so.

(2) It is hereby declared that the appointment of a qualified person to be the provisional supervisor of the company may be made---

(a) whether or not the company is able to pay its debts;

(b) notwithstanding that the qualified person is---

(i) the provisional liquidator or liquidator of the company; or

(ii) a partner of that provisional liquidator or liquidator.

(3) In subsection (2), "partner" (合夥人), in relation to a provisional liquidator or liquidator, includes a person recognized in writing by the Official Receiver as being equivalent to a partner of the provisional liquidator or liquidator, as the case may be.

168Z. Purposes of proposal, etc.

(1) The persons referred to in section 168Y(1) shall not appoint a qualified person to be the provisional supervisor of the company unless they are satisfied that there is a reasonable likelihood that the qualified person, if so appointed, could make a proposal which would achieve one or more of the following purposes---

(a) a more advantageous realization of the company's property than would be effected on a winding up of the company;

(b) the survival of the company, and the whole or any part of its undertaking, as a going concern;

(c) the more advantageous satisfaction, in whole or in part, of the debts and other liabilities of the company;

(d) a purpose declared in a notice under subsection (2) to be a purpose to which this subsection shall apply.

(2) The Secretary for Financial Services may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice, declare a purpose specified in the notice to be a purpose to which subsection (1) shall apply.

(3) It is hereby declared that a notice under subsection (2) is subsidiary legislation.

168ZA. Filing of documents

The appointment of a qualified person to be the provisional supervisor of the company shall not come into effect unless and until the following documents are filed with the Official Receiver, the Registrar and the High Court Registry---

- (a) a notice of---
 - (i) the resolution---
- (A) in the specified form;
- (B) of the directors or members of the company; and
- (C) providing for the appointment; or
- (ii) the appointment---
- (A) in the specified form; and
- (B) signed by the provisional liquidator or liquidator, if any, of the company;
- (b) a notice in the specified form of the consent of the qualified person to the appointment signed by the qualified person; and
- (c) a notice in the specified form of an affidavit---
 - (i) where the appointment is made by virtue of section 168Y(1)(a)(i), of the directors of the company or, in the case of a company having more than 2 directors, of the majority of them;
 - (ii) where the appointment is made by virtue of section 168Y(1)(a)(ii), of not less than 3 members of the company or, in the case of a company with only 2 members, of both those members;
 - (iii) setting out the reasons for the appointment; and
 - (iv) stating that the company---
- (A) has a trust account---
 - (I) with an authorized institution within the meaning of the Banking Ordinance (Cap. 155);
 - (II) the exclusive purpose of which is to provide money to pay all debts and liabilities owing, by virtue of the Employment Ordinance (Cap. 57), by the company to its employees and former employees before the relevant date; and
 - (III) containing sufficient money to pay all those debts and liabilities; or
- (B) has paid all debts and liabilities, or has no debts and liabilities, owing, by virtue of the Employment Ordinance (Cap. 57), to its employees and former employees before the relevant date.

168ZB. Notice in Gazette

The provisional supervisor of the company shall, as soon as is practicable after the relevant date, cause a notice in the specified form to be published---

- (a) in the Gazette and in---
 - (i) 1 English language newspaper circulating generally in Hong Kong; and
 - (ii) 1 Chinese language newspaper circulating generally in Hong Kong; and
- (b) containing a statement to the effect that he has been appointed to be the provisional supervisor of the company for the purposes of examining whether a proposal can be made to the creditors of the company for a voluntary arrangement in respect of the company and, if so, making the proposal.

168ZC. Notice to creditors

(1) The provisional supervisor of the company shall, as soon as is practicable after the relevant date, cause a notice in the specified form to be published---

- (a) in---
 - (i) 1 English language newspaper circulating generally in Hong Kong; and
 - (ii) 1 Chinese language newspaper circulating generally in Hong Kong; and
- (b) advising creditors of the company to give notice in writing---
 - (i) to the provisional supervisor at the address specified in the notice;
 - (ii) of their claims against the company; and
 - (iii) not later than 7 days after the date on which the newspaper is published.

(2) For the avoidance of doubt, it is hereby declared that a notice under section 168ZB may be combined with a notice under this section.

168ZD. Moratorium

(1) Subject to subsections (2), (7), (8) and (9), the provisions of subsection (3) shall apply to and in relation to the company with effect on and after the relevant date.

(2) Subject to subsection (7) and sections 168ZE(3), 168ZQ(2) and 168ZT(20)(c), the moratorium shall cease upon the expiration of 30 days immediately following the relevant date unless---

- (a) the moratorium has been extended under section 168ZE(2); or
- (b) a resolution to extend the moratorium has been passed under section 168ZS at a relevant meeting of creditors.

(3) Subject to subsection (4), during the moratorium and notwithstanding any other law (including any other provision of this Ordinance)---

- (a) no application for the winding up of the company by the court may be commenced or continued;
- (b) no resolution may be passed for the winding up of the company except at a relevant meeting of creditors;
- (c) no receiver of the property of the company may be appointed or, if such a receiver has already been appointed, the receiver shall not exercise any of the powers of his office;
- (d) except with the consent of the provisional supervisor of the company, no steps may be taken to enforce or continue to enforce any security over the company's property or to repossess goods in the company's possession;
- (e) except with the consent of the provisional supervisor of the company, no proceedings (including proceedings for winding up but excluding any criminal proceedings), execution, attachment or other legal process may be commenced or continued against the company or its property, no distress may be levied (or,

if distress has already been levied, no sale thereunder may be effected) and no right of forfeiture or entry or re-entry may be exercised against the company's property;

(f) no set-off may be allowed to any creditor of the company except with the consent of the provisional supervisor of the company or in relation to a contract or other agreement referred to in subsection (4)(d).

(4) Subsection (3) shall not apply to or in relation to---

(a) any debt or other liability of the company incurred on or after the relevant date (including any creditor in respect thereof);

(b) any property held by the company as trustee;

(c) any resumptions by the Government pursuant to a Government lease or otherwise;

(d) a contract or other agreement specified in the Seventeenth Schedule;

(e) any proceedings or other legal process in relation to the company arising from the performance of any function or the exercise of any power under section 29A, 30, 31, 33, 37A or 45 of the Securities and Futures Commission Ordinance (Cap. 24);

(f) an inquiry or other proceedings under the Securities (Insider Dealing) Ordinance (Cap. 395);

(g) a petition under section 168A.

(5) Where---

(a) a matter (howsoever described, and including the doing of any act and the taking of any step) may not proceed by virtue of the operation of subsection (3) (and whether or not the matter may not proceed on any other ground); and

(b) a period is fixed by or under any law or otherwise for the matter to proceed, then, and notwithstanding howsoever that period is fixed, that period shall not run during the time that that matter may not proceed by virtue of the operation of that subsection.

(6) Where a contract or other agreement referred to in subsection (4)(d) entered into by the company before the relevant date is terminated on or after that date---

(a) the setting-off of obligations between the company and the other parties to the contract or agreement, in accordance with its provisions, shall be permitted; and

(b) if net termination values determined in accordance with the contract or agreement are owed by the company to another party to the contract or agreement, that other party shall be deemed for the purpose of this Part and, where applicable, any subsequent winding up of the company to be a creditor of the company with a claim provable in respect of those net termination values.

(7) The moratorium shall cease forthwith on the day---

(a) an order or appointment is made under section 168A(2)(b), (ba) or (c) in respect of the company;

(b) an order or appointment is made under section 37A(2)(b), (c) or (d), or a winding up order is made in consequence of a petition under section 45(1), of the Securities and Futures Commission Ordinance (Cap. 24) in respect of the company; or

(c) a resolution under section 168ZS(1)(a)(ii), (2)(b) or (4)(b) is passed in relation to the company.

(8) Without prejudice to the operation of subsection (7) or section 168ZO(4)(iii), 168ZQ(2) or 168ZT(20)(c), the moratorium shall cease forthwith where a resolution is passed to approve the proposal, or a resolution is passed or deemed to be passed to wind up the company, or a resolution is passed to reject the proposal concerned, at a relevant meeting of creditors.

(9) Subsection (3) shall cease to apply---

(a) to 1 or more creditors of the company who have been excluded from the proposal by the provisional supervisor of the company at any time prior to the first relevant meeting of creditors if, but only if, the provisional supervisor---

(i) has made alternative arrangements in writing to satisfy their claims (whether in whole or in part) against the company; and

(ii) has filed a notice in the specified form of such exclusion with the Official Receiver, the Registrar and the High Court Registry; and

(b) to any creditor exempted from that subsection pursuant to an order under section 168ZE(4).

(10) Without prejudice to the operation of subsection (4), it is hereby declared that the provisions of this Part bind the Government in its capacity, if any, as a creditor of the company.

(11) Where the provisional supervisor of the company is appointed, then, and notwithstanding any other law (including any other provision of this Ordinance) but subject to subsection (13) and sections 168ZQ(2)(b) and 168ZS(6), the appointment of the provisional liquidator or liquidator, if any, of the company in force immediately before the relevant date shall terminate, and the winding up proceedings of the company shall be stayed, with effect on the relevant date.

(12) Subsection (11) shall not of itself operate to prevent a person whose appointment as the provisional liquidator or liquidator of the company has been terminated by that subsection from being appointed as the supervisor of the voluntary arrangement in respect of the company.

(13) It is hereby declared that---

(a) the operation of this section (including subsection (11)) in relation to a company shall not of itself terminate any proceedings for the winding up of the company commenced before the relevant date and, accordingly, a resolution referred to in section 168ZS(1)(a)(ii), (2)(b) or (4)(b) shall in effect revive such proceedings;

(b) any fees, costs and charges owing to or incurred by the provisional liquidator or liquidator whose appointment is terminated by virtue of subsection (11) shall be charged on and paid out of the property of the company in priority to any qualifying liabilities under section 168ZK.

(14) The Secretary for Financial Services may, by notice in the Gazette, amend the

Seventeenth Schedule.

(15) In this section---
"net termination value" (淨終止值), in relation to a contract or agreement, means the net amount obtained after setting-off the mutual obligations between the parties to the contract or agreement in accordance with its provisions.

168ZE. Extension of moratorium, etc.

(1) Where the provisional supervisor of the company is unable to complete the proposal before the expiration of the moratorium (including the moratorium as extended under this section), then he may, before that expiration, make an application to the court for an extension of the moratorium.

(2) Subject to subsection (5), the court may determine an application made under subsection (1) by granting an extension of the moratorium for a further period if, but only if, it is satisfied that---

(a) the provisional supervisor of the company is and has been acting in good faith and with due diligence in discharging his duties and exercising his powers as the provisional supervisor;

(b) the provisional supervisor will be likely to complete the proposal within the period of the extension; and

(c) the creditors as a whole of the company would not be materially prejudiced by the extension.

(3) Where an application has been made under subsection (1) in respect of the company, the moratorium shall not cease before the determination of the application.

(4) Without prejudice to the operation of the other provisions of this section, any creditor affected by the moratorium may make an application to the court (a copy of which shall be served on the provisional supervisor of the company) to be exempted from the application of section 168ZD(3) on the ground that the moratorium is causing, or will cause, the creditor significant financial hardship and, accordingly, if the court is satisfied that the moratorium is causing, or will cause, the creditor significant financial hardship, it may by order exempt the creditor from the application of section 168ZD(3) or make such other order as the court thinks fit in all the circumstances of the case.

(5) Subject to section 168ZT(20)(c), the court shall not under subsection (2) extend the moratorium for any period beyond the period of 6 months immediately following the relevant date in respect of the company.

168ZF. Duties of provisional supervisor, etc.

(1) The provisional supervisor of the company shall have, and shall discharge, in respect of the company, all the duties specified in Part 1 of the Eighteenth Schedule.

(2) The provisional supervisor of the company shall be personally liable on any contract entered into by the provisional supervisor in the discharge of his duties or the exercise of his powers as the provisional supervisor except in so far as the contract otherwise provides.

168ZG. Powers of provisional supervisor

(1) The provisional supervisor of the company shall have, and may exercise, in respect of the company, all the powers specified in Part 2 of the Eighteenth Schedule.

(2) The provisional supervisor of the company may---

(a) remove any director or officer of the company; or

(b) appoint any director or officer of the company, whether to fill a vacancy or otherwise.

(3) The provisional supervisor of the company may apply to the court for directions in relation to any particular matter arising in connection with the discharge of his duties or the exercise of his powers.

(4) Subject to sections 168ZF(2) and 168ZL, in exercising his powers the provisional supervisor of the company shall be deemed to act as the agent of the company.

(5) Where a person deals with the provisional supervisor of the company in good faith and for good consideration and thereby changes his position or acts to his detriment based on the dealing, the provisional supervisor and the company shall be bound by the provisional supervisor's actions whether or not the provisional supervisor was acting within his powers.

