

OFFICIAL RECEIVER'S OFFICE
10/F – 12/F, High Block
Queensway Government Offices
66 Queensway, Hong Kong



Q&As on Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016

If you require further information, please contact us:

Mail : The Departmental Secretary
Official Receiver's Office
10/F – 12/F, High Block
Queensway Government Offices
66 Queensway, Hong Kong

Telephone: 2867 2448

Fax : 3105 1814

E-mail : oroadmin@oro.gov.hk

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破產管理署
香港金鐘道 66 號
金鐘道政府合署高座 10-12 樓



關於2016年公司(清盤及雜項條文) (修訂)條例的問與答

如果需要進一步的資料，請向本署查詢：

郵遞： 香港金鐘道 66 號
金鐘道政府合署高座 10-12 樓
破產管理署
部門主任秘書

電話： 2867 2448

傳真： 3105 1814

電子郵件： oroadmin@oro.gov.hk

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**Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Ordinance 2016 (14 of 2016)
("the CWUMP Amendment Ordinance")**

Questions and Answers

1. When was the CWUMP Amendment Ordinance enacted?

The CWUMP Amendment Ordinance was enacted by the Legislative Council on 27 May 2016

2. When was the CWUMP Amendment Ordinance published in the Gazette?

The CWUMP Amendment Ordinance was published in the Gazette (Legal Supplement No. 1, No. 22 Vol. 20) on 3 June 2016.

3. Where can I find the CWUMP Amendment Ordinance?

The electronic version of the CWUMP Amendment Ordinance is available at the website of the Government Logistics Department (Website : www.gld.gov.hk/egazette).

4. What are the objectives of the CWUMP Amendment Ordinance?

The CWUMP Amendment Ordinance seeks to amend the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") and its subsidiary legislation to increase protection of creditors, streamline the winding up process and strengthen regulation under the winding up regime. Related, consequential and minor technical amendments are also made to relevant legislation.

**《2016 年公司(清盤及雜項條文)(修訂)條例》
(2016 年第 14 號) ("公司清盤修訂條例")**

問與答

1. 公司清盤修訂條例於何時通過?

公司清盤修訂條例於 2016 年 5 月 27 日獲立法會通過。

2. 公司清盤修訂條例於何時刊登於憲報?

公司清盤修訂條例於 2016 年 6 月 3 日刊登於憲報 (第 20 卷第 22 期 第 1 號法律副刊)。

3. 我可在何處找到公司清盤修訂條例?

公司清盤修訂條例的電子版已上載至政府物流服務署網站 (網址 : www.gld.gov.hk/egazette)。

4. 公司清盤修訂條例的目標為何?

公司清盤修訂條例旨在修訂《公司(清盤及雜項條文)條例》(第 32 章) ("《條例》") 及其附屬法例，以增加對債權人的保障；精簡清盤程序；以及強化在清盤架構下的規管。此外，公司清盤修訂條例亦對有關法例作出相關、相應及輕微技術修訂。

5. 有關增加對債權人的保障的措施的例子為何？

公司清盤修訂條例內增加對債權人的保障的部分措施如下：

- (a) 對於公司在清盤開始前五年內的遜值交易，賦權法院將之作廢；
- (b) 公司如從資本中撥款贖回或回購本身的股份，但在其後一年內清盤，則公司有關董事及成員須為有關贖回或回購股份一事承擔提供有關公司資產的責任；
- (c) 增訂保障措施，減低在《條例》第 228A 條下董事可展開債權人自動清盤程序的安排被濫用的風險；以及
- (d) 優化有關債權人自動清盤開始後舉行第一次債權人會議的規定；另又限制由成員委任的清盤人及董事分別在第一次債權人會議舉行前及清盤人在會議上獲委任前的權力。

6. 有關精簡清盤程序的措施的例子為何？

公司清盤修訂條例內可精簡清盤程序的部分措施如下：

5. What are the examples of initiatives for increasing protection of creditors?

The following are some of the initiatives in the CWUMP Amendment Ordinance which will increase protection of creditors:

- (a) providing for the power of the court to set aside “transactions at an undervalue” entered into by a company within five years before the commencement of its winding-up;
- (b) providing for the liabilities of directors and members concerned to contribute to the assets of the company in connection with a redemption or buy-back of the company’s own shares out of capital in cases where the company is wound up within one year of the relevant payment out of capital;
- (c) introducing additional safeguards to reduce the risk of abuse in a director-initiated creditors’ voluntary winding-up commenced under section 228A of CWUMPO; and
- (d) enhancing the requirements relating to the first creditors’ meeting upon the commencement of a creditors’ voluntary winding-up; and restricting the powers of the members-appointed liquidator and the directors before the holding of the first creditors’ meeting and the appointment of a liquidator thereat respectively.

