

265. Preferential payments

- (1) In a winding up there shall be paid in priority to all other debts—
- (a) *(Repealed 6 of 1984 s. 181)*
 - (b) any—
 - (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any clerk or servant in respect of wages or salary or both in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and *(Amended 48 of 1987 s. 8)*
 - (ii) wages and salary (including commission provided that the amount thereof is fixed or ascertainable at the relevant date) of any clerk or servant in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3,000; *(Replaced 12 of 1985 s. 29)*
 - (c) any—
 - (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap. 380) to any labourer or workman in respect of wages, whether payable for time or for piece work, in respect of services rendered to the company if such payment was made during a period of 4 months before the commencement of the winding up; and *(Amended 48 of 1987 s. 8)*
 - (ii) wages of any labourer or workman, whether payable for time or for piece work, in respect of services rendered to the company during the relevant period not exceeding, together with any payment under sub-paragraph (i), \$3,000; *(Replaced 12 of 1985 s. 29)*
 - (ca) any severance payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$6,000; *(Added 55 of 1974 s. 2)*
 - (caa) any long service payment payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee \$8,000; *(Added 77 of 1985 s. 2)*

- (cb) any amount due in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the relevant date and, where the compensation is a periodical payment, the amount due in respect thereof shall be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed on an application being made for that purpose under the Employees' Compensation Ordinance (Cap. 282), but this paragraph shall not apply to any amount due in respect of compensation or liability for compensation where the company has entered into a contract with a person carrying on accident insurance business in Hong Kong in respect of its liability under the Employees' Compensation Ordinance (Cap. 282) for personal injury by accident to the employee to whom the compensation or liability for compensation is due or where the company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company; (*Added 4 of 1977 s. 2. Amended 6 of 1984 s. 259*)
- (cc) any wages in lieu of notice payable to an employee under the Employment Ordinance (Cap. 57), not exceeding in respect of each employee one month's wages or \$2,000 whichever is the lesser; (*Added 4 of 1977 s. 2*)
- (cd) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the winding-up order or resolution; (*Added 6 of 1984 s. 181*)

- (ce) any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap. 365) representing an amount due by the company in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap. 282) accrued before the relevant date; *(Added 54 of 1991 s. 47)*
- (cf) any amount of unpaid contribution or any amount deemed to be unpaid contribution calculated in accordance with rules made under section 73(1)(n) of the Occupational Retirement Schemes Ordinance (Cap. 426) which should have been paid by the company being wound up in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the winding up:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection; *(Added 88 of 1992 s. 84)*
- (cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the company being wound up from its employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426) which have not been paid into such funds; *(Added 88 of 1992 s. 84)*

- (ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which should have been paid by the company being wound up in accordance with the provisions of that Ordinance before the commencement of the winding up:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection; *(Added 80 of 1995 s. 49)*

- (ci) any amount deducted by the company being wound up from the relevant income of its relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which have not been paid to that approved trustee; *(Added 80 of 1995 s. 49)*
- (cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); *(Added 80 of 1995 s. 49)*
- (d) all statutory debts due from the company to the Government at the relevant date and which became due and payable within 12 months next before that date. *(Replaced 6 of 1984 s. 181. Amended 23 of 1999 s. 3)*
- (da) *(Repealed 30 of 1999 s. 18)[#]*
- (db) where the company being wound up is or was a bank and, at the commencement of the winding up, held deposits, to each depositor— *(Amended 7 of 2004 s. 55)*

- (i) in respect of the deposits, or portion thereof, that the depositor holds in his own right, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits;
- (ii) in respect of the deposits, or portion thereof, that the depositor holds as a bare trustee for each of the beneficiaries, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held for the beneficiary;
- (iii) in respect of the deposits, or portion thereof, that the depositor holds in a client account for each of the clients, the aggregate amount so held on deposit, up to, subject to subsection (5J), the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held for the client; and

- (iv) in respect of the deposits, or portion thereof, that the depositor holds as a trustee (but not a bare trustee) under each of the trusts, the aggregate amount so held on deposit, up to the limit on the total amount of compensation to which a depositor is entitled as prescribed in section 27(2) of the Deposit Protection Scheme Ordinance (Cap. 581), regardless of the number of deposits so held under the trust; (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14*)
- (e) where the company being wound up is an insurer, any sum payable to a person in respect of any claim (other than a claim for a refund of premium) made under or in accordance with a contract of insurance (but not a contract of reinsurance) effected by the insurer as part of its general business carried on in or from Hong Kong, unless—
 - (i) such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; or
 - (ii) the person to whom the sum is payable is entitled with respect to the claim to claim compensation under any scheme designed to secure compensation to persons in circumstances where the insurer becomes insolvent; (*Added 79 of 1988 s. 8*)

