

Press Release

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

Friday, October 2, 2015

The Government today (October 2) gazetted the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Bill 2015 (the Bill), which aims to improve and modernise the corporate winding-up regime by increasing creditor protection and streamlining and further enhancing the integrity of the winding-up process.

The Secretary for Financial Services and the Treasury, Professor K C Chan, said, "The proposals in the Bill will promote our business environment and bring our corporate winding-up regime up to speed with international developments.

"An effective corporate winding-up regime helps ensure that the value of the remaining assets of an insolvent company will be preserved as far as possible and that the assets will be distributed amongst the creditors of the company, including its employees, suppliers and contractors, in a fair and orderly manner."

The following highlights some of the major proposals in the Bill:

(a) the court may set aside transactions at an undervalue entered into by a company within five years before the commencement of its winding-up, where the company received no consideration or a consideration which is significantly less than the value of the subject of the transaction at the relevant time. This will increase the pool of property of an insolvent company which would be available for distribution to its creditors (including employees, suppliers and contractors);

(b) there will be a new disclosure requirement for prospective provisional liquidators and prospective liquidators to disclose specified relationships between him/her and their immediate family members and the company being wound up. This will enhance transparency of the appointment process and will ensure that relevant parties make appointment decisions in an informed manner;

(c) aggrieved parties may apply to the court for an order to enforce liabilities arising from the liquidator's misfeasance or breach of duty or trust, notwithstanding that the liquidator has obtained a court order releasing him/her as liquidator after completion of the relevant winding-up case;

(d) where a provisional liquidator or liquidator has been appointed by directors or members of the company being wound up respectively and before the first creditors' meeting is held in a voluntary winding-up, there will be new measures to restrict the powers of the provisional liquidator and liquidator concerned to minimise potential abuse in the process; and

(e) there will be more court-free procedures which will save time and costs for administering winding-up cases.

The Government launched a public consultation on the legislative proposals in 2013 after conducting a comprehensive review of the relevant provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance. With the overwhelming support of the public and relevant stakeholders, the Government published the consultation conclusions in 2014 and took forward the preparation of the Bill.

The Bill will be introduced into the Legislative Council for first reading on October 14.

Ends