

Schedule 26

[s. 368]

Transitional and Saving Provisions Relating to Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016

(Schedule 26 added 14 of 2016 s. 177)

1. Interpretation

In this Schedule—

Amendment Ordinance (《修訂條例》) means the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016);

commencement date (生效日期) means the date of commencement of the Amendment Ordinance;

former (原有), when it appears in conjunction with a reference to a section described by a number or a combination of a number and a letter, means the provision of the former Ordinance that is referred to as a section described by that number or that combination of number and letter;

former Ordinance (《原有條例》) means this Ordinance as in force immediately before the commencement date;

former Rules (《原有規則》) means the Winding-up Rules as in force immediately before the commencement date;

Winding-up Rules (《清盤規則》) means the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).

2. Public examination under section 168IA

(1) This section applies where, before the commencement date, an application has been made under the former section 168IA for the court to exercise any of its powers under that section.

(2) The following provisions and forms continue to apply in relation to the proceedings and examination arising from the application—

(a) the former section 168IA; and

(b) rules 52, 57 and 57A of, and Forms 29, 30, 31, 38 and 38A in the Appendix to, the former Rules.

(3) The following provisions do not apply in relation to the proceedings and examination arising from the application—

(a) sections 168IB and 286E; and

(b) rule 51B of the Winding-up Rules.

3. Liability to contribute under section 170A

Section 170A does not apply in relation to a payment out of capital in respect of the redemption or buy-back of a company's own shares that has taken place before the commencement date.

4. Demand to pay debts under section 178(1)(a)

If a demand was served under the former section 178(1)(a) before the commencement date, the demand continues to have effect on and after the commencement date as if that former section had not been amended by the Amendment Ordinance.

5. Statement of affairs required under section 190

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up and the appointment of a provisional liquidator in connection with the petition—

- (a) the following provisions continue to apply—
 - (i) the former section 190; and
 - (ii) rules 39, 40, 41, 42, 43 and 44 of the former Rules; and
- (b) section 190A does not apply.

6. Case where former sections 193, 194 and 196 apply

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up—

- (a) the former sections 193, 194 and 196(1), (1A), (2), (2A), (3) and (4) continue to apply; and
- (b) sections 193(4), (5), (6) and (7), 194(1)(da) and (6) and 196(1B) do not apply.

7. Powers of liquidators under section 199

If the petition for the winding up of a company has been presented before the commencement date, then in relation to the winding up—

- (a) the former section 199 continues to apply; and
- (b) sections 199A and 199B and Schedule 25 do not apply.

8. Release of liquidators under section 205

For a liquidator appointed before the commencement date, section 205(3)(a) does not apply in relation to the release of the liquidator.

9. Meetings of creditors and contributories to consider appointment of committee of inspection; constitution of committee of inspection

- (1) Subject to subsection (2), if the winding up of a company has commenced before the commencement date, the former sections 206 and 207(1) continue to apply in relation to the winding up of the company.
- (2) Subject to section 11(2) of this Schedule, section 206(6) applies in relation to the membership of, and representation at a meeting of, a committee of inspection, irrespective of when the winding up of the company commenced.

10. Proceedings of committee of inspection

- (1) Subject to subsections (2), (3) and (4), sections 206A and 207 apply in relation to the proceedings of a committee of inspection, irrespective of when the winding up of the company commenced.
- (2) In respect of a committee of inspection appointed before the commencement date, if the first meeting of the committee has not been held before that date—
 - (a) the former section 207(2) continues to apply in relation to the first meeting of the committee; and
 - (b) section 206A(2) does not apply in relation to that committee.
- (3) If the winding up of a company has commenced before the commencement date, then in relation to the proceedings of the committee of inspection—
 - (a) the former section 207(7) continues to apply; and

(b) section 207(7A) and (7B) does not apply.

- (4) If the winding up of a company has commenced before the commencement date, the former section 207(8) continues to apply in relation to the proceedings of the committee of inspection.

11. Representatives of members of committee of inspection

- (1) Subject to subsection (2), section 207A applies in relation to the representatives of the members of a committee of inspection, irrespective of when the winding up of the company commenced.
- (2) If a member of the committee of inspection has validly appointed a representative before the commencement date—
- (a) section 207A(1), (2), (3) and (5) does not operate to invalidate the appointment; and
- (b) section 207A(4), (6) and (7) does not apply to the representative.

12. Remote attendance and written resolutions of meeting of committee of inspection, etc.

Sections 207B, 207C, 207D, 207E, 207F, 207G, 207H, 207I, 207J and 207K apply in relation to the proceedings of a committee of inspection, irrespective of when the winding up of the company commenced.