- (ea) where the company being wound up is an insurer, any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance (Cap. 365) representing a sum payable by the company to a person in respect of any claim (other than a claim for refund of premium) made under or in accordance with a contract of insurance issued for the purposes of Part IV of the Employees' Compensation Ordinance (Cap. 282) effected by the insurer as part of its general business carried on in or from Hong Kong; unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place; (*Added 54 of 1991 s. 47*)
- (f) where the company being wound up is an insurer, any sum payable (after offsetting the amount of any sums owing from the claimant) to a person in respect of any claim (other than a claim for a refund of premium) made under or in accordance with a contract of reinsurance effected by the insurer, as reinsurer, as part of its general business carried on in or from Hong Kong, unless such sum is, under the contract or in the ordinary course of business, payable in a place outside Hong Kong where assets of the company are maintained and under the law of that place the claim in respect of which the sum is payable is, in the event of a winding up, accorded priority with respect to those assets over claims which under the contract or in the ordinary course of business are payable at any other place. (*Added 79 of 1988 s. 8*)

- (1A) Where the relevant date is on or after 1 June 1970 but before 1 April 1977, the sum of \$6,000 shall be deemed to be substituted in each case for the sums of \$3,000 referred to in paragraphs (b) and (c) respectively of subsection (1). (*Added 41 of 1970 s. 2. Amended 4 of 1977 s. 2*)
- (1B) Where the relevant date is on or after 1 April 1977, the sum of \$8,000 shall be deemed to be substituted in each case for the sums of \$3,000 referred to in paragraphs (b) and (c) respectively, and for the sum of \$6,000 referred to in paragraph (ca), of subsection (1). (*Added 4 of 1977 s. 2*)
- (2) Subject to subsection (1)(b) and (c), where any payment on account of wages or salary, or severance payment, or long service payment or wages in lieu of notice payable under the Employment Ordinance (Cap. 57), or accrued holiday remuneration, has been made to any clerk, servant, workman or labourer in the employment of a company out of money advanced by some person for that purpose, that person shall in a winding up have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which that clerk, servant, workman or labourer would have been entitled to priority in the winding up has been diminished by reason of the payment having been made. (*Amended 6 of 1984 s. 181; 12 of 1985 s. 29(3); 77 of 1985 s. 2*)
- (3) The debts specified in subsection (1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj)— (*Amended 55 of 1974 s. 2; 4 of 1977 s. 2; 6 of 1984 s. 181; 77 of 1985 s. 2; 54 of 1991 s. 47; 88 of 1992 s. 84; 80 of 1995 s. 49*)
- (a) shall have priority over the debts specified in subsection (1)(d);
 - (b) shall rank equally among themselves; and

- (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. *(Replaced 41 of 1970 s. 2)*
- (3A) The debts specified in subsection (1)(d) shall have priority over the debts specified in subsection (1)(da), (db), (e), (ea) and (f). *(Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47; 10 of 1993 s. 2; 83 of 1995 s. 16)*
- (3AAA) The debts specified in subsection (1)(da) shall have priority over the debts specified in subsection (1)(db), (e), (ea) and (f). *(Added 10 of 1993 s. 2. Amended 83 of 1995 s. 16)*
- (3AAAA) The debts specified in subsection (1)(db)—
 - (a) shall have priority over the debts in subsection (1)(e), (ea) and (f);
 - (b) shall rank equally among themselves; and
 - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. *(Added 83 of 1995 s. 16)*
- (3AA) The debts specified in subsection (1)(e) and (ea)—
 - (a) shall have priority over the debts specified in subsection (1)(f);
 - (b) shall rank equally among themselves; and
 - (c) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. *(Added 79 of 1988 s. 8. Amended 54 of 1991 s. 47)*
- (3AB) The debts specified in subsection (1)(f)—
 - (a) shall rank equally among themselves; and