(6) The Secretary for Financial Services may, by notice in the Gazette, amend the Eighteenth Schedule.

168ZH. Delegations

(1) Subject to subsection (2), the provisional supervisor of the company may, with or without restrictions as he thinks fit, delegate in writing to any director of the company who is an individual any of the duties and powers imposed or conferred on the provisional supervisor under this Ordinance.

(2) Subsection (1) shall not apply to the power under that subsection to delegate.

(3) A delegate of the provisional supervisor of the company---

(a) shall discharge the delegated duties and may exercise the delegated powers as if the delegate were the provisional supervisor;

(b) shall be presumed to be acting in accordance with the terms of the delegation in the absence of evidence to the contrary.

168ZL. Effect of moratorium on directors of company, etc.

(1) Subject to section 168ZO(4)(i), during the moratorium and notwithstanding any other law (including any other provision of this Ordinance)---

(a) a director of the company shall not discharge a duty or exercise a power imposed or conferred on him in his capacity as such a director;

(b) the provisional supervisor of the company shall discharge such a duty and may exercise such a power.

(2) If a director of the company contravenes subsection (1)(a), he shall be liable to imprisonment and a fine.

(3) The provisional supervisor of the company---

(a) may delegate under section 168ZH to a director of the company a duty or power imposed or conferred on the provisional supervisor under subsection (1)(b);

(b) shall be deemed to act as the company's agent where the provisional supervisor discharges a duty or exercises a power imposed or conferred on the provisional supervisor under subsection (1)(b).

(4) Where a director of the company deals with a person and thereby contravenes subsection (1)(a), then, and notwithstanding that contravention, the director, the provisional supervisor of the company and the company are bound by that dealing if, but only if, that person---

(a) acted in good faith and for good consideration in relation to the dealing; and

(b) changed his position or acted to his detriment based on the dealing.

168ZJ. Effect of moratorium on certain contracts

(1) Subject to subsection (2) and sections 168ZK and 168ZL, the provisional supervisor of the company shall not be liable for a contract entered into, or a debt or other liability incurred, by the company before the relevant date.

(2) The acceptance by the provisional supervisor of the company of any goods or services under a contract referred to in subsection (1) shall not prejudice the operation of that subsection if, but only if, the provisional supervisor has, before that acceptance, advised, in writing, the person who under that contract provides those goods or services, as the case may be, that the provisional supervisor will not be liable under that contract.

(3) It is hereby declared that a contract referred to in subsection (1), and notwithstanding the wording of the contract, shall not be determined, or be deemed to be determined, by reason only of the operation of that subsection or of section 168ZD(3).

168ZK. Liability for certain contracts of employment

(1) The provisional supervisor of the company shall be personally liable for the wages, salaries and other emoluments---

(a) under a contract of employment of an employee of the company existing immediately before the relevant date if, but only if, within 14 days immediately following that date, the provisional supervisor accepts in writing that contract;

(b) under a contract of employment entered into by the provisional supervisor on or after the relevant date.

(2) Where a contract of employment referred to in subsection (1)(a)---

(a) has not been accepted under that subsection, or terminated, within the period specified in that subsection, then it shall be deemed to be terminated by the company immediately upon the expiration of that period;

(b) is terminated before the expiration of the period referred to in paragraph (a), or deemed to be terminated under that paragraph, then the wages, salaries and other emoluments under the contract---

(i) shall be deemed to be liabilities of the company incurred on or after the relevant date; and

(ii) shall be charged on and paid out of the property of the company by the provisional

supervisor in the same priority as qualifying liabilities under subsection (3).

(3) Any sums payable under subsection (1) in respect of liabilities shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of the property of the company in priority to the indemnity given under section 168ZL.

(4) For the purposes of subsection (3), a liability under a contract of employment is a qualifying liability if---

(a) it is a liability to pay a sum by way of wages or salary or contribution to---

(i) an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426); or

(ii) a provident fund scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); and

(b) it is in respect of services rendered wholly or partly after the acceptance of the contract by the provisional supervisor of the company.

(5) There shall be disregarded for the purposes of subsection (3) so much of any qualifying liability as represents payment in respect of services rendered before the acceptance of the contract by the provisional supervisor of the company.

(6) For the purposes of subsections (4) and (5), wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or salary, as the case may be, in respect of services rendered in that period.

(7) In this section, "contract of employment" (僱傭合約) means a contract of service or apprenticeship, or a contract personally to execute any work or labour.

168ZL. Indemnity to provisional supervisor

(1) The provisional supervisor of the company shall be entitled to be indemnified out of the property of the company for---

(a) all contracts, debts and other liabilities for which he is liable as the provisional supervisor in the discharge of his duties and the exercise of his powers as the provisional supervisor; and

(b) his remuneration and all reasonable fees, costs and charges, to the extent that such contracts, debts and other liabilities, and such remuneration and reasonable fees, costs

and charges, are not attributable to misconduct or negligence on the part of the provisional supervisor.

(2) Notwithstanding any other law (including any other provision of this Ordinance except section 168ZD(13)(b) or 168ZK), the indemnification given to the provisional supervisor of the company under subsection (1) shall---

- (a) have priority to all other claims, whether secured or unsecured, against the company; and
- (b) be secured by a lien over the property of the company.

(3) The lien referred to in subsection (2)(b) shall, notwithstanding any other law (including any other provision of this Ordinance except section 168ZD(13)(b) or 168ZK), have priority over all other securities over the property of the company.

168ZM. Remuneration of provisional supervisor

(1) Subject to subsections (3) and (5) and section 168ZT(16), the provisional supervisor of the company shall be entitled to be remunerated, in discharging his duties and exercising his powers as the provisional supervisor, in accordance with a scale of fees approved in writing by the Official Receiver for the purposes of this section.

(2) The provisional supervisor of the company may make an application to the court to be remunerated at a rate other than the approved scale of fees.

(3) The court shall not grant an application made under subsection (2) by the provisional supervisor of the company unless the court is satisfied that the grant thereof is warranted because of---

- (a) the complexity (or otherwise) of the particular case;
- (b) any additional responsibilities of an exceptional kind or degree placed on the provisional supervisor;
- (c) the value and nature of the property with which the provisional supervisor has to deal; or
- (d) any other factor declared in a notice under subsection (6) to be a factor to which this subsection shall apply.

(4) If a relevant creditor is of the opinion that the remuneration of the provisional supervisor of the company based on the approved scale of fees is excessive, he may, if he has the agreement in writing to do so of not less than 50% in value of all relevant creditors (including the first-mentioned relevant creditor), make an application to the court to reduce that scale in relation to that provisional supervisor.

(5) The court shall determine an application made under subsection (4) by confirming, or reducing, the approved scale of fees in relation to the provisional supervisor of the company the subject of the application.

(6) The Secretary for Financial Services may, by notice in the Gazette, and subject to such conditions, if any, as are specified in the notice, declare a factor to be a factor to which subsection (3) shall apply.

(7) It is hereby declared that a notice under subsection (6) is subsidiary legislation.

168ZN. Statement of affairs

(1) The provisional supervisor of the company shall, as soon as practicable after the relevant date, by notice in the specified form given to a specified person, require the person to provide the provisional supervisor with a statement of the affairs of the company---

- (a) disclosing---
 - (i) particulars of its property, debts and other liabilities;
 - (ii) the names and addresses of its creditors;
 - (iii) details of any securities held by its creditors, including the dates when the securities were respectively given; and
 - (iv) such further or other information as the provisional supervisor may reasonably require in the notice; and
- (b) not later than 7 days after giving of the notice or such further period, if any, permitted in writing by the provisional supervisor.

(2) The provisional supervisor of the company may, in a notice under subsection (1) given to a specified person or in another notice in the specified form given to that or another specified person, require the person to---

- (a) deliver to the provisional supervisor all documents and records relating to the company in that person's custody or under his control;
- (b) inform the provisional supervisor as to the whereabouts of any such documents and records within the knowledge of that person;
- (c) attend on the provisional supervisor at a place in Hong Kong and at a reasonable time; and
- (d) provide the provisional supervisor with such information about the business, property, affairs or financial circumstances of the company as the provisional supervisor may reasonably request in the notice or at a meeting arising from a requirement referred to in paragraph (c).

(3) Subject to subsection (4), a specified person the subject of a requirement under subsection (1) or (2) shall be entitled to be paid all reasonable costs incurred or to be incurred in complying with the requirement.

(4) Subsection (3) shall not apply unless the specified person referred to in that subsection submits to the provisional supervisor of the company a statement in writing---

- (a) of the estimated costs referred to in that subsection; and
- (b) before incurring any of those costs.

(5) If a specified person without reasonable excuse fails to comply with a requirement under subsection (1) or (2), he shall be guilty of an offence and, if found guilty, shall be liable to a fine and, for continued contravention, to a daily default fine.

(6) In this section, "specified person" (指明人士), in relation to a company, means 1 or more

of the following---

- (a) an officer or employee of the company;
- (b) a person who has taken part in the formation, promotion, administration or management of the company within 1 year before the relevant date;
- (c) a person who---
 - (i) has been an officer or employee of the company within 1 year before the relevant date;

and

- (ii) is, in the reasonable opinion of the provisional supervisor of the company, capable of complying with a requirement under subsection (1) or (2);
- (d) a former provisional supervisor of the company.

168ZO. Removal and resignation of provisional supervisor

(1) The court may---

(a) upon application made to it by a relevant creditor who has the agreement in writing to do so of not less than 50% in value of all relevant creditors (including the first-mentioned relevant creditor), order the termination of the appointment of the provisional supervisor of the company for cause shown;

(b) in the case of such an application which is refused, order the person who made the application to pay the costs of any other person appearing or represented at the hearing of the application.

(2) The provisional supervisor of the company may only resign his office with the leave of the court.

(3) The court shall not grant the leave referred to in subsection (2) unless it is satisfied that---

(a) the circumstances are exceptional;

(b) for the provisional supervisor of the company to continue in office would cause severe personal hardship to him; and

(c) another qualified person has consented to be appointed to be the provisional supervisor of the company.

(4) Where---

(a) the court makes an order under subsection (1)(a), or grants the leave referred to in subsection (2), in respect of the provisional supervisor of the company; or

(b) the provisional supervisor of the company---

(i) dies; or

(ii) ceases to be a qualified person,

then---

(i) section 168Y shall apply in relation to the appointment of a qualified person to be the next provisional supervisor of the company (in which case section 168ZI(1)(a) shall not apply in relation to section 168Y) unless the court has stated that section 168Y shall not apply---

(A) where paragraph (a) applies, in the order under that paragraph;

(B) where paragraph (b) applies, upon application made to it by a relevant creditor or the Official Receiver;

(ii) if the court has stated that section 168Y shall not apply, the court shall appoint a qualified person to be the next provisional supervisor of the company if the qualified person has consented to the appointment (but the provisions of section 168ZA shall not apply in relation to any such appointment);

(iii) the moratorium shall cease if there is no provisional supervisor of the company within---

(A) subject to sub-subparagraph (B), 14 days immediately following the relevant event specified in paragraph (a) or (b);

(B) such longer period, not exceeding 30 days after such event, as the court may specify.

(5) Where subsection (4)(i) or (ii) is applicable, the appointment of a qualified person to be the next provisional supervisor of the company shall not come into effect unless and until there is filed with the Official Receiver, the Registrar and the High Court Registry a notice of the consent of the qualified person to the appointment---

(a) in the specified form; and

(b) signed by the qualified person.

(6) The provisional supervisor of the company who has become such provisional supervisor by virtue of the operation of subsection (4)(i) or (ii) shall, as soon as practicable, cause a notice in the specified form of his appointment to be published in---

(a) the Gazette;

(b) 1 English language newspaper circulating generally in Hong Kong; and

(c) 1 Chinese language newspaper circulating generally in Hong Kong.

(7) Subject to subsection (8), upon the appointment of a qualified person as the next provisional supervisor of the company taking effect in accordance with subsection (5), the immediately preceding provisional supervisor of the company shall thereupon cease to be the provisional supervisor.

(8) The fact that a person has ceased to be the provisional supervisor of the company by virtue of the operation of this section shall not affect that person's liability for any act or omission done, caused, permitted or made prior to his ceasing to be the provisional supervisor.

(9) The provisional supervisor or former provisional supervisor of the company shall, if the company goes into liquidation after the cessation of the moratorium, pass over all documents and disclose all information---

(a) obtained by him in his capacity as the provisional supervisor; and

(b) to the liquidator of the company.

(10) Where in the winding up of a company it appears to the liquidator that the former

provisional supervisor of the company was in breach of any of his duties under this Ordinance---

(a) the liquidator shall prepare a report on the breach;
(b) where the liquidator is not the Official Receiver, the liquidator shall forward a copy of the report to the Official Receiver;

(c) the Official Receiver may forward a copy of the report to the Hong Kong Society of Accountants or The Law Society of Hong Kong if the former provisional supervisor is or was a member of either Society.
168ZP. Priority of funds provided as operating capital during moratorium

(1) Notwithstanding any other law (including any other provision of this Ordinance except sections 168ZD, 168ZK and 168ZL and subsections (2) and (3)), relevant funds shall, in relation to the voluntary arrangement in respect of the company or the winding up of the company, have priority over the debts of the creditors of the company, whether or not those debts are preferential or secured or otherwise.