13. Travelling expenses of members of committee of inspection or representatives of members

- (1) Subject to subsection (2), section 207L applies in relation to the travelling expenses of a member of a committee of inspection or the representative of a member referred to in that section, irrespective of when the winding up of the company commenced.
- (2) Section 207L does not apply to any expenses incurred before the commencement date.

14. Examination under former section 221

- (1) This section applies where, before the commencement date—
- (a) an application has been made pursuant to the former section 221 for the court to exercise any of its powers under that section; or
- (b) the court has exercised any of its powers under the former section 221.
- (2) The following provisions continue to apply in relation to the proceedings and examination arising from the application or exercise of power—
- (a) the former sections 221 and 222A; and
- (b) rules 5(2), 62 and 206 of the former Rules.
- (3) The following provisions and forms do not apply in relation to the proceedings and examination arising from the application or exercise of power—
- (a) sections 286B, 286C, 286D and 286E; and
- (b) rules 58A and 58B of, and Forms 38B and 38C in the Appendix to, the Winding-up Rules.
- (4) Section 360G applies for the purposes of the application or exercise of power as if the references to sections 286B, 286C and 286D in it were a reference to the former section 221.

15. Public examination under former section 222

- (1) This section applies where, before the commencement date, an application has been made under rule 50 of the former Rules to fix a day for the consideration of a report submitted under section 191(2).
- (2) The following provisions and forms continue to apply in relation to the proceedings and

examination arising from the application—

- (a) the former sections 191, 222 and 222A; and
 - (b) rules 52, 57 and 59 of, and Forms 29, 30, 31, 38 and 38A in the Appendix to, the former Rules.
- (3) The following provisions do not apply in relation to the proceedings and examination arising from the application—
- (a) sections 286A, 286D and 286E; and
 - (b) rules 51A and 51B of the Winding-up Rules.

16. Regulating order under section 227A, etc.

- (1) If the petition for the winding up of a company has been presented before the commencement date, the former sections 227A, 227B and 227E continue to apply in relation to that winding up.
- (2) If the petition for the winding up of a company is presented on or after the commencement date, but the winding up has commenced before that date, section 227B(2) applies as if—
 - (a) the reference to section 206(1) and (2) in it were a reference to the former section 206(1) and (2); and
 - (b) the reference to section 207(6), (7), (7A) and (7B) in it were a reference to the former section 207(6) and (7).

17. Voluntary winding up under former section 228(1)(c)

- (1) If a company has passed a special resolution under the former section 228(1)(c) before the commencement date, then—
 - (a) the former section 228(1) continues to apply in relation to the winding up; and
 - (b) in the winding up of the company, the expression *a resolution for voluntary winding up* continues to have the meaning given by the former section 228(2).
- (2) No resolution for voluntary winding up of a company may be passed on or after the commencement date under the former section 228(1)(c) even if, before the commencement date—
 - (a) notices of the meeting to consider the resolution have been sent to members of the company; or
 - (b) the relevant written resolution has been circulated among the members.

18. Voluntary winding up under section 228A

- (1) If the winding up of a company has commenced before the commencement date, then—
 - (a) subject to subsections (2) and (3), the former section 228A and the provisions in the Twelfth Schedule to the former Ordinance relating to that section continue to apply; and
 - (b) section 228B and the provisions in the Twelfth Schedule relating to section 228B do not apply.
- (2) Section 228A(11) applies if a provisional liquidator appointed under the former section 228A(5)(b) ceases to act as such on or after the commencement date.
- (3) Section 228A(12) applies to a notice of appointment delivered under the former section 228A(10) if, on or after the commencement date, any change occurs in the particulars in that notice.

19. Notice of resolution to wind up voluntarily under section 229

If a company has passed a resolution for voluntary winding up under the former section 228 before the commencement date, the former section 229 continues to apply in relation to the company's obligation to give notice of the resolution.

20. Cases where former section 237A and related provisions apply

- (1) This section applies if—
 - (a) a members' voluntary winding up has commenced before the commencement date; and
 - (b) subsequently, the liquidator of the company is of the opinion that the company will not be able to pay its debts in full within the period stated in the certificate or declaration mentioned in the former section 237A.
- (2) In relation to the winding up—
 - (a) the former sections 237A, 238 and 239 and the provisions in the Twelfth Schedule to the former Ordinance relating to those sections continue to apply;
 - (b) sections 237B and 240(2) do not apply;
 - (c) the former section 239A continues to apply; and
 - (d) section 240(1) is to be read as if it is not subject to section 240(2).