- (b) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions among themselves. *(Added 79 of 1988 s. 8)*
- (3B) The debts specified in subsection (1) shall, so far as the assets of the company available for payment of general creditors are insufficient to meet those debts, have priority over the claims of holders of debentures under any charge created as a floating charge by the company, and shall be paid accordingly out of any property comprised in or subject to the charge. *(Added 41 of 1970 s. 2. Amended 10 of 1987 s. 9)*
- (4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.
- (5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within 3 months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof. *(Amended 41 of 1970 s. 2)*
- (5A) Any money paid under a charge under subsection (5) shall be a debt due from the company to the landlord or other person having distrained, and such debt shall be discharged so far as the assets are sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the winding up. *(Added 41 of 1970 s. 2)*

- (5B) Where in any winding up assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a liquidator have been recovered, the court may, on the application of the Official Receiver or the liquidator or any such creditor, make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing. *(Added 6 of 1984 s. 181)*
- (5C) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period. *(Added 6 of 1984 s. 181)*
- (5D) The deposits given priority under subsection (1)(db) do not include the following—
- (a) terms deposits where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;
 - (b) deposits made after the date of publication of a notice in the Gazette under section 28(2)(b) of the Banking Ordinance (Cap. 155) that the company has been removed from the register and has ceased to be a bank. *(Added 83 of 1995 s. 16)*
- (5E) If—
- (a) an arrangement has been entered into or carried out on or after the specified date in relation to a deposit with the company except where the arrangement is one in pursuance of a legally enforceable obligation incurred prior to that date;

- (b) the arrangement has, or would have had but for this subsection, the effect of enabling a person to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled; and
- (c) it would be concluded, having regard to—
 - (i) the manner in which, and the circumstances under which, the arrangement was entered into or carried out;
 - (ii) the form and substance of the arrangement; and
 - (iii) the result in relation to the operation of this Ordinance that, but for this subsection, would have been achieved by the arrangement,
 that the arrangement was entered into or carried out for the sole or dominant purpose of enabling the person, either alone or in conjunction with other persons, to become entitled to priority under subsection (1)(db), to which the person would otherwise not be entitled,

the priority given under subsection (1)(db) shall apply as if the arrangement or any part thereof had not been entered into or carried out. (*Replaced 7 of 2004 s. 55*)

- (5F) Deposits given priority under subsection (1)(db) do not include—
 - (a) a deposit held for the account of the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66);
 - (b) a deposit held by an excluded person in his own right, or, in the case of a deposit held by an excluded person and a non-excluded person in their own right (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit;

- (c) a deposit held by a depositor as a bare trustee for an excluded person, or in a client account for an excluded person as the depositor's client, or, in the case of a deposit so held for an excluded person and a non-excluded person (except where those persons carry on business in partnership), the portion of the deposit attributable to the excluded person's share in the deposit; and
 - (d) a deposit held by a depositor as a trustee (but not a bare trustee) for an excluded person only. *(Replaced 7 of 2004 s. 55)*
- (5G) For the purposes of subsection (5F)(b) and (c), if a deposit is held by more than one person in their own right or held for more than one person, each of those persons is deemed to have an equal share in the deposit unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator. *(Added 7 of 2004 s. 55)*
- (5H) For the purposes of paragraph (db) of subsection (1)—
 - (a) if the depositor referred to in subparagraph (i) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator;

- (b) if the beneficiary or client referred to in subparagraph (ii) or (iii) of that paragraph consists of 2 or more persons—
 - (i) in the case where the persons carry on business in partnership, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the members of the partnership;
 - (ii) in any other case, each of those persons is deemed to have an equal share in the deposit, or the relevant portion thereof, unless the contrary is proved to the satisfaction of the liquidator or provisional liquidator; and
 - (c) if the depositor referred to in subparagraph (iv) of that paragraph consists of 2 or more persons, those persons are, for the purpose of priority given under that paragraph, a single and continuing body of persons as distinct from the persons who may from time to time be the trustees. *(Added 7 of 2004 s. 55)*
- (5I) If a deposit, or portion thereof, held by a depositor in a client account for a client is also held by the depositor as a trustee (whether a bare trustee or not) under a trust (whether a bare trust or not), the deposit or portion is, for the purposes of this section, taken as being held by the depositor for the client and not as such trustee. *(Added 7 of 2004 s. 55)*
- (5J) If—
- (a) a person has more than one of the following capacities—
 - (i) a depositor holding one or more deposits, or portion thereof, in his own right;
 - (ii) a beneficiary for whom one or more deposits, or portion thereof, is or are held by a depositor as a bare trustee;