(2) Subsection (1) shall not apply to a debt of a creditor of the company where the debt is secured by a charge which---

(a) is a fixed charge;
(b) was at the time of its creation a fixed charge; and
(c) was created before the relevant date.

(3) No person shall use relevant funds to discharge, whether in whole or in part, any liability of the company---

(a) to any person who provided any part of those funds; and
(b) existing immediately before the relevant date.

(4) A relevant creditor shall be given an opportunity to provide relevant funds to the company before a person (whether or not a creditor of the company) who is not a relevant creditor.

(5) The provisional supervisor of the company shall give a relevant creditor an opportunity referred to in subsection (4) by giving the creditor a notice---

(a) containing a statement to the effect that relevant creditors are invited to contribute funds as operating capital for the company;
(b) specifying the total amount the provisional supervisor is seeking as the minimum operating capital required.

(6) In this section---
"relevant funds" (有關資金), in relation to a company, means funds---

(a) provided---
(i) during the moratorium;
(ii) to the company; and
(iii) as operating capital for the company; and
(b) the total amount of which is not less than the amount specified in the notice under subsection (5) as being the minimum operating capital required.

168ZQ. Right of major creditor to decide whether provisional supervisor proceeds with proposal

(1) The provisional supervisor of the company shall, not later than 3 working days (excluding Saturdays) after the relevant date, give a notice in the specified form ("1st notice") to each major creditor, if any, of the company---

(a) containing a statement to the effect that he has been appointed to be the provisional supervisor of the company for the purposes of examining whether a proposal can be made to the creditors of the company for a voluntary arrangement in respect of the company and, if so, making the proposal;

(b) requiring the major creditor to---
(i) decide in the notice in the specified form ("2nd notice") attached to the 1st notice whether or not the major creditor agrees with the provisional supervisor proceeding to prepare the proposal; and

(ii) give the 2nd notice to the provisional supervisor not later than 3 working days after the major creditor receives the 1st notice or 7 days after the relevant date, whichever is the earlier; and

(c) to which is attached a copy of this section and an address stated to be the address at which the 2nd notice may be received.

(2) Where a major creditor decides that he does not agree with the provisional supervisor of the company proceeding to prepare the proposal, then---

(a) the moratorium shall cease immediately when the provisional supervisor receives the 2nd notice concerned at the address referred to in subsection (1)(c);

(b) if section 168ZD(11) terminated the appointment of a provisional liquidator or liquidator of the company and stayed the winding up proceedings of the company, that section shall be deemed never to have so terminated that appointment and stayed those proceedings;

(c) the provisional supervisor shall as soon as practicable after receipt of that notice cause a notice in the specified form of the cessation of the moratorium to be---

(i) filed with the Official Receiver, the Registrar and the High Court Registry; and
(ii) published in the Gazette and in---

(A) 1 English language newspaper circulating generally in Hong Kong; and

(B) 1 Chinese language newspaper circulating generally in Hong Kong; and

(d) the provisional supervisor shall vacate his office as soon as practicable.

(3) Where a major creditor---

(a) decides that he does not agree with the provisional supervisor of the company proceeding to prepare the proposal but fails to give the provisional supervisor the 2nd notice concerned not later than 3

working days after the major creditor receives the 1st notice concerned or 7 days after the relevant date, whichever is the earlier; or

(b) decides that he agrees with the provisional supervisor of the company proceeding to prepare the proposal,

then, unless subsection (2) applies in the case of any other major creditor of the company---

(i) the provisional supervisor may proceed to prepare the proposal;

(ii) the major creditor shall be subject to the provisions of this Part in like manner as any other creditor of the company is so subject.

(4) Any charge on the undertaking or property of the company created at any time within the period of 12 months immediately preceding the relevant date shall, unless it is proved that the company was solvent immediately after the creation of the charge, be invalid for the purposes of this Part except for---

(a) the amount of any cash paid to the company at the time of or subsequent to the creation of, and in consideration for, the charge; and

(b) interest on that amount at the rate specified in the charge, or at the rate of 12% per annum, whichever is the less.

(5) In this section, "major creditor" (主要債權人), in relation to a company, means the holder of a charge over the whole or substantially the whole of the company's property if, but only if, the claim under the charge amounts to not less than 33 1/3% of the liabilities of the company immediately before the relevant date.

168ZR. Requirements for relevant meetings of creditors

(1) The provisional supervisor of the company shall call a meeting of relevant creditors of the company where he is satisfied that---

(a) he will be able to complete the proposal before the expiration of the moratorium (including the moratorium as extended under section 168ZE);

(b) he will be able to complete the proposal but not before the expiration of 6 months immediately following the relevant date; or

(c) none of the relevant purposes can be achieved.

(2) Where the date has been set for a relevant meeting of creditors (other than an adjournment thereof), the provisional supervisor of the company shall prepare a report to creditors on the company and shall---

(a) not less than 7 days before that date, cause a notice in the specified form to be published---

(i) in---

(A) 1 English language newspaper circulating generally in Hong Kong; and

(B) 1 Chinese language newspaper circulating generally in Hong Kong; and

(ii) advising creditors of the company---

(A) of the date, time and place of the meeting;

(B) to give notice in writing, if they have not already done so---

(I) to the provisional supervisor at the address specified in the notice;

(II) of their claims against the company; and

(III) not later than 2 days before that date;

(b) give a notice in the specified form---

(i) to each relevant creditor of the company whose name and address---

(A) appears in the company's statement of affairs submitted under section 168ZN to the provisional supervisor; or

(B) is otherwise known to the provisional supervisor;

(ii) setting out in full each resolution proposed to be passed at the meeting;

(iii) to which is attached a copy of the report to creditors on the company or, alternatively,

stating that such copy---

(A) will be supplied upon request made to the provisional supervisor; and

(B) is available for inspection during normal office hours at the address specified in the notice;

(iv) specifying the date, time and place of the meeting;

(v) attached to which are instruments providing for the appointment of a proxy;

(vi) where subsection (1)(a) is applicable---

(A) to which is attached a copy of a summary of the statement of affairs of the company or, alternatively, stating that such copy---

(I) will be supplied upon request made to the provisional supervisor; and

(II) is available for inspection during normal office hours at the address specified in the

notice;

(B) stating that the purpose of the meeting is to---

(I) approve the proposal (whether with or without modifications);

(II) adjourn the meeting in order that the provisional supervisor may submit a modified form of the proposal to the adjourned meeting; or

(III) reject the proposal, resolve that the company be wound up as a creditors' voluntary

winding up and appoint a liquidator;

(C) containing---

(I) a statement, with reasons, as to the decision of the provisional supervisor as to which of the relevant purposes, if any, are capable of being achieved;

(II) a statement, with reasons, as to the decision of the provisional supervisor as to which of the relevant purposes, if any, are not capable of being achieved; and

(III) a summary of the proposal containing a statement as to the advantages and disadvantages to the creditors of the company of the proposal as opposed to the advantages and disadvantages to the creditors of a liquidation of the company; and

(D) to which is attached a copy of the proposal or, alternatively, stating that such copy---

(I) will be supplied upon request made to the provisional supervisor; and

(II) is available for inspection during normal office hours at the address specified in the

notice;

(vii) where subsection (1)(b) is applicable---

(A) to which is attached a copy of a summary of the statement of affairs of the company or, alternatively, stating that such copy---

(I) will be supplied upon request made to the provisional supervisor; and

(II) is available for inspection during normal office hours at the address specified in the

notice;

(B) to which is attached a statement, with reasons, as to why the provisional supervisor has been unable to complete the proposal before the expiration of the moratorium or, alternatively, stating that a copy of such statement---

(I) will be supplied upon request made to the provisional supervisor; and

(II) is available for inspection during normal office hours at the address specified in the

notice;

(C) stating that the purpose of the meeting is to---

(I) consider the statement referred to in sub-subparagraph (B); and

(II) decide whether or not the moratorium should be extended and, if so, for what period and

on what terms;

(viii) where subsection (1)(c) is applicable---

(A) to which is attached a statement, with reasons, as to the decision of the provisional supervisor as to why he considers none of the relevant purposes is capable of being achieved or, alternatively, stating that a copy of such statement---

(I) will be supplied upon request made to the provisional supervisor; and

(II) is available for inspection during normal office hours at the address specified in the

notice;

(B) stating that the purpose of the meeting is to consider the decision of the provisional supervisor referred to in sub-subparagraph (A) and resolve that the company be wound up as a creditors' voluntary winding up and appoint a liquidator.

(3) At any adjournment of a relevant meeting of creditors to which subsection (1)(a) or (b) applies, the provisional supervisor of the company shall give a notice in the specified form to each relevant creditor referred to in subsection (2)(b)(i)---

(a) which complies with the requirements of subsection (2)(b)(i), (ii), (iv) and (v); and

(b) where subsection (1)(a) is applicable---

(i) stating that the purpose of the meeting is to---

(A) approve the proposal as modified;

(B) adjourn the meeting in order that the provisional supervisor may submit a further modified form of the proposal; or

(C) reject the proposal as modified, resolve that the company be wound up as a creditors' voluntary winding up and appoint a liquidator;

(ii) containing a summary of the proposal as modified; and

(iii) to which is attached a copy of the proposal as modified or, alternatively, stating that such

copy---

(A) will be supplied upon request made to the provisional supervisor; and

(B) is available for inspection during normal office hours at the address specified in the notice;

(c) where subsection (1)(b) is applicable stating that the purpose of the meeting is to---

(i) review the extension; and

(ii) resolve to continue or terminate the extension and, in the latter case, that the company be wound up as a creditors' voluntary winding up and to appoint a liquidator.

(4) The Secretary for Financial Services may, by notice in the Gazette, amend subsection (2) or (3).

(5) The chairman of the relevant meeting of creditors concerned shall cause a copy of each resolution passed or rejected at the meeting, certified by the chairman to be a true copy of such resolution, to be filed with the Official Receiver, the Registrar and the High Court Registry.

(6) In this section---

"report to creditors" (致債權人報告書), in relation to a company, means a report in the specified form concerning the business, property, affairs, financial circumstances and prospects of the company.

168ZS. Resolutions of relevant meetings of creditors

(1) At a relevant meeting of creditors to which section 168ZR(1)(a) is applicable---

(a) the meeting shall resolve---

(i) to approve the proposal (whether with or without modifications); or

(ii) the following---

(A) to reject the proposal;

(B) where the provisional supervisor of the company was appointed by virtue of section 168Y(1)(a), that the company be wound up as a creditors' voluntary winding up; and

- (C) to appoint a liquidator at the meeting, and notwithstanding any other law (including any other provision of this Ordinance);
- (b) no modification to the proposal may be made unless the provisional supervisor consents to the modification;
- (c) the proposal shall be deemed to be approved by the creditors when the resolution approving the proposal (whether with or without modifications) is passed.
- (2) At a relevant meeting of creditors to which section 168ZR(1)(b) is applicable the meeting shall resolve---
- (a) to extend the moratorium for such period and on such terms as the meeting thinks fit (except that the extension shall not commence before the period of 6 months immediately following the relevant date); or
- (b) not to extend the moratorium and---
- (i) where the provisional supervisor of the company was appointed by virtue of section 168Y(1)(a), that the company be wound up as a creditors' voluntary winding up; and
- (ii) to appoint a liquidator at the meeting, and notwithstanding any other law (including any other provision of this Ordinance).
- (3) Terms imposed under subsection (2)(a) on an extension of the moratorium may require the provisional supervisor of the company to call a subsequent meeting of creditors to review the extension from time to time.
- (4) At a relevant meeting to which section 168ZR(1)(c) is applicable---
- (a) for any resolution to pass there must be in excess of 50% in value of the relevant creditors present in person or by proxy and voting on the resolution;
- (b) the meeting shall resolve---
- (i) where the provisional supervisor of the company was appointed by virtue of section 168Y(1)(a), that the company be wound up as a creditors' voluntary winding up; and
- (ii) to appoint a liquidator at the meeting, and notwithstanding any other law (including any other provision of this Ordinance).
- (5) Where subsection (1)(a)(ii), (2)(b) or (4)(b) is applicable to a relevant meeting of creditors---
- (a) the liquidator appointed shall as soon as practicable after his appointment cause a notice in the specified form of his appointment to be---
- (i) filed with the Official Receiver, the Registrar and the High Court Registry; and
- (ii) published in the Gazette and in---
- (A) 1 English language newspaper circulating generally in Hong Kong; and
- (B) 1 Chinese language newspaper circulating generally in Hong Kong;
- (b) notwithstanding any other law (including any other provision of this Ordinance), the creditors' voluntary winding up referred to in that subsection shall be deemed to commence on the relevant date (except that, for the purposes of sections 263, 264, 264A and 265, that winding up shall be deemed to commence at the time of the passing of the resolution referred to in that subsection for that winding up); and
- (c) the other provisions of this Ordinance applicable to the liquidation of the company shall apply with such modifications as are necessary to take into account the operation of that subsection and paragraphs (a) and (b).
- (6) Where subsection (1)(a)(ii)(A), (2)(b) or (4)(b) is applicable to a relevant meeting of creditors and the provisional supervisor of the company was appointed by virtue of section 168Y(1)(b) or (c), then, if section 168ZD(11) terminated the appointment of a provisional liquidator or liquidator of the company and stayed the winding up proceedings of the company, that last-mentioned section shall be deemed never to have so terminated that appointment and stayed those proceedings.
- 168ZT. Proceedings and voting at relevant meetings of creditors
- (1) The persons entitled to attend a relevant meeting of creditors are---
- (a) the provisional supervisor of the company;
- (b) each relevant creditor of the company who has given notice of his claim against the company in accordance with the requirements of the notice under section 168ZC or 168ZR(2)(a)(ii);
- (c) the shareholders of the company; and
- (d) the directors of the company.
- (2) The relevant creditors present and voting at a relevant meeting of creditors shall form one class of voters only.
- (3) The chairman of a relevant meeting of creditors shall be---
- (a) the provisional supervisor of the company; or
- (b) a partner, or employee, of the provisional supervisor---
- (i) who is, in the opinion of the provisional supervisor, experienced in insolvency matters;
- and

