

**228A. Special procedure for voluntary winding up of company in case of inability to continue its business**

- (1) The directors of a company or, in the case of a company having more than 2 directors, the majority of the directors, may, if they have formed the opinion that the company cannot by reason of its liabilities continue its business— (*Amended 14 of 2016 s. 59*)
  - (a) pass a resolution to the effect that—
    - (i) the company cannot by reason of its liabilities continue its business;
    - (ii) they consider it necessary that the company be wound up and that the winding up should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; and
    - (iii) meetings of the company and of its creditors will be summoned for a date not later than 28 days after the delivery of a winding-up statement to the Registrar;
  - (b) cause a meeting of the company to be summoned for a date not later than 28 days after the delivery of a winding-up statement to the Registrar; and
  - (c) appoint a person as the provisional liquidator in the winding up of the company with effect from the commencement of the winding up.
- (1A) After taking the actions specified in subsection (1)(a), (b) and (c), the directors or the majority of the directors may deliver a winding-up statement to the Registrar. (*Added 14 of 2016 s. 59*)
- (1B) The winding-up statement delivered to the Registrar must—
  - (a) be in the specified form;
  - (b) be signed by one of the directors; and
  - (c) contain a statement by the director signing the winding-up statement certifying that—
    - (i) a resolution has been passed under subsection (1);
    - (ii) a meeting of the company has been summoned for the date and time stated in the winding-up statement; and
    - (iii) a provisional liquidator of the name and address stated in the winding-up statement has been appointed and that the appointment will take effect from the commencement of the winding up. (*Added 14 of 2016 s. 59*)
- (2) The resolution referred to in subsection (1) and the winding-up statement shall specify the reasons in support of the consideration mentioned in paragraph (a)(ii) of that subsection.
- (3) A winding-up statement shall have no effect for the purposes of this Ordinance unless it is delivered to the Registrar for registration within 7 days after the date on which it is made.
- (4) A director of a company who signs a winding-up statement without having reasonable grounds— (*Amended 14 of 2016 s. 59*)
  - (a) for the opinion that the company cannot by reason of its liabilities continue its business; or
  - (b) to consider that the winding up of the company should be commenced under this section because it is not reasonably practicable for it to be commenced under another section of this Ordinance; or
  - (c) for certifying any of the matters referred to in subsection (1B)(c), (*Added 14 of 2016 s. 59*)shall be liable to a fine and imprisonment.

- (5) Where a winding-up statement is delivered to the Registrar—
  - (a) the winding up of the company shall commence at the time of the delivery of that statement; and
  - (b) *(Repealed 14 of 2016 s. 59)*
  - (c) the directors shall cause a meeting of the creditors of the company to be summoned for a date not later than 28 days after the delivery of that statement.
- (6) A director who fails to comply with subsection (5)(c) commits an offence and is liable on conviction to a fine.
- (7) The provisional liquidator appointed under subsection (1)(c) may—
  - (a) summon a meeting of the company if the directors have not, prior to the delivery of the winding-up statement to the Registrar, caused a meeting of the company to be summoned under subsection (1)(b); and
  - (b) summon a meeting of the creditors of the company if the directors fail to comply with subsection (5)(c). *(Replaced 14 of 2016 s. 59)*
- (8) Without limiting section 262A, no person may be appointed as, or act as, a provisional liquidator under subsection (1)(c) unless— *(Amended 14 of 2016 s. 59)*
  - (a) that person has consented in writing to the appointment; and
  - (b) that person is a solicitor, or a certified public accountant under the Professional Accountants Ordinance (Cap. 50). *(Amended 23 of 2004 s. 56)*
- (8A) An appointment that is made in contravention of subsection (8) is void. *(Added 14 of 2016 s. 59)*
- (8B) A person who acts as a provisional liquidator in contravention of subsection (8) commits an offence and is liable on conviction to a fine. *(Added 14 of 2016 s. 59)*
- (9) Within 15 days after the commencement of the winding up of the company, the directors shall give notice in the Gazette of— *(Amended 14 of 2016 s. 59)*
  - (a) the commencement of the winding up of the company by the delivery to the Registrar of the winding-up statement and the date of such delivery; and
  - (b) the appointment of the provisional liquidator and his name and address.
- (9A) A director who fails to comply with subsection (9) commits an offence and is liable on conviction to a fine and, for continued default, to a daily default fine. *(Added 14 of 2016 s. 59)*
- (10) A provisional liquidator appointed under subsection (1)(c) must, within 15 days after the commencement of the winding up of the company, deliver to the Registrar for registration a notice of his appointment in the specified form, which notice shall include the following particulars— *(Amended 14 of 2016 s. 59)*
  - (a) his name;
  - (b) his address; and
  - (c) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.
- (11) A person appointed as a provisional liquidator under subsection (1)(c) who ceases to act as such must, within 15 days after the date of his ceasing to act— *(Amended 14 of 2016 s. 59)*
  - (a) publish in the Gazette a notice of that fact; and
  - (b) deliver to the Registrar for registration a notice of that fact in the specified form.
- (12) If any change occurs in the particulars given in a notice delivered to the Registrar under subsection (10), the provisional liquidator shall, within 15 days after the date of the change, deliver to the Registrar for registration a notice of that change in the specified form, unless