- (iii) a client for whom one or more deposits, or portion thereof, is or are held by a depositor in a client account; and
- (b) the aggregate of the amount that shall be paid in priority under subsection (1)(db)(i), (ii) or (iii) in respect of the relevant deposits or portions would, but for this subsection, have exceeded the limit on the total amount of compensation to which a person is entitled as prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581),

the amount that shall be paid in priority under subsection (1)(db)(ii) or (iii) shall abate in equal proportions among themselves so that the aggregate referred to in paragraph (b) shall be that limit prescribed in section 27(1) of the Deposit Protection Scheme Ordinance (Cap. 581). (*Added 7 of 2004 s. 55. Amended 11 of 2010 s. 14*)

- (6) In this section—

accrued holiday remuneration (累算的假日薪酬) includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Ordinance), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the company continued until he became entitled to be allowed the holiday, and, without limitation, includes any pay for untaken statutory holidays and pay for untaken annual leave; (*Amended 7 of 2012 s. 11*)

arrangement (安排) includes an arrangement, transaction, operation or scheme whether or not such arrangement, transaction, operation or scheme is enforceable, or intended to be enforceable, by legal proceedings; (*Added 7 of 2004 s. 55*)

bank (銀行) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16*)

bare trustee (被動受託人) has the same meaning as in the Deposit Protection Scheme Ordinance (Cap. 581); (*Added 7 of 2004 s. 55*)

chief executive (行政總裁) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 7 of 2004 s. 55*)

client account (客戶帳戶), in relation to a depositor, means an account maintained by the depositor with a bank for the purpose of holding money held by the depositor for a client of the depositor, whether or not other money may be held in the account; (*Added 7 of 2004 s. 55*)

controller (控權人) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55*)

deposit (存款) and **depositor** (存款人) have the same meaning as in the Deposit Protection Scheme Ordinance (Cap. 581); (*Added 83 of 1995 s. 16. Amended 7 of 2004 s. 55; 11 of 2010 s. 14*)

Employees Compensation Assistance Fund (僱員補償援助基金) means the fund established by section 7 of the Employees Compensation Assistance Ordinance (Cap. 365); (*Added 54 of 1991 s. 47*)

excluded person (豁除人士), in relation to a deposit maintained with the company being wound up, means—

- (a) a related company of the company;
- (b) an officer of the company being wound up or its related company on—

- (i) the date immediately preceding the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company being wound up under section 52 of that Ordinance; or
- (ii) the date on which the petition for the winding up of the company being wound up is presented,

whichever is the earlier;

- (c) a multilateral development bank as defined in section 2(1) of the Banking Ordinance (Cap. 155); (*Amended 19 of 2005 s. 7*)
- (d) an authorized financial institution; or
- (e) a foreign bank; (*Added 7 of 2004 s. 55*)

foreign bank (外地銀行) means a company that—

- (a) is incorporated outside Hong Kong;
- (b) is not an authorized financial institution; and
- (c) may, in or outside the place where it is incorporated, lawfully take deposits from the general public (whether or not on current account), or is authorized or recognized as a bank in that place; (*Added 7 of 2004 s. 55*)

general business (一般業務) means insurance business not being long term business as defined in section 2(1) of the Insurance Ordinance (Cap. 41); (*Added 79 of 1988 s. 8. Amended 12 of 2015 s. 100*)

insurer (保險人) means a person carrying on insurance business; (*Added 79 of 1988 s. 8*)

manager (經理) has the same meaning as in the Banking Ordinance (Cap. 155); (*Added 83 of 1995 s. 16*)

non-excluded person (非豁除人士) means a person who is not an excluded person; (*Added 7 of 2004 s. 55*)

officer (人員), in relation to a company that is an authorized financial institution, means—

- (a) a director of the company;
- (b) a chief executive of the company;
- (c) a controller of the company; or
- (d) a manager of the company; (*Added 7 of 2004 s. 55*)

pay for untaken annual leave (未放年假薪酬), in relation to any person, means any sum which, by virtue either of the person's contract of employment or of any enactment (including any order made or direction given under any Ordinance), is payable—

- (a) in respect of annual leave to which the person has become entitled to be allowed but which the person has not taken; or
- (b) on account of the remuneration in respect of annual leave that would have become payable to the person if the person's employment had continued until the person became entitled to be allowed the annual leave,

and, without limitation, includes any sum payable under section 41D of the Employment Ordinance (Cap. 57); (*Added 7 of 2012 s. 11*)

pay for untaken statutory holidays (未放法定假日薪酬) means any sum payable under the Employment Ordinance (Cap. 57) or a contract of employment in respect of a statutory holiday (within the meaning of that Ordinance) that has not been taken as a holiday (within the meaning of that Ordinance); (*Added 7 of 2012 s. 11*)