- (ii) nominated in writing by the provisional supervisor to be the chairman of the meeting.
- (4) The chairman of a relevant meeting of creditors, the provisional supervisor of the company or any other person---
 - (a) may hold a special proxy or proxies; and
 - (b) in the case of any such proxy, shall vote or otherwise as directed by the principal.
- (5) Any person other than the chairman of a relevant meeting of creditors or the provisional supervisor of the company may hold a general proxy or proxies.
- (6) The quorum for a relevant meeting of creditors shall be one relevant creditor present and entitled to vote.
- (7) Where---
 - (a) there is no quorum within 30 minutes from the time appointed for a relevant meeting of creditors; or
 - (b) at a relevant meeting of creditors the meeting fails to---
 - (i) resolve that the company be wound up as a creditors' voluntary winding up when the meeting is required to do so by virtue of section 168ZS;
 - (ii) appoint a liquidator of the company when the meeting is required to do so by virtue of that section; or
 - (iii) both pass the resolution referred to in subparagraph (i) and make the appointment referred to in subparagraph (ii),then---
 - (i) in the case of paragraph (a) (other than where the provisional supervisor of the company was appointed by virtue of section 168Y(1)(b) or (c)) or paragraph (b)(i) or (iii), it shall be deemed for all purposes that the meeting resolved that the company be wound up as a creditors' voluntary winding up;
 - (ii) in the case of paragraph (a) or (b)(i), (ii) or (iii)---
- (A) the provisional supervisor of the company shall appoint a liquidator of the company (which may be himself) as soon as is practicable but, in any case, not later than 7 days after the date of the meeting, and notwithstanding any other law (including any other provision of this Ordinance); and
- (B) it shall be deemed for all purposes that the meeting appointed that liquidator.
- (8) Where the provisional supervisor of the company fails to comply with subsection (7)(ii)
 - (A) within the period specified in that subsection, then, immediately upon the expiration of that period, he shall be deemed to have appointed himself as the liquidator of the company.
- (9) Where section 168ZR(1)(a) is applicable to a relevant meeting of creditors, the meeting may only be adjourned to allow the provisional supervisor of the company time to modify the proposal or to apply under section 168ZE for an extension of the moratorium.
- (10) Where section 168ZR(1)(b) is applicable to a relevant meeting of creditors, the meeting may only be adjourned to a later date, not exceeding 6 months after the date on which the meeting is held, if the meeting resolves to extend the moratorium.
- (11) A relevant meeting of creditors to which section 168ZR(1)(c) is applicable shall not be adjourned.
- (12) Subject to subsections (13), (14) and (15), each relevant creditor who is entitled to attend a relevant meeting of creditors shall be entitled to vote at the meeting.
- (13) Votes of relevant creditors shall be calculated according to the amount of the creditor's debt on the relevant date.
- (14) At a relevant meeting of creditors to which section 168ZR(1)(a) or (b) is applicable, for any resolution to pass approving the proposal or a modification of the proposal, there must be a majority in number and in excess of 66²/₃% in value of the creditors present in person or by proxy and voting on the resolution.
- (15) Subsection (14) applies in respect of any other resolution proposed at a relevant meeting of creditors to which section 168ZR(1)(a) or (b) is applicable, but substituting "50%" for "66²/₃%" appearing in that subsection.
- (16) At a relevant meeting of creditors to which section 168ZR(1)(a) or (b) is applicable, a resolution that the provisional supervisor of the company may be remunerated at a rate higher than the approved scale of fees may be passed or rejected.
- (17) Where---
 - (a) subsection (7)(i) is applicable---
 - (i) notwithstanding any other law (including any other provision of this Ordinance), the creditors' voluntary winding up referred to in that subsection shall be deemed to commence on the relevant date (except that, for the purposes of sections 263, 264, 264A and 265, that winding up shall be deemed to commence at the time that it was deemed for all purposes that the meeting referred to in that subsection resolved that the company be wound up as a creditors' voluntary winding up); and
 - (ii) the other provisions of this Ordinance applicable to the liquidation of the company shall be construed with such modifications as are necessary to take into account the operation of that subsection and subparagraph (i);
 - (b) subsection (7)(ii) or (8) is applicable---
 - (i) the liquidator appointed shall as soon as practicable after the appointment cause a notice in the specified form of his appointment to be---
 - (A) filed with the Official Receiver, the Registrar and the High Court Registry; and
 - (B) published in the Gazette and in---

(I) 1 English language newspaper circulating generally in Hong Kong; and
(II) 1 Chinese language newspaper circulating generally in Hong Kong;
(ii) the remuneration of the liquidator as liquidator shall be at the same rate as the remuneration of the provisional supervisor of the company was receiving as provisional supervisor immediately before the provisional supervisor vacated his office; and
(iii) the other provisions of this Ordinance applicable to the liquidation of the company shall apply with such modifications as are necessary to take into account the operation of that subsection and subparagraphs (i) and (ii).

(18) At a relevant meeting of creditors---
(a) a relevant creditor shall not vote in respect of a debt for an unliquidated amount, or any debt the value of which is not ascertained, except where the chairman of the meeting agrees to put upon the debt an estimated reasonable minimum value for the purpose of entitlement to vote;
(b) the chairman has power to admit or reject a relevant creditor's claim (whether in whole or in part) for the purpose of the creditor's entitlement to vote;
(c) if the chairman is in doubt as to whether a relevant creditor's claim should be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to that vote being subsequently declared invalid if the objection to the claim is sustained.

(19) An appeal against the chairman's decision on a relevant creditor's entitlement to vote may be made---

(a) by application to the court not later than 30 days after the conclusion of the relevant meeting of creditors at which the decision was made; and

(b) by any relevant creditor of the company.

(20) On an appeal under subsection (19)---

(a) where subsection (18)(a) or (b) is applicable, the court may reverse or vary the chairman's decision concerned (and, if required, declare a relevant creditor's vote invalid) only if it is satisfied that the decision was manifestly unreasonable;

(b) where subsection (18)(c) is applicable, the court may declare a relevant creditor's vote invalid if it is satisfied that the creditor had no entitlement to vote;

(c) in any case, the court may order another relevant meeting of creditors to be summoned or make such other order as it thinks just (including an order to extend the moratorium).

(21) The chairman of a relevant meeting of creditors is not personally liable for any costs incurred by any person in respect of an appeal under subsection (19).

168ZU. Implementation of relevant creditors' resolutions

(1) Where the proposal has been approved by a resolution passed at a relevant meeting of creditors---

(a) the appointment of the provisional supervisor of the company shall terminate except for the purpose of concluding the meeting and matters incidental thereto; and

(b) the terms of the voluntary arrangement shall take effect and shall bind---

(i) each relevant creditor who was given notice under section 168ZR(2)(b) or (3) in respect of the meeting (and whether or not the creditor notified the provisional supervisor of any claim against the company or attended the meeting);

(ii) the company;

(iii) the members of the company; and

(iv) the supervisor of the voluntary arrangement.

(2) The supervisor of the voluntary arrangement shall as soon as practicable after his appointment---

(a) file copies of the voluntary arrangement with the Official Receiver, the Registrar and the High Court Registry; and

(b) cause a notice in the specified form to be published---

(i) in the Gazette and in---

(A) 1 English language newspaper circulating generally in Hong Kong; and

(B) 1 Chinese language newspaper circulating generally in Hong Kong; and

(ii) containing a statement to the effect that he has been appointed to be the supervisor of the company for the purpose of implementing a voluntary arrangement in respect of the company.

(3) Where the former provisional supervisor of the company does not become the supervisor of the voluntary arrangement in respect of the company, the former provisional supervisor shall deliver to the supervisor all the documents of the company in his custody or under his control.

168ZV. Effect of voluntary arrangement

(1) While the voluntary arrangement is in effect in respect of the company---

(a) no creditor bound by the arrangement may commence or continue any winding up proceedings against the company;

(b) no resolution may be passed or made by the members or directors of the company for the winding up of the company;

(c) no receiver of the company may be appointed by a creditor bound by the arrangement or, if already appointed, no receiver may exercise any powers incidental to the office;

(d) no creditor bound by the arrangement may take any step to enforce or continue to enforce any security over the company's property or to repossess goods in the company's possession; and

(e) no creditor bound by the arrangement may commence any proceedings, execution, distress or other

legal process against the company.

(2) The voluntary arrangement shall cease to have effect in the events specified in the arrangement.

(3) Where the company is subject to the voluntary arrangement, every invoice, order for goods or business letter issued by or on behalf of the company or the supervisor of the voluntary arrangement, being a document on or in which the name of the company appears, shall contain a statement that the company is subject to the voluntary arrangement.

168ZW. Supervisor of voluntary arrangement

(1) No person shall be appointed to be the supervisor of the voluntary arrangement in respect of the company---

(a) except---

(i) a member of the panel; or

(ii) a person in respect of whom the Official Receiver has stated in writing that he is satisfied

that the person---

(A) has particular skills which warrant him being appointed to be the supervisor of the voluntary arrangement; and

(B) is a fit and proper person to be so appointed; and

(b) unless he provides such security, and in such form, as is prescribed in regulations made under section 168ZZA.

(2) Subject to any directions under subsection (5), the supervisor of the voluntary arrangement shall---

(a) discharge such duties and exercise such powers as are specified in the arrangement;

(b) ascertain on behalf of the creditors of the company that the arrangement is being adhered to and implemented by the company in accordance with its terms; and

(c) supervise the arrangement having regard to the interests of---

(i) the creditors of the company bound by the arrangement;

(ii) the company; and

(iii) the members of the company.

(3) The supervisor of the voluntary arrangement---

(a) may require an officer or employee of the company to provide such information about the business, property, affairs or financial circumstances of the company as the supervisor may reasonably request;

(b) shall have access to the premises (except domestic premises) of the company and all books and records of the company upon reasonable notice; and

(c) may, where the supervisor is satisfied that the arrangement is not being adhered to and implemented by the company in accordance with its terms, present a petition to the court for the winding up of the company by the court.

(4) An officer or employee of the company who, without reasonable excuse, fails to comply with a requirement under subsection (3)(a) shall be guilty of an offence.

(5) The supervisor of the voluntary arrangement may apply to the court for directions in relation to any particular matter arising in connection with his duties and powers under the arrangement and, without prejudice to the generality of the foregoing, the court may by such a direction permit a deviation from the arrangement if, but only if, the court is satisfied that the deviation would not affect the substance of the arrangement.

(6) A party to the voluntary arrangement who is aggrieved by any act, omission or decision of the supervisor of the voluntary arrangement may make an application to the court.

(7) The court shall determine an application made under subsection (6) by---

(a) confirming, reversing or modifying any act, omission or decision of the supervisor of the voluntary arrangement;

(b) giving the supervisor directions;

(c) removing the supervisor from office; or

(d) making such other order as it sees fit.

168ZX. Vacation of office, etc. of supervisor

Where---

(a) it is expedient to appoint a person to discharge the duties of the supervisor of the voluntary arrangement; and

(b) it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the court,

the court may, upon the application of the company, the directors of the company or a creditor of the company bound by the arrangement, make an order appointing a supervisor of the voluntary arrangement, either in substitution for the existing supervisor or to fill a vacancy.