21. Provisions relating to liquidators where former section 237A applies

- (1) This section applies to a members' voluntary winding up commenced before the commencement date—
 - (a) in relation to which the former section 237A applies because of section 20 of this Schedule; and
 - (b) in respect of which a meeting of the creditors summoned by the liquidator under the former section 237A is held on or after the commencement date.
- (2) If the person holding the office of liquidator of the company is disqualified under section 262B(3) from acting as liquidator of the company, then—
 - (a) despite sections 262A and 262B and rule 155 of the Winding-up Rules, the person may continue to act as liquidator of the company until the meeting is concluded, but solely for the purposes of complying with the former section 237A; and
 - (b) immediately after the conclusion of the meeting, the person ceases to be the liquidator of the company and for the purposes of this Ordinance, the Winding-up Rules and the Companies Ordinance (Cap. 622) is taken to have been removed from that office.
- (3) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections apply in relation to—
 - (a) the appointment of a liquidator made at a meeting of creditors held under the former section 237A(2) if notices of the meeting are sent on or after the commencement date; and
 - (b) the liquidator appointed at that meeting.
- (4) The former section 278 continues to apply and sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—
 - (a) the appointment of a liquidator made at a meeting of creditors held under the former section 237A(2) if notices of the meeting have been sent before the commencement date; and
 - (b) the liquidator appointed at that meeting.

22. Provisions applicable to creditors' voluntary winding up (former section 241 and section 243A)

If notices of a meeting of the company at which a resolution for voluntary winding up is to be proposed have been sent before the commencement date and the winding up is intended to be a creditors' voluntary winding up—

- (a) the former section 241 continues to apply in relation to the meeting of creditors of the company; and
- (b) section 243A and the provisions in the Twelfth Schedule relating to that section do not apply in relation to the powers and duties of a person nominated by the company to be liquidator in that winding up.

23. Appointment of committee of inspection

- (1) Subject to subsections (2) and (3), if the winding up of a company has commenced before the commencement date, the former section 243 continues to apply in relation to the winding up of the company.
- (2) Without limiting sections 10, 11, 12 and 13 of this Schedule, section 243(2) applies in relation to a committee of inspection appointed in a creditors' voluntary winding up, irrespective of when the winding up of the company commenced.
- (3) Subject to section 11(2) of this Schedule, section 243(3) applies in relation to the membership of, and representation at a meeting of, a committee of inspection, irrespective of when the winding up of the company commenced.

24. Removal of liquidator under section 244A

Section 244A does not apply to a liquidator appointed before the commencement date.

25. Directors' powers before nomination or appointment of liquidator under section 250A

- (1) This section applies where—
 - (a) notices of a meeting of a company at which a resolution for voluntary winding up is to be proposed have been sent before the commencement date; and
 - (b) the resolution is passed at the meeting, irrespective of when the meeting is held.
- (2) Section 250A and the provision in the Twelfth Schedule relating to that section do not apply in relation to the directors' powers before nomination or appointment of liquidator in the winding up.

26. Powers and duties of liquidator in voluntary winding up under section 251

In a voluntary winding up, if the winding up has commenced before the commencement date, then in relation to the powers and duties of the liquidator in that winding up—

- (a) the former section 251 continues to apply; and
- (b) Schedule 25 does not apply.

27. Notice by liquidator of appointment or ceasing to act under section 253

- (1) If a liquidator was appointed before the commencement date, the liquidator is to comply with the requirements under the former section 253(1).
- (2) If a person appointed as liquidator has ceased to act before the commencement date, the person is to comply with the requirements under the former section 253(2).
- (3) If, before the commencement date, a change has occurred in the particulars given in a notice delivered to the Registrar under the former section 253(1)(b), the liquidator is to comply with the requirements under the former section 253(3).

- (4) To avoid doubt, section 253 does not apply to a provisional liquidator appointed under the former section 228A(5)(b), just as the former section 253 did not apply to a provisional liquidator appointed under the former section 228A(5)(b).

28. Audit of liquidator's accounts in voluntary winding up

- (1) Subject to subsection (2), section 255A(2) applies in relation to the liquidator's accounts, irrespective of when the winding up of the company commenced.
- (2) If a resolution has been passed in accordance with the former section 255A(2) before the commencement date, that section continues to apply in relation to the liquidator's account.