Protection of Wages on Insolvency Fund (破產欠薪保障基金) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap. 380); (*Added 12 of 1985 s. 29(3)*)

related company (關連公司), in relation to a company, means—

- (a) a subsidiary of the company;
- (b) a holding company of the company; or
- (c) a subsidiary of the holding company; (*Added 7 of 2004 s. 55*)

specified date (指明日期), in relation to a company, means—

- (a) the date on which a Manager within the meaning of section 2(1) of the Banking Ordinance (Cap. 155) is appointed in respect of the company under section 52 of that Ordinance; or
- (b) the date on which the petition for the winding up of the company is presented, whichever is the earlier; (*Added 7 of 2004 s. 55*)

statutory debt (法定債項) means a debt the liability for which and the amount of which are determined by or under any provision in any Ordinance; (*Amended 23 of 1999 s. 3*)

the relevant date (有關日期) means—

- (a) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
- (b) in any case where paragraph (a) does not apply, the date of the commencement of the winding up;

the relevant period (有關期間) means—

- (a) in a case where a company is being wound up by the court and the relevant date in the case of that company is a date other than the date of the commencement of the winding up, the period—
 - (i) beginning 4 months next before the commencement of the winding up and ending on the relevant date; or
 - (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (*Replaced 68 of 1996 s. 5*)

whichever is the earlier;

- (b) in any case where paragraph (a) does not apply, the period—
 - (i) of 4 months next before the relevant date; or
 - (ii) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap. 380) of any clerk or servant or labourer or workman, as the case may be, who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (*Replaced 68 of 1996 s. 5*)

whichever is the earlier; (*Replaced 48 of 1987 s. 8*)

wages (工資) includes, in relation to any person, any sum which, by virtue of his contract of employment, is payable to him as a Lunar New Year bonus, but does not include any accrued holiday remuneration. *(Replaced 6 of 1984 s. 181)*

(Amended E.R. 2 of 2012)

- (7) The Companies (Amendment) Ordinance 1984 (6 of 1984) shall not apply in the case of a winding up where the relevant date occurred before the commencement[@] of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. *(Added 6 of 1984 s. 181)*
- (8) The Fourth Schedule to the Protection of Wages on Insolvency Ordinance 1985 (12 of 1985) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement^{##} of that Ordinance, and, in such case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force *(Added 12 of 1985 s. 29(3))*
- (9) The Companies (Amendment) (No. 3) Ordinance 1988 (79 of 1988) shall not apply in the case of a winding up where the date of the commencement of the winding up occurred before the commencement of that Ordinance, and, in such a case, the provisions relating to preferential payments which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. *(Added 79 of 1988 s. 8)*

- (10) Section 5(a) of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 (68 of 1996) (*the amending Ordinance*) shall not apply in the case of a winding up to which an application under section 15(1) of the Protection of Wages on Insolvency Ordinance (Cap. 380) relates where such application is made before the commencement[†] of the amending Ordinance, and in such a case, the provisions relating to preferential payments which would have applied if the amending Ordinance had not been enacted shall be deemed to remain in full force. (*Added 68 of 1996 s. 5*)
- (11) In the case of a winding up where the relevant date has occurred before the commencement^{††} of the Schedule to the Deposit Protection Scheme (Amendment) Ordinance 2010 (11 of 2010), that Schedule applies in relation to that winding up if the specified event within the meaning of section 22(1) of the Deposit Protection Scheme Ordinance (Cap. 581) occurs on or after the commencement of that Schedule. (*Added 11 of 2010 s. 14*)

[*cf. 1929 c. 23 s. 264 U.K.*]

Editorial Note:

[#] Section 265(1)(da) was repealed by the Companies (Amendment) Ordinance 1999 (30 of 1999). Section 43 of that Ordinance provides as follows—

“43. Savings

Despite the repeal of sections 265(1)(da), 290A, 290B and 290E of the principal Ordinance, those sections are to continue to have effect in relation to a company that has been struck off under section 290A of the principal Ordinance as if those sections had not been repealed.”.

@ Commencement date: 31 August 1984.

Commencement date: 19 April 1985.

† Commencement date: 6 December 1996.

†† Commencement date: 1 January 2011.