168ZY. Notification

Where---

(a) the supervisor of the voluntary arrangement has replaced a former supervisor of the voluntary arrangement; or

(b) the voluntary arrangement has ceased to have effect,

the supervisor shall file a notice in the specified form of his appointment, or a notice in the specified form of the cessation of the voluntary arrangement, as the case may be, with the Official Receiver, the Registrar and the High Court Registry not later than 14 days after the date of his appointment or the cessation of the voluntary arrangement, as the case may be.

168ZZ. Power of Official Receiver

to specify forms

(1) Subject to subsection (2), the Official Receiver, after consultation with the Registrar, may specify the form of any document required under this Part to be in the specified form and the form of such other documents required for the purposes of this Part as he thinks fit.

(2) The Official Receiver's power under subsection (1) shall be subject to any express requirement under this Part for a form, whether specified or otherwise, to comply with that requirement, but that requirement shall not restrict the exercise of that power in respect of that form to the extent that, in the opinion of the Official Receiver, his exercise of that power in respect of that form does not contravene that requirement.

(3) The Official Receiver's power under subsection (1) may be exercised in such a way as to---

(a) include in the specified form of any document referred to in that subsection a statutory declaration---

(i) to be made by the person completing the form; and

(ii) as to whether the particulars contained in the form are true and correct to the best of that person's knowledge and belief;

(b) specify 2 or more forms of any document referred to in that subsection, whether as alternatives, or to provide for particular circumstances or particular cases, as the Official Receiver thinks fit.

(4) A form specified under this section shall be---

(a) completed in accordance with such directions and instructions as are specified in the form;

(b) accompanied by such documents as are specified in the form; and

(c) if the completed form is required to be provided to---

(i) the Official Receiver or the Registrar;

(ii) another person on behalf of the Official Receiver or the Registrar; or

(iii) any other person,

so provided in the manner, if any, specified in the form.

168ZZA. Regulations

(1) The Secretary for Financial Services may make regulations prescribing anything that is required or permitted to be prescribed under this Part.

(2) Regulations made under this section may---

(a) specify criteria for determining whether or not a company was solvent for the purposes of section 168ZQ(4);

(b) specify the procedures to be followed at relevant meetings of creditors;

(c) without prejudice to the generality of paragraph (b), specify the powers of the chairman of a relevant meeting of creditors, in particular in relation to the adjudication of claims against the company by relevant creditors;

(d) without prejudice to the generality of paragraph (c), provide that any adjudication referred to in that paragraph (and notwithstanding any other law, including any other provision of this Ordinance) shall not be overturned or otherwise varied by any court unless---

(i) the court concludes that the adjudication was manifestly unreasonable; or

(ii) the chairman of the relevant meeting of creditors concerned consents thereto;

(e) specify the Official Receiver as being the person who must be satisfied that a requirement imposed by the regulations has been met;

(f) make different provisions for different circumstances and provide for a particular case or class of case;

(g) be made so as to apply only in such circumstances as are specified in the regulations;

(h) provide for the better carrying into effect of the provisions of this Part;

(i) provide for such incidental, consequential, evidential, transitional and supplemental provisions as are necessary or expedient for the purpose of giving full effect to the provisions of this Part.

(3) Any regulations made under this section may prescribe offences in respect of contraventions of the regulations and may provide for the imposition in respect of any such offence of a fine not exceeding level 6 and of imprisonment for a period not exceeding 2 years and, in the case of a continuing offence, to a daily penalty not exceeding \$1,000.

(4) In this section, "daily penalty" (按日罰款) means a penalty for each day on which the offence is continued after conviction therefor."

25. Subheading amended

The subheading after section 187 is amended by repealing "in Winding Up" and substituting "and Liquidators".

26. Statement of company's affairs to

be submitted to provisional

liquidator or liquidator

Section 190 is amended---

(a) in subsections (1), (2) and (3), by repealing "Official Receiver" wherever it appears and substituting "provisional liquidator or liquidator";

(b) in subsection (4)---

(i) by repealing "Official Receiver or provisional liquidator,

as the case may be," and substituting "liquidator or provisional liquidator";

(ii) by repealing "Official Receiver may" and substituting "provisional liquidator or liquidator may".

27. Report by Official Receiver or liquidator

- Section 191 is amended---
- (a) in subsection (1), by repealing "Official Receiver" and substituting "liquidator";
- (b) in subsections (2) and (3), by adding "or liquidator" after "Official Receiver".
28. Subheading repealed
The subheading "Liquidators" before section 192 is repealed.
29. Power of court to appoint liquidators
Section 192 is amended by adding ", provisionally or otherwise," after "liquidators".
30. Appointment, style, etc. of liquidators
Section 194 is amended---
- (a) in subsection (1)---
- (i) in paragraph (a), by adding "and subsection (1A)" after "(aa)";
- (ii) in paragraph (b), by repealing "in the place of the provisional liquidator";
- (iii) by repealing paragraph (d);
- (b) by adding---
- "(1A) Where the Official Receiver---
- (a) is the provisional liquidator of the company by virtue of subsection (1)(a); and
- (b) is of the opinion that the property of the company is not likely to exceed in value \$200,000, he may, at any time, appoint 1 or more persons as provisional liquidator in his place."
31. Provisions where person other than Official Receiver is appointed liquidator
Section 195 is amended---
- (a) by repealing "appointed liquidator" and substituting "appointed provisional liquidator or liquidator under section 194";
- (b) by repealing paragraph (a) and substituting---
- "(a) shall forthwith notify his appointment to the Registrar and give security in the prescribed manner to the satisfaction of the Official Receiver;"
32. General provisions as to liquidators
Section 196 is amended---
- (a) by repealing subsection (1) and substituting---
- "(1) A provisional liquidator or liquidator appointed under section 193 or 194 may resign or, on cause shown, be removed by the court.
- (1A) A provisional liquidator appointed under section 194(1A) shall be remunerated---
- (a) in accordance with a scale of fees approved from time to time by the Official Receiver; or
- (b) on such other basis as the Official Receiver approves in writing.";
- (b) in subsection (2), by repealing "Where" and substituting "Subject to subsection (1A), where".
33. Powers of liquidator
Section 199 is amended---
- (a) in subsections (1) and (2), by repealing "The" and substituting "Subject to section 193(3), the";
- (b) by adding---
- "(4) A provisional liquidator appointed under section 194(1A) shall have power---
- (a) to take into his custody or under his control all the property to which the company concerned is or appears to be entitled;
- (b) subject to subsection (5), to sell or dispose of perishable goods or other assets (but not including derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if they are not immediately sold or disposed of.
- (5) A provisional liquidator appointed under section 194(1A) may, with the sanction of the court or the Official Receiver, exercise any power under subsection (1) or (2).
- (6) No sale or disposal under subsection (4)(b) may be made to a person who is---
- (a) a director, or shadow director within the meaning of section 168C, of the company concerned; or
- (b) an associate, within the meaning of section 51B of the Bankruptcy Ordinance (Cap. 6), of the company or of any such director or shadow director, unless the sale or disposal has the sanction of the court or of the Official Receiver.
- (7) The Official Receiver shall not be personally liable for costs for any refusal to grant sanction under subsection (5) or (6)."
34. Power of court to order winding up to be conducted as creditors' voluntary winding up
Section 209A(6) is repealed and the following substituted---
- "(6) Where an application is made under subsection (1)---
- (a) the liquidator shall; and
- (b) the Official Receiver may, submit to the court a report with regard to the application."
35. Appointment of special manager
Section 216(1) is amended by adding "or there are other grounds therefor," after "generally,".
36. Power to order public examination of promoters, directors, etc.
Section 222 is amended---
- (a) in subsection (1)---

- (i) by adding "or liquidator" after "Official Receiver";
 - (ii) by repealing paragraph (b);
 - (b) in subsection (2), by adding "or liquidator, as the case may be," after "Official Receiver";
 - (c) in subsection (3), by repealing "liquidator, where the Official Receiver is not the liquidator" and substituting "Official Receiver or the liquidator, where he is not the party making the further report";
 - (d) in subsection (6)---
 - (i) by repealing "Official Receiver's" and substituting "further";
 - (ii) in the proviso---
 - (A) by adding "or liquidator, as the case may be," after "Official Receiver" where it first appears;
 - (B) by repealing "the Official Receiver" where it secondly appears and substituting "him";
 - (C) by adding "or liquidator, as the case may be," after "Official Receiver" where it last appears.
37. Application of Ordinance to small winding up
Section 227F is amended---
- (a) in subsection (1)---
 - (i) in paragraph (b), by adding "or the provisional liquidator" after "Official Receiver";
 - (ii) in paragraph (i), by adding "or the provisional liquidator, as the case may be," after "Official Receiver";
 - (iii) in paragraph (ii), by repealing "Official Receiver" and substituting "liquidator";
 - (b) in subsection (2), by repealing "Official Receiver" and substituting "liquidator".
38. Circumstances in which company may be wound up voluntarily
Section 228(1)(d) is repealed.
39. Special procedure for voluntary winding up in case of inability to continue its business
Section 228A is repealed.
40. Commencement of voluntary winding up
Section 230 is amended by repealing "Except as provided in section 228A(3)(a), a" and substituting "A".
41. Notice by liquidator of his appointment
Section 253(3) is repealed.
42. Interest on debts
Section 264A is amended---
- (a) in subsection (1), by adding "the taxed costs of the petition and" after "on" where it first appears;
 - (b) in subsection (2)---
 - (i) by adding "the taxed costs of the petition and" after "interest on";
 - (ii) by repealing "debt has" and substituting "taxed costs of the petition and the debt have";
 - (iii) by repealing paragraph (b) and substituting---
- "(b) a voluntary winding up, since the commencement of the winding up.".
43. Extortionate credit transactions
Section 264B(2)(b) is repealed and the following substituted---
- "(b) a voluntary winding up, the commencement of the winding up.".
44. Sections added
The following is added after section 295---
- "Insolvent Trading
- 295A. Interpretation
- (1) In this section and sections 295B to 295G---
- "company" (公司) means---
- (a) a company within the meaning of section 2; or
 - (b) an unregistered company within the meaning of Part X (other than a partnership, whether limited or not, or an association)---
 - (i) wherever incorporated;
 - (ii) carrying on business in Hong Kong or which has carried on business in Hong Kong; or
 - (iii) which is capable of being wound up under this Ordinance;
- "former responsible person" (前任負責人), in relation to a company, means a person who was formerly a responsible person of the company;
- "insolvent trading" (在無力償債情況下營商), in relation to a company, means the company falls within any of the criteria specified in Part 1 of the Nineteenth Schedule;
- "responsible person" (負責人), in relation to a company---
- (a) means---
 - (i) a director or shadow director of the company; or
 - (ii) a manager of the company who is involved to a substantial or material degree in directing the company's business or affairs;
 - (b) does not include a person who is a provisional supervisor or former provisional supervisor of the company except, in the latter case, a former provisional supervisor who is a person referred to in paragraph (a);
- "shadow director" (影子董事), in relation to a company, means a person in accordance with whose directions or instructions 1 or more directors of the company are accustomed to act but a person shall not be considered to be a shadow director by reason only that 1 or more of the directors of the company act on

advice given by him in a professional capacity.

- (2) For the purposes of sections 295B to 295G, a company goes into liquidation---
- (a) if it passes a resolution for a creditors' voluntary winding up; or
- (b) an order for its winding up is made by the court.
- (3) The Secretary for Financial Services may, by notice in the Gazette, amend Part 1 of the Nineteenth Schedule.

295B. Liquidator may make application to court to seek declaration that responsible person, etc. is liable for insolvent trading

Where---

- (a) a company goes into liquidation; and
- (b) the liquidator of the company is satisfied that the company engaged in insolvent trading, the liquidator may make an application to the court to declare that a responsible person or former responsible person is liable for insolvent trading.

295C. Grounds on which court may declare responsible person, etc. liable for insolvent trading

(1) The court shall declare a responsible person or former responsible person liable for insolvent trading if, but only if, it is satisfied that---

- (a) the company engaged in insolvent trading;
- (b) the company incurred debt---
- (i) when it engaged in insolvent trading; and
- (ii) on or after the date on which this section came into operation;
- (c) the responsible person or former responsible person was a responsible person at the time that the debt was so incurred; and
- (d) either---
- (i) the responsible person---
- (A) knew or ought reasonably to have known the company was insolvent; or
- (B) knew or ought reasonably to have known that there was no reasonable prospect that the company could avoid becoming insolvent; or
- (ii) there were reasonable grounds for suspecting that---
- (A) the company was insolvent; or
- (B) there was no reasonable prospect that the company could avoid becoming insolvent, and the responsible person failed to take any steps to prevent the debt referred to in paragraph (b) from being incurred.