he has previously given notice to the Registrar under subsection (11).

- (13) A person who fails to comply with subsection (10), (11) or (12) commits an offence and is liable on conviction to a fine and, for continued default, to a daily default fine.
- (14) A provisional liquidator appointed under subsection (1)(c) shall— (*Amended 14 of 2016 s. 59*)
- (a) unless a liquidator is sooner appointed, hold office until a meeting of the creditors of the company summoned under this section or, if that meeting is adjourned, any adjourned meeting, may allow;
  - (b) take into his custody or under his control all the property and things in action to which the company is or appears to be entitled; and
  - (c) be entitled, out of the funds of the company, to such remuneration as the committee of inspection or, if there is no such committee, the creditors, may fix and to reimbursement of expenses properly incurred by him, but he shall not be liable, and no civil action or other proceedings shall lie against him, in respect of acts properly done by him.
- (15) All the powers of the directors cease during the period of the provisional liquidator's appointment except—
- (a) so far as may be necessary for enabling the directors to comply with this section; or
  - (b) if the court sanctions the continuance of those powers for any other purpose. (*Replaced 14 of 2016 s. 59*)
- (16) (*Repealed 14 of 2016 s. 59*)
- (17) In relation to every winding up commenced under this section—
- (a) section 241 shall apply to a meeting of the creditors of the company summoned under this section as it applies to a meeting of the creditors of a company summoned under that section except that—
    - (i) for the words “at which the resolution for voluntary winding up is to be proposed” in subsection (1)(a) of that section there shall be substituted the words “under section 228A(1)(b)”;
    - (ii) the advertisement of the meeting of creditors required by subsection (2) of that section must occur at least 7 days before the meeting of creditors; and (*Replaced 14 of 2016 s. 59*)
    - (iii) subsection (5) of that section shall be omitted;
  - (b) subject to paragraph (a), sections 241 to 248 shall apply as they apply in relation to a creditors' voluntary winding up.
- (18) In the case of a private company having only one director, the sole director may—
- (a) pass the resolution referred to in subsection (1) and sign the record of it in the minute book; and
  - (b) make the winding-up statement.
- (19) In relation to a statutory declaration made under section 228A of this Ordinance before the commencement<sup>#</sup> of section 83 of the Companies (Amendment) Ordinance 2003 (28 of 2003), the provisions of section 228A of this Ordinance in force immediately before that commencement shall continue to have effect as if section 83 of that Ordinance had not been enacted.
- (20) In this section—
- winding-up statement** (清盤陳述書) means the winding-up statement described in subsection (1B). (*Added 14 of 2016 s. 59. Amended 14 of 2016 s. 59*)

*(Replaced 28 of 2003 s. 83)*

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Editorial Note:

# Commencement date: 13 February 2004.