29. Application of former sections 196(5) and 278 to liquidators and their appointment

- (1) The former sections 196(5) and 278 (and the provision in the Twelfth Schedule to the former Ordinance relating to the former section 278) continue to apply and sections 262A, 262B, 262C, 262D, 262E, 262F and 262G (and the provisions in the Twelfth Schedule relating to sections 262A, 262B, 262C, 262D, 262E, 262F and 262G) do not apply in relation to—
 - (a) the appointment of a liquidator—
 - (i) made before the commencement date;
 - (ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; or
 - (iii) to be made by the court on or after the commencement date in response to an application made before that date; and
 - (b) a liquidator appointed—
 - (i) before the commencement date;
 - (ii) at a meeting mentioned in paragraph (a)(ii); or
 - (iii) by the court in response to an application mentioned in paragraph (a)(iii).
- (2) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—
 - (a) the appointment of a provisional liquidator—
 - (i) made before the commencement date;
 - (ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; or
 - (iii) to be made by the court on or after the commencement date in response to an application made before that date; and
 - (b) a provisional liquidator appointed—
 - (i) before the commencement date;
 - (ii) at a meeting mentioned in paragraph (a)(ii); or
 - (iii) by the court in response to an application mentioned in paragraph (a)(iii).
- (3) Sections 262A, 262B, 262C, 262D, 262E, 262F and 262G and the provisions in the Twelfth Schedule relating to those sections do not apply in relation to—
 - (a) the nomination for appointment of a liquidator—
 - (i) made before the commencement date; or
 - (ii) to be made at a meeting held on or after the commencement date but notices of the meeting have been sent before that date; and
 - (b) a liquidator nominated for appointment—
 - (i) before the commencement date; or

- (ii) at a meeting mentioned in paragraph (a)(ii).

30. Effect of transactions at an undervalue, unfair preferences and floating charges (sections 265A to 267A)

- (1) Sections 265A, 265B and 265C do not apply in relation to—
 - (a) a transaction at an undervalue entered into by a company before the commencement date;
 - (b) an unfair preference given by a company before the commencement date; or
 - (c) a charge created on the undertaking or property of a company before the commencement date.
- (2) Section 265D does not apply in relation to a transaction at an undervalue entered into by a company before the commencement date.
- (3) Sections 266 and 266A do not apply in relation to anything done or suffered to be done by a company before the commencement date, and the former sections 266, 266A and 266B continue to apply in relation to that thing.
- (4) Sections 266B, 266C and 266D do not apply in relation to—
 - (a) a transaction at an undervalue entered into by a company before the commencement date; or
 - (b) an unfair preference given by a company before the commencement date.
- (5) Sections 267 and 267A do not apply in relation to a charge created on the undertaking or property of a company before the commencement date, and the former section 267 continues to apply in relation to the charge.
- (6) Section 360G applies—
 - (a) for the purposes of anything done or suffered to be done by a company before the commencement date, as if the references to sections 265A, 265B, 265C, 266, 266A, 266B, 266C and 266D in it were references to the former sections 266, 266A and 266B; and
 - (b) for the purposes of a charge created on the undertaking or property of a company before the commencement date, as if the references to sections 265A, 265B, 265C, 267 and 267A in it were a reference to the former section 267.
- (7) In paragraph 3 of Part II of the Fifteenth Schedule, the reference to section 266 includes the former section 266.

31. Liability for not keeping proper records under section 274

- (1) In this section—

record keeping period (存檔期), in relation to a company being wound up, means the shorter of the following periods—

 - (a) the period of 2 years immediately preceding the commencement of the winding up;
 - (b) the period between the incorporation of the company and the commencement of the winding up.
- (2) If the winding up of a company commences before the expiry of the period of 2 years beginning on the first day of the company's first financial year that begins on or after the commencement date, section 274 is to have effect as provided in subsection (3).
- (3) For the purposes of subsection (2), section 274 is to be read as if, for a part of the record keeping period that coincides (whether in whole or in part) with a financial year of the company that begins before the commencement date—
 - (a) “proper books of accounts” were substituted for “accounting records that comply with

- section 373(2) and (3) of the Companies Ordinance (Cap. 622)”; and
- (b) the former section 274(2) had not been repealed.

32. Power of court to assess damages against delinquent officer, etc. under section 276

For a person who has acted as a liquidator of a company and who has been released under section 205, section 276(1B) does not apply in relation to an application made under section 276(1) in respect of the person if the person was appointed as liquidator before the commencement date.

33. Electronic communications by liquidators

Division 6 of Part V and the provision in the Twelfth Schedule relating to section 296E(7) apply in respect of communications by liquidators to other persons, irrespective of when the winding up of the company commenced.

34. Demand to pay debts under former section 327(4)(a)

If a demand was served under the former section 327(4)(a) before the commencement date, the demand continues to have effect on and after the commencement date as if that former section had not been amended by the Amendment Ordinance.