(2) Where, but for this subsection, the court would make a declaration under subsection (1) in respect of a responsible person or former responsible person, it shall not make such a declaration---

- (a) if that person---
- (i) was, at the time the debt referred to in subsection (1)(b) was incurred, a responsible person by virtue of paragraph (a)(ii) of the definition of "responsible person" in section 295A(1); and
- (ii) satisfies the court that, before such debt was incurred, he issued a notice, in the form specified in Part 2 of the Nineteenth Schedule---
- (A) to the board of directors of the company;
- (B) stating that the company is engaging in, or is about to engage in, insolvent trading; and
- (C) to which was attached a copy of section 295B; or
- (b) if that person satisfies the court that, after the requirement referred to in subsection (1)(d)(i) was first satisfied in relation to him, he took every step with a view to minimizing the potential loss to the company's creditors as he ought to have taken.

(3) For the purposes of subsections (1) and (2), the facts which a responsible person (including a former responsible person at the time he was a responsible person) ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having---

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same duties as are discharged by that responsible person in relation to the company; and
- (b) the general knowledge, skill and experience that that responsible person has.

(4) The reference in subsection (3) to duties discharged in relation to the company by a responsible person (including a former responsible person at the time he was a responsible person) includes any duties which he does not discharge but which have been entrusted to him.

(5) The Official Receiver may, by notice in the Gazette, amend Part 2 of the Nineteenth Schedule.

295D. Presumption of continued insolvency in certain circumstances

(1) Subject to subsection (2), where in any proceedings under section 295C it is shown to the satisfaction of the court that the company, on any date within the 12 months period immediately preceding the date of commencement of the winding up of the company---

- (a) was insolvent; or
- (b) contravened section 121(1) or (3A) (and whether or not any person was convicted of an offence in respect of the contravention),
- then it shall be presumed in those proceedings, unless the contrary is shown, that the company remained

insolvent from the first-mentioned date to and including the second-mentioned date.

- (2) Subsection (1) shall not apply in the case of---
- (a) a contravention of section 121(1) or (3A) where the court is satisfied that the contravention---
- (i) is minor or of a technical nature; and
 - (ii) did not materially distort the books of account of the company; or
- (b) a contravention of section 121(3A) where the court is satisfied that the responsible person or former responsible person concerned---
- (i) took all reasonable steps to secure compliance by the company with that section; or
 - (ii) has not---
- (A) by his own wilful act been the cause (whether in whole or in part) of the contravention; and
- (B) aided, abetted, counselled or procured the contravention.

295E. Compensation, etc.

- (1) Where the court makes a declaration under section 295C(1) in respect of a responsible person or former responsible person, it may---
- (a) order the person to pay such compensation to the company as the court thinks proper in all the circumstances of the case;
- (b) if it is satisfied that a creditor's claim against the company arose at a time when the creditor knew the company was engaging in insolvent trading, order that the compensation shall not be used to satisfy that claim until all other claims by creditors against the company have been satisfied.
- (2) Compensation to be paid under subsection (1)(a) to the company may include all or part of the costs of the liquidator of the company arising from seeking the declaration under section 295C(1) to which the order relates.
- (3) Compensation to be paid under subsection (1)(a) to the company shall be used by the liquidator of the company in the following order of priority---
- (a) first, any costs of the kind referred to in subsection (2) (and whether or not the compensation includes all or part of any such costs);
 - (b) secondly, the costs of the liquidation of the company in accordance with the Companies (Winding-up) Rules (Cap. 32 sub. leg.);
 - (c) thirdly, claims of creditors of the company in accordance with their priority unless the court orders a different priority.

295F. Enforcement of order for compensation

An order under section 295E(1)(a) shall be enforceable in all respects as if it were a judgment of the court.

295G. Assignment of action for insolvent trading prohibited

The liquidator of the company shall not assign any cause of action for any insolvent trading engaged in by the company."

45. General rules and fees

Section 296(1) is amended by adding "or to applications to the court under the provisions of Part IVB" after "companies".

46. Documents etc. to be delivered to Registrar by companies which establish a place of business in Hong Kong

Section 333(1) is amended---

- (a) in paragraph (a), by repealing "and, if" and substituting "or, if";
- (b) by repealing paragraph (d);
- (c) in paragraph (f), by repealing "together with" and substituting "or";
- (d) in the proviso---

 - (i) in paragraph (i), by adding "a solicitor corporation, a corporate practice within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50) or" after "other than";
 - (ii) in paragraph (ii)---

(A) by adding "a solicitor corporation, such a corporate practice or" after "in the case of";

(B) by adding "solicitor corporation, corporate practice or" after "name of the".

47. Continuing obligation in respect of authorized representative

Section 333A(2) is amended by repealing "and (d)".

48. Return to be delivered to Registrar where documents, etc. altered

Section 335(1) is amended by repealing "and, in respect of any change of the persons referred to in paragraph (c), a document complying with section 333(1)(d)".

49. Accounts of oversea company

Section 336(5) is amended by repealing "there shall be annexed to it" and substituting "in lieu of that delivery there shall be delivered to the Registrar".

50. Prohibition of partnerships with more than 20 members

Section 345(2)(b) is repealed and the following substituted---

"(b) for the purpose of carrying on practice as a firm of certified public accountants or public accountants and such firm is registered under the Professional Accountants Ordinance (Cap. 50);"

51. Punishment of offences under this Ordinance

The Twelfth Schedule is amended---

- (a) in the entry relating to section 190(5), in the second column, by repealing "Official Receiver" and

substituting "liquidator";

(b) by adding---

"116BA(2) Director or secretary Summary Level 3 ---

failing to notify
company's auditor

of matters under
section 116B

168ZI(2) Director On Level 6 ---
contravening indictment and 2

prohibition not to
discharge duty or Summary Level 4 ---
exercise power as
and 6

director months
168ZN(5) Failing to comply Summary Level 5 \$300

with requirement
of provisional
supervisor of
company to give
information, etc.

168ZW(4) Failing to comply Summary Level 5 \$300";

with requirement
of supervisor of
voluntary
arrangement to
give information,
etc.

(c) by repealing the entries relating to sections 228A(2), 228A(3A) (relating to subsection (3)(b)),
228A(3A) (relating to subsection (3)(c)) and 228A(4B).

52. Matters for determining
unfitness of directors

The Fifteenth Schedule is amended, in Part II, by repealing paragraph 5(c).

53. Schedules added
The following are added---

"SEVENTEENTH SCHEDULE [s. 168ZD &
Eighteenth
Sch.]

Contracts or Other Agreements to Which Section 168ZD(3)
of this Ordinance shall not Apply

1. Currency or interest rate swap agreement.
2. Basis swap agreement.
3. Spot, futures, forward or other foreign exchange agreement.
4. Cap, collar or floor transaction.
5. Commodity swap.
6. Forward rate agreement.
7. Repurchase or reverse repurchase agreement.
8. Spot, futures, forward or other commodity contract and financial futures contract.
9. Agreement to buy, sell, borrow, or lend securities, to clear or settle securities transactions or futures contracts or to act as a depository for securities.
10. Derivative, combination or option in respect of, or agreement similar to, an agreement or contract referred to in any of items 1 to 9.
11. Master agreement in respect of any agreement or contract referred to in any of items 1 to 10.
12. Guarantee of the liabilities under an agreement or contract referred to in any of items 1 to 11.

EIGHTEENTH SCHEDULE [ss. 168ZF &
168ZG]

Duties and Powers of Provisional
Supervisor of Company

Part 1

Duties of Provisional Supervisor

1. As soon as practicable, take into custody or under control all the property to which the company is or appears to be entitled.
2. Investigate and assess the affairs, business and property, and financial circumstances, of the company.
3. As soon as practicable after complying with paragraph 2, decide whether or not any of the relevant purposes are capable of being achieved.
4. If it is decided that any of the relevant purposes are capable of being achieved, prepare the proposal to achieve any such purpose or purposes.
5. During the moratorium, do all things necessary to protect the property of the company.
6. During the moratorium, manage the affairs, business and property of the company for the primary purpose of preserving the property of the company for the creditors of the company as a whole.

7. Apply the company's trust fund, if any, referred to in section 168ZA(c)(iv) for the purpose referred to in section 168ZA(c)(iv)(II).
8. Subject to paragraphs 1 to 7, act in the supervision of the company in the best interests of the company.
9. Discharge such other duties as may be imposed on the provisional supervisor of the company by this or any other Ordinance.
10. Do such other things as may be necessary for the supervision and management of the affairs, business and property of the company.

Part 2

Powers of Provisional Supervisor

1. Power to appoint any agent or employ any person to do any business and to dismiss the agent or employee.
2. Power to appoint a solicitor, professional accountant or other professionally qualified person to assist in the discharge of duties and the exercise of powers and to dismiss the solicitor, professional accountant or other professionally qualified person.
3. Power to do all acts and execute in the name and on behalf of the company any deed, receipt or other document.
4. Power to use the company seal and chop.
5. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
6. Power to make any payment which is necessary or incidental to the discharge of any duty.
7. Power to raise or borrow money and grant security over the property of the company.
8. Power to make any compromise or arrangement on behalf of the company.
9. Power to disclaim onerous contracts or agreements, excluding contracts or agreements specified in the Seventeenth Schedule (and, for the purposes of such power, section 59 of the Bankruptcy Ordinance (Cap. 6) shall, with all necessary modifications, apply to and in relation thereto).
10. Power to form a committee of relevant creditors.
11. Power to exercise such other powers as may be conferred upon the provisional supervisor of the company by this or any other Ordinance.
12. Power to do all things incidental to his duties.

NINETEENTH SCHEDULE [ss. 295A & 295C]

Criteria Applicable to Insolvent Trading
and Notice of Insolvent Trading

Part 1

Criteria for Determining Whether
Company Trades While Insolvent

1. The company is unable to pay its debts as and when they become due and owing.

Part 2

Notice of Insolvent Trading by Responsible Person
of Company to Board of Directors
Notice of Insolvent Trading under Section 295C(2)(a)(ii)
of Companies Ordinance (Cap. 32)

To: The board of directors of

(name of company)

From:

(name of responsible person of company)

I hereby advise that the company is *engaging in/about to engage in insolvent trading. A copy of section 295B of the Companies Ordinance is attached.

Dated this day of 20 .

(signature of responsible person)

*Delete whichever is inapplicable."

54. Consequential and other amendments
and transitional provisions

- (1) The enactments specified in the Schedule are amended as set out in the Schedule.
- (2) The provisions of sections 190, 191, 192, 194, 195, 196, 199, 209A(6), 216, 222, 227F, 264A and 264B, the Companies (Fees and Percentages) Order (Cap. 32 sub. leg.), and the Companies (Winding-up) Rules (Cap. 32 sub. leg.), as amended by this Ordinance, shall apply to and in relation to a company in respect of which proceedings for its winding up have commenced but not been concluded before the commencement of this section as those provisions apply to and in relation to a company in respect of which proceedings for its winding up have commenced on or after the commencement of this section.

SCHEDULE [s. 54]

Consequential and Other Amendments
Companies (Fees and Percentages) Order

1. Paragraph 7 amended
Paragraph 7(3) of the Companies (Fees and Percentages) Order (Cap. 32 sub. leg.) is amended by repealing "9 of Schedule 3" and substituting "3 of Schedule 2".
2. Schedule 2 amended

- Schedule 2 is amended---
- (a) by repealing item 2;
 - (b) by adding---
- "3. On an application for release by a liquidator for every \$1,000 or fraction of \$1,000 of the gross amount of assets realized and brought to credit \$5.00 ---".
3. Schedule 3 amended
Schedule 3 is amended, in Table A---
- (a) in item 3, by repealing "committee of inspection" and substituting "liquidator";
 - (b) by repealing item 9;
 - (c) by adding---
- "10. On proof of debt above \$250 (other than a proof for workmen's wages) 40.00".
This fee includes administering oath and filing.
No fee is payable on a proof for \$250 or under.
- Companies (Winding-up) Rules
4. Interpretation of terms
Rule 2 of the Companies (Winding-up) Rules (Cap. 32 sub. leg.) is amended by repealing the definition of "liquidator".
 5. Copies of documents filed in proceedings to be served on Official Receiver and Chief Bailiff
Rule 23A is amended by adding "and the Chief Bailiff" after "Official Receiver".
 6. Administration of small liquidations
Rule 27A is amended---
 - (a) in paragraph (1), by repealing "(6)" and substituting "(5)";
 - (b) in paragraph (2), by repealing "Official Receiver" and substituting "liquidator";
 - (c) by repealing paragraph (6). 7. Drawing up and contents of winding-up order
Rule 35(2) is amended by adding ", provisional liquidator or liquidator" after "Official Receiver" where it twice appears.
 8. Preparation of statement of affairs
Rule 39 is amended---
 - (a) in paragraph (1), by repealing "Official Receiver" wherever it appears and substituting "provisional liquidator or liquidator";
 - (b) in paragraph (2), by adding ", provisional liquidator or liquidator" after "Official Receiver" wherever it appears. 9. Extension of time for submitting statement of affairs
Rule 40 is amended by repealing "Official Receiver" and substituting "provisional liquidator or liquidator".
 10. Information subsequent to statement of affairs
Rule 41 is amended---
 - (a) by repealing "to the Official Receiver" and substituting "to the provisional liquidator or liquidator";
 - (b) by adding ", provisional liquidator or liquidator" after "Official Receiver" where it secondly and last appears. 11. Default
Rule 42 is amended by repealing "Official Receiver" and substituting "provisional liquidator or liquidator".
 12. Expenses of statement of affairs
Rule 43 is amended by repealing "Official Receiver" where it twice appears and substituting "provisional liquidator or liquidator".
 13. Dispensing with statement of affairs
Rule 44(1) is amended by repealing "Official Receiver" and substituting "provisional liquidator or liquidator".
 14. Appointment of liquidator on report of meetings of creditors and contributories
Rule 45(2), (3) and (4) is amended by repealing "Official Receiver" wherever it appears and substituting "provisional liquidator".
 15. Report of liquidator to be filed
Rule 49 is amended by adding "or liquidator" after "Official Receiver" where it twice appears.
 16. Appointment of time for consideration of report
Rule 50 is amended by adding "or liquidator" after "Official Receiver".
 17. Consideration of report
Rule 51 is amended by repealing "Official Receiver shall" and substituting "party who made the

further report shall, and the Official Receiver or the liquidator when he is not the party who made the further report may."

18. Application for day for holding examination

Rule 53 is amended by adding "or liquidator, as the case may be," after "Official Receiver".

19. Appointment of time and place for public examination

Rule 54 is amended by adding "or liquidator, as the case may be," after "Official Receiver".

20. Notice of public examination to creditors and contributories

Rule 55(1) is amended by adding "or liquidator, as the case may be," after "Official Receiver" where it twice appears.

21. Default in attending

Rule 56(1) is amended by adding "or liquidator" after "Official Receiver".

22. Rule added

The following is added---

"57A. Application of certain rules where report is made under section 168IA of Ordinance

Where a report under section 168IA of the Ordinance is made to the court by the Official Receiver, rules 49 to 54 and 56 and 57 inclusive shall apply to and in relation to the proceedings arising from the report."

23. Application by or against delinquent directors, officers and promoters

Rule 58(1)(c) is amended by repealing "157E or 157F" and substituting "168I".

24. Depositions of private examinations

Rule 62(1) is amended by repealing "may attend in person, or by an assistant official receiver" and substituting "or liquidator may attend in person".

25. Provisional liquidator's powers

Rule 99 is amended by repealing "Official Receiver" and substituting "provisional liquidator".

26. First meetings of creditors and contributories

Rule 106 is amended by repealing "Official Receiver" and substituting "provisional liquidator".

27. Notice of first meetings

Rule 107 is amended by repealing "Official Receiver" and substituting "provisional liquidator".

28. Notice of first meetings

to officers of company

Rule 110 is amended by repealing "Official Receiver" wherever it appears and substituting "provisional liquidator".

29. Summary of statement of affairs

Rule 111(1) is amended by repealing "Official Receiver" where it twice appears and substituting "provisional liquidator or liquidator".

30. Heading amended

The heading before rule 112 is amended by repealing ", including a Winding up under Section 228A".

31. Creditors entitled to vote

Rule 124(1) is amended---

(a) by repealing "Official Receiver" where it first appears and substituting "liquidator";

(b) by repealing "Official Receiver or".

32. Heading amended

The heading before rule 131 is amended by repealing ", including a Winding up under Section 228A".

33. Lodgment of proxies

Rule 139 is amended---

(a) in paragraph (1), by repealing "Official Receiver" and substituting "liquidator";

(b) in paragraph (2), by repealing "Official Receiver or".

34. Remuneration of liquidator

Rule 146(2) is amended by repealing "the court shall otherwise order" and substituting "otherwise provided for under the Ordinance or ordered by the court".

35. Discharge of costs before assets

handed to liquidator

Rule 153 is amended---

(a) in paragraph (1)---

(i) by adding "or under the Ordinance" after "appointed by the court";

(ii) by repealing "Official Receiver" where it secondly and thirdly appears and substituting "provisional liquidator";

(iii) in the proviso---

(A) by repealing "Official Receiver" where it first appears and substituting "provisional liquidator";

(B) by adding "and provisional liquidator" after "Official Receiver" where it secondly and last appears;

(b) in paragraphs (2) and (3), by adding "and provisional liquidator" after "Official Receiver".

36. Record of proceedings
Rule 158 is amended by repealing "Official Receiver, until a liquidator is appointed" and substituting "provisional liquidator, until a liquidator is appointed under the Ordinance or".
37. Cash book
Rule 159(1) is amended by repealing "Official Receiver, until a liquidator is appointed" and substituting "provisional liquidator, until a liquidator is appointed under the Ordinance or".
38. Lodgment of bill
Rule 171 is amended by repealing "Official Receiver" where it twice appears and substituting "provisional liquidator".
39. Costs payable out of the assets
Rule 179(1) is amended---
(a) by adding "but excluding the interest on such costs" after "allowed by the court";
(b) by adding "and any fees, disbursements and expenses properly incurred by" before "the special";
(c) after the proviso, by adding "or under the Ordinance" after "winding up by the court" wherever it appears.
40. Disposal of moneys received after execution
Rule 207(2) is amended by repealing "or of a declaration made under section 228A of the Ordinance having been delivered to the Registrar of Companies under that section".
41. Forms
The Appendix is amended---
(a) in Form 4---
(i) by adding "(c)" after "[Name]" and after "[Address]";
(ii) by adding immediately below "he has no solicitor." the following---
"(c) The name and address of the petitioner and the solicitor, if any, to the petitioner should be stated.";
(b) in Form 9, in the Note, by adding "or provisional liquidator" after "Official Receiver" where it twice appears;
(c) in Form 14---
(i) by repealing ", and that the Official Receiver, or as the case may be, be constituted provisional liquidator of the affairs of the company";
(ii) in the Note, by adding "or provisional liquidator" after "Official Receiver" where it twice appears;
(d) in Form 18---
(i) by repealing "Official Receiver" where it first appears;
(ii) by repealing "Official Receiver" where it secondly appears and substituting "provisional liquidator";
(iii) by repealing "Note---If a liquidator is not appointed by the court the Official Receiver will be the liquidator.";
(e) in Form 19---
(i) by repealing "Official Receiver" where it first appears;
(ii) by repealing "Official Receiver" where it secondly appears and substituting "provisional liquidator";
(iii) by repealing "Note---If a liquidator is not appointed by the court the Official Receiver will be the liquidator.";
(f) in Form 20---
(i) by repealing "Official Receiver" where it first appears;
(ii) by repealing "by the Official Receiver";
(g) in Form 23---
(i) by repealing "as the Official Receiver" and substituting "as the liquidator";
(ii) in Note (2), by repealing "Official Receiver" and substituting "liquidator";
(h) in Form 25---
(i) by repealing "Official Receiver and";
(ii) by repealing "of the Official Receiver" where it twice appears and substituting "of the provisional liquidator";
(i) in Forms 29, 30, 31 and 32, by adding "or liquidator, as the case may be," after "Official Receiver" wherever it appears;
(j) in Form 38A, by repealing "and Liquidator of the above-named company" and substituting "or Liquidator of the above-named company, as the case may be";
(k) in Form 63A---
(i) by repealing "to the Official Receiver" and substituting "to the provisional liquidator";
(ii) by repealing "with the Official Receiver" and substituting "with the liquidator";
(l) in Form 63B, by repealing "Official Receiver" and substituting "provisional liquidator".
Companies (Disqualification Orders) Regulation
42. Interpretation
Section 1 of the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg.) is amended by repealing the definitions of "court" and "disqualification order".
43. Officers of court to furnish particulars to Registrar
Section 3(1) is amended by adding---
"(aa) where a disqualification order is made by the Tribunal within the meaning of section 2 of the

- Securities (Insider Dealing) Ordinance (Cap. 395), the clerk to the Tribunal;".
44. Schedule 1 amended
Schedule 1 is amended by repealing---
- "(1) Section of the Companies Ordinance under which the order was made(---
Section 168E
Section 168F
Section 168G
Section 168H
Section 168J
Section 168L "
- and substituting---
- "(1) Section of the Companies Ordinance ("CO") or Securities (Insider Dealing) Ordinance ("SIDO")
under which the order was made (---
Section 168E of CO
Section 168F of CO
Section 168G of CO
Section 168H of CO
Section 168J of CO
Section 168L of CO
Section 24(1)(a) of SIDO
Section 24(1) of SIDO "
45. Schedule 2 amended
Schedule 2 is amended, in item (7), by adding---
" Provisional supervision of company
Supervision of voluntary arrangement in respect of company "
- after---
- " Receivership or management of the property of the company "
46. Schedule 3 amended
Schedule 3 is amended by adding "or the Securities (Insider Dealing) Ordinance (Cap. 395)" after
"Companies Ordinance".
Companies (Reports on Conduct of
Directors) Regulation
47. Reports required under section 168I(3)
of the Ordinance
Section 2(1) of the Companies (Reports on Conduct of Directors) Regulation (Cap. 32 sub. leg.) is
amended by adding, before paragraph (a)---
(aa) the provisional supervisor of a company;
(ab) the supervisor of a voluntary arrangement in respect of a company;".
48. Return by office-holder
Section 3 is amended---
(a) in subsection (1), by adding "the provisional supervisor of a company as mentioned in section 2(1)
(aa)," after "appears to";
(b) in subsection (4)---
(i) by adding before paragraph (a)---
"(aa) in the case of the provisional supervisor, the date of his appointment taking effect;";
(ii) by repealing paragraph (b).
49. Schedule amended
The Schedule is amended---
(a) in Form D1---
(i) by adding "Under *Provisional Supervisor/Supervisor or" after "Insolvent Company";
(ii) by adding "appointment of provisional supervisor/appointment of supervisor/" after "Date
of *";
(iii) by adding "provisional supervisor/supervisor/" after "Name of *";
(iv) by adding "Provisional Supervisor's/Supervisor's/" before "Liquidator's/ Receiver's
address";
(v) by adding "provisional supervisor/ supervisor/" after "I am the *";
(vi) by adding "Provisional Supervisor's/Supervisor's/" before "Liquidator's/ Receiver's
signature" wherever it appears;
(vii) in Annex B, in item 15(a), by repealing "liquidator or receiver" and substituting
"provisional supervisor of that company, the supervisor of a voluntary arrangement in respect of that
company, or the liquidator or receiver";
(b) in Form D2---
(i) by adding "Under *Provisional Supervisor or" after "Insolvent Company";
(ii) by adding "appointment of provisional supervisor/" after "Date of *";
(iii) by adding "provisional supervisor/" after "Name of *";
(iv) by adding "Provisional Supervisor's/" before "Liquidator's" where it twice appears.
- Companies (Disqualification of Directors)
Proceedings Rules
50. Service and acknowledgment
Rule 6(4)(a) of the Companies (Disqualification of Directors) Proceedings Rules (Cap. 32 sub. leg.)

is amended---

- (a) in subparagraph (i)---
- (i) by adding ", provisional supervisor" after "officer";
 - (ii) by adding "the supervisor of a voluntary arrangement in respect of the company or" after "neither was he";
- (b) in subparagraph (ii), by repealing "liquidator" and substituting "provisional supervisor, liquidator, supervisor".

Employees Compensation Assistance Ordinance

51. Meaning of "Insolvent"

Schedule 2 to the Employees Compensation Assistance Ordinance (Cap. 365) is amended, in paragraph (a)(v), by repealing "or a winding up of the insurer has commenced pursuant to section 228A of the Companies Ordinance (Cap. 32)".

Securities (Insider Dealing) Ordinance

52. Section substituted

Section 29 of the Securities (Insider Dealing) Ordinance (Cap. 395) is repealed and the following substituted---

"29. Registration, etc. of Tribunal orders

(1) An order of the Tribunal may be registered by the Tribunal, in such manner as may be prescribed, in the Court of First Instance and shall, on such registration, become for all purposes an order of the Court of First Instance made within the jurisdiction of the Court of First Instance.

(2) An order of the Tribunal under section 23(1)(a) or 24(1) shall be filed by the Tribunal---

- (a) with the Registrar within the meaning of section 2 of the Companies Ordinance (Cap. 32); and
- (b) as soon as is reasonably practicable after the order is made."

Securities and Futures (Clearing Houses) Ordinance

53. Right of relevant office-holder to

recover certain amounts arising from certain transactions

Section 11(2) of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended, in the definition of "prescribed event", by repealing paragraph (b).

Administrative Appeals Board Ordinance

54. Schedule amended

The Schedule to the Administrative Appeals Board Ordinance (Cap. 442) is amended by adding---

"47. Companies Ordinance (Cap. 32) A decision of the Official Receiver under section 168W to refuse to appoint a professional accountant or solicitor to be a member of the panel."

Mandatory Provident Fund Schemes (General) Regulation

55. Approved trustee to notify Authority

of events of significant nature

Section 62(3)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) is amended by adding "the appointment of a provisional supervisor, within the meaning of Part IVB of the Companies Ordinance (Cap. 32), of the approved trustee," before "the winding-up".

Mandatory Provident Fund Schemes (Exemption) Regulation

56. Minimum standards applicable to

trustees, etc. of schemes

Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) is amended, in section 7(5), by adding "retirement or" after "approves the".

Explanatory Memorandum

The principal purpose of this Bill is to amend the Companies Ordinance (Cap. 32) to give effect to the recommendations contained in the Report on Corporate Rescue and Insolvent Trading issued by the Law Reform Commission of Hong Kong (see new Part IVB at clause 24 and new sections 295A to 295G at clause 44).

2. Clauses 3, 7, 8, 9(b), 10(a) and (b)(ii), 11, 15, 46, 47, 48 and 49 make technical amendments to sections 21, 57B, 64A, 107, 109, 110, 157D, 333, 333A, 335 and 336 respectively to reduce the documents required to be filed by local and overseas companies and their directors.

3. Clause 9(a) amends section 107 to simplify the filing requirement of the first annual return of a private company having a share capital. The simplification is that the date of filing of that return is no longer linked to the date of the company's first annual general meeting.

4. Clause 10(a) amends section 109 to repeal spent transitional provisions.

5. Clause 14 repeals section 116B and adds new sections 116B, 116BA and 116BB. There is doubt that the existing section 116B enables a company to pass a resolution without holding a meeting provided all the shareholders agree. This doubt is removed by new section 116B which states specifically that anything which may be done by a company by resolution of the company in general meeting may be done, without a meeting and without any previous notice being required, by a written resolution signed by or on behalf of all the members who at the date of the resolution would be entitled to attend and vote at the meeting. New section 116BA requires a director or secretary of a company to notify the company's auditors of a resolution falling within new section 116B. New section 116BB contains provisions supplementary to new sections 116B and 116BA. Clauses 4, 5, 6, 12, 13 and 51 make consequential amendments to sections 47E, 49D, 49K, 111 and 113(1) and the Twelfth Schedule respectively.

6. Clause 20 introduces a new section 168IA to empower the Official Receiver to conduct a public examination in court of the promoters or directors of a company which has been wound up by the court.

7. Clause 23 amends section 168R to include an order of the Insider Dealing Tribunal under section

23(1)(a) or 24(1) of the Securities (Insider Dealing) Ordinance (Cap. 395) in the definition of "disqualification order". The Schedule to the Bill makes consequential amendments to the Companies (Disqualification Orders) Regulation (Cap. 32 sub. leg.) and the Securities (Insider Dealing) Ordinance (Cap. 395).

8. Clause 24 adds new Part IVB (new sections 168U to 168ZZA) to enable a company in financial difficulty to be put into the hands of a provisional supervisor for the purpose of the provisional supervisor preparing a proposal to creditors of the company for a voluntary arrangement in respect of the company. If that proposal is accepted by the creditors, then the voluntary arrangement is put into effect under a supervisor of the arrangement. If that proposal is rejected by the creditors, then the company is wound up as a creditors' voluntary winding up.

9. New section 168U(1) defines the terms used in new Part IVB. The definitions of "provisional supervisor", "relevant creditor", "relevant date", "relevant meeting of creditors" and "voluntary arrangement" should, in particular, be noted. New section 168U(2) and (3) make it clear that more than one person may be appointed to be the provisional supervisor of a company or the supervisor of a voluntary arrangement in respect of a company. New section 168V specifies the companies to which new Part IVB shall apply. It should be noted that the Part does not, inter alia, apply to banks, restricted licence banks or deposit-taking companies, as the provisions of the Banking Ordinance (Cap. 155) govern such institutions.

10. New Section 168W empowers the Official Receiver to appoint a panel of professional accountants and solicitors. Apart from the exceptions given at new sections 168X(a)(ii) and 168ZW(1)(a)(ii), no person may be appointed to be the provisional supervisor of a company or the supervisor of a voluntary arrangement except a member of the panel. New section 168Y specifies the persons who may appoint the provisional supervisor of a company. (For example, the directors of the company or a liquidator of the company). However, new section 168Z provides that those persons shall not appoint a provisional supervisor unless they are satisfied there is a reasonable likelihood that 1 or more of the purposes specified in new section 168Z(1)(a), (b), (c) or (d) could be achieved. (Such a purpose is defined in new section 168U(1) as a "relevant purpose"). New sections 168ZA, 168ZB and 168ZC require certain documents relating to the appointment of a provisional supervisor of a company to be filed with the Official Receiver, the Registrar of Companies and the High Court Registry, a notice of the appointment to be published in the Gazette, and notices to be published in newspapers inviting creditors of the company to give notice to the provisional supervisor of their claims against the company.

11. New section 168ZD is of particular importance as it provides for a stay of proceedings against a company (for example, applications for winding up the company or for enforcing security over the company's property) whilst the company is under the control of the provisional supervisor. (This stay of proceedings is defined as "moratorium" in new section 168U(1)). The provisional supervisor is thus granted a "breathing space" whilst he attempts to prepare the proposal. The moratorium expires after 30 days unless it is extended by the court or a resolution of creditors of the company. (New sections 168ZD(7), 168ZO(4)(iii) and 168ZQ(2) specify the other circumstances in which the moratorium shall cease). New section 168ZD(9) specifies the creditors who are exempt from the moratorium. (These are creditors in respect of whom the provisional supervisor has entered into a separate arrangement, or whom the court has exempted on the ground of significant financial hardship under new section 168ZE(4)). New section 168ZE(2) empowers the court to extend the moratorium on specified grounds.

12. New sections 168ZF and 168ZG, together with the new Eighteenth Schedule at clause 53, set out the duties and powers of the provisional supervisor. New section 168ZH empowers the provisional supervisor to delegate his duties and powers, but only to a director of the company. New section 168ZI states that the effect of the moratorium on the directors of the company are that they are prohibited from discharging a duty or exercising a power in their capacity as directors except pursuant to a delegation from the provisional supervisor. (The latter will have all the duties and powers of a director). New sections 168ZJ and 168ZK specify the effect of the moratorium on contracts, in particular contracts of employment. It should be noted that where the provisional supervisor accepts a pre-existing contract of employment, or enters into a new contract of employment, the wages, salaries and other emoluments thereby payable have priority even over the provisional supervisor's remuneration. (See new section 168ZK(2)).

13. New section 168ZL provides an indemnity for, inter alia, the remuneration and fees, costs and charges of the provisional supervisor. The indemnity is secured by way of a lien over the company's property. New section 168ZM provides that the provisional supervisor is, subject to certain exceptions, entitled to remuneration in accordance with a scale of fees approved by the Official Receiver.

14. New section 168ZN empowers the provisional supervisor to require a specified person (see the definition of "specified person" in new section 168ZN(6)) to submit a statement of the affairs of the company, and to provide the provisional supervisor with such information about the business and financial circumstances of the company as the provisional supervisor may reasonably request.

15. New section 168ZO relates to the removal and resignation of the provisional supervisor, and to the appointment of a replacement provisional supervisor. It should be noted that the provisional supervisor can only be removed from office by the court for cause shown on the application of a creditor of the company who has the support in writing of not less than 50% in value of the total number of creditors.

16. New section 168ZP encourages the injection of fresh funds into the company as operating capital by giving those funds priority, in the event of the winding up of the company, over the debts of other creditors of the company. New section 168ZQ empowers a major creditor of the company (see definition of "major creditor" in new section 168ZQ(5)) to decide that he does not agree with the provisional supervisor proceeding to prepare the proposal. If he so decides, then the moratorium ceases and the provisional supervisor vacates his office.

17. New sections 168ZR, 168ZS and 168ZT relate to relevant meetings of creditors called by the

provisional supervisor and the resolutions passed or rejected at such meetings. (See the definition of "relevant meeting of creditors" in new section 168U(1)). Basically, there are 3 types of meeting --- a meeting where the provisional supervisor submits the completed proposal for acceptance, modification or rejection by the creditors, a meeting to seek an extension of the moratorium so that the provisional supervisor may complete the proposal, and a meeting to resolve to wind up the company where the provisional supervisor has decided that none of the relevant purposes is capable of being achieved. It should be noted that if the creditors reject the proposal or refuse to extend the moratorium, then they may also resolve to wind up the company.

18. New section 168ZU specifies the consequences that ensue where the proposal has been approved at a relevant meeting of creditors. The provisional supervisor vacates office and a supervisor of the voluntary arrangement takes his place. (They may be the same person). It should be noted that all relevant creditors who received notice of the meeting are bound by the voluntary arrangement even if they declined to attend the meeting (see new section 168ZU(1)(b)(i)). New section 168ZV sets out the effect of the voluntary arrangement, in particular that no creditor of the company bound by the arrangement may commence or continue any winding up proceedings against the company or enforce any security over the company's property.

19. New section 168ZW relates to the supervisor of the voluntary arrangement and provides, in particular, that he must ascertain on behalf of creditors of the company that the arrangement is being adhered to and implemented in accordance with its terms. New section 168ZX empowers the court in certain circumstances to appoint the supervisor of the voluntary arrangement in substitution for an existing supervisor, or to fill a vacancy. New section 168ZY requires the supervisor of the voluntary arrangement to file a notice with, inter alia, the Official Receiver where he is a replacement supervisor or where the voluntary arrangement has ceased to have effect.

20. New section 168ZZ empowers the Official Receiver to specify forms, and new section 168ZZA empowers the Secretary for Financial Services to make regulations, for the purposes of new Part IVB. Clauses 16, 17, 18, 19, 45, 51(b) and 54 (together with the Schedule to the Bill) amend sections 168D(1), 168G(1)(b), 168H(2)(b), 168I, 296(1), the Twelfth Schedule and the Administrative Appeals Board Ordinance (Cap. 442) consequential to the provisions of new Part IVB.

21. Clause 30 amends section 194 to empower the Official Receiver, where he is the provisional liquidator of a company, to appoint a person as a provisional liquidator in his place. Clause 2(a) consequently amends section 2(1) to add a definition of the term "liquidator" so that the term includes a provisional liquidator holding such office by virtue of section 194 as amended. Other amendments consequential to the amendments made to section 194 are made by clauses 25, 26, 27, 28, 31, 32, 33, 36 and 37.

22. Clause 34 repeals and replaces section 209A(6) to relieve the Official Receiver from a mandatory obligation to submit a report under section 209A(1). Clause 35 amends section 216(1) to widen the grounds on which the court may appoint a special manager of a company.

23. Clause 39 repeals section 228A to remove the ability of the directors of a company by majority resolution to place the company into a creditors' voluntary winding up by appointing a provisional liquidator and delivering to the Registrar of Companies a statutory declaration made by one of the directors. Clauses 19(b)(i), 38, 40, 41, 42, 43 and 52 and the Schedule to the Bill make consequential amendments to sections 168I, 228, 230, 253, 264A and 264B, the Fifteenth Schedule and the Companies (Winding-up) Rules (Cap. 32 sub. leg.).

24. Clause 42 amends section 264A to, inter alia, make it clear that interest on the taxed costs of a petition for winding up is payable in accordance with that section as with interest on other proved debts, and not with the same priority as the taxed costs of the petition itself.

25. Clause 44 adds new sections 295A to 295G to empower the liquidator of a company to make an application to the court to declare that a responsible person or former responsible person is liable for insolvent trading. (See the definitions of "former responsible person", "insolvent trading" and "responsible person" in new section 295A(1) and the new Nineteenth Schedule at clause 53). The new provisions are based to some extent on sections 214 and 215 of the Insolvency Act 1986 of the U.K. (c. 45).

26. New section 295C(1) specifies the matters in respect of which the court must be satisfied before it may declare a responsible person or former responsible person liable for insolvent trading. New section 295C(2) provides defences to a declaration of insolvent trading under new section 295C(1). New section 295D provides for a presumption of continued insolvency from a date in the period of 12 months preceding the winding up of the company if it is shown to the satisfaction of the court that the company was insolvent on that date. New section 295E provides that where the court makes a declaration of insolvent trading in respect of a responsible person or former responsible person, it may order that person to pay to the company such compensation as the court thinks proper in all the circumstance of the case. New section 295E specifies how the compensation is to be applied. It should be noted that new section 295G prohibits the liquidator from assigning an action for insolvent trading. Clauses 21 and 22 consequentially amend sections 168L(1) and 168O to account for the new action of insolvent trading.