6. What are the examples of initiatives for streamlining the winding up process?

The following are some of the initiatives in the CWUMP Amendment Ordinance which will streamline the winding up process:

- (a) allowing the bills of costs or charges of the liquidators' agents in a court winding-up to be approved by the Committee of Inspection ("COI");
- (b) allowing remote attendance at meetings of COIs by the use of technology;
- (c) enabling COIs to perform their functions and make decisions through written resolutions; and
- (d) prescribing the maximum and minimum numbers of members of COIs.

7. What are the examples of the initiatives for strengthening regulation under the winding up regime?

The following are some of the initiatives in the CWUMP Amendment Ordinance which will strengthen regulation under the winding up regime:

- (a) setting out more clearly the powers and duties, the basis for determining remuneration, and tenure of office of a provisional liquidator appointed under different sections of CWUMPO in a court winding-up;
- (b) providing that a liquidator would not be absolved from liabilities arising from the liquidator's misfeasance or breach of duty / trust notwithstanding that he has obtained a court order releasing him as liquidator after the completion of the winding-up;
- (c) suitably expanding the list of persons disqualified for appointment as a provisional liquidator or liquidator;

- (a) 在由法院作出的清盤中，清盤人所聘用的代理人的訟費單或收費單，可經審查委員會（“委員會”）核准；
- (b) 可運用科技，遙距出席委員會的會議；
- (c) 委員會可藉書面決議行使其職能和作出決定；以及
- (d) 訂明委員會委員人數的上限及下限。

7. 有關強化在清盤架構下的規管的措施的例子為何？

公司清盤修訂條例內可加強在清盤架構下的規管的部分措施如下：

- (a) 更清楚述明在由法院作出的清盤中，根據《條例》不同條文委任的臨時清盤人的權力與職責、酬金的訂定及任期；
- (b) 訂明清盤人在清盤完成後，即使已獲法院頒令解除其作為清盤人的職務，也不會獲豁免承擔因失當行為或失職行為/違反信託行為而引致的法律責任；
- (c) 適當地把無資格獲委任為臨時清盤人或清盤人的人士的類別擴大；

- (d) 引入新規定，訂明準臨時清盤人或準清盤人在獲提名或獲委任前，如其本人或家人等與清盤公司有指明的關係，便須披露該等關係；以及
- (e) 改善《條例》的閉門和公開訊問程序，有關程序是清盤人在清盤過程中所進行的調查工作的一部分，以核實公司事務及財產等方面的資料。

8. 有甚麼相關、相應及輕微技術修訂？

相應及相關修訂載於公司清盤修訂條例第 8 部。公司清盤修訂條例各部分亦載有其他輕微技術修訂，這些修訂包括把自動清盤開始時須在憲報公布某些行動的時限劃一。

9. 公司清盤修訂條例將於何時實施？

憑藉《2016 年〈2016 年公司(清盤及雜項條文)(修訂)條例〉(生效日期)公告》，財經事務及庫務局局長指定 2017 年 2 月 13 日為公司清盤修訂條例(第 8 部第 7 分部除外)開始實施的日期。

10. 公司清盤修訂條例是否有任何過渡性安排及保留安排？

有。過渡性條文及保留條文載於公司清盤修訂條例第 7 部。

- (d) introducing a new requirement for disclosure by a prospective provisional liquidator and prospective liquidator of specified relationships between him or his immediate family members, etc. and the company being wound up before his nomination or appointment; and
- (e) improving the private and public examination procedures of CWUMPO which are part of the process of investigation conducted by the liquidator during a winding-up to ascertain information about the company's affairs and property, etc.

8. What are the related, consequential and minor technical amendments?

Consequential and related amendments can be found in Part 8 of the CWUMP Amendment Ordinance. There are other minor technical amendments in different parts of the CWUMP Amendment Ordinance. They include, for example, aligning the time limits for giving notices in the Gazette for certain actions in the commencement of a voluntary winding-up.

9. When will the CWUMP Amendment Ordinance come into operation?

By the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (Commencement) Notice 2016, the Secretary for Financial Services and the Treasury has appointed 13 February 2017 as the day on which the CWUMP Amendment Ordinance (except Division 7 of Part 8) comes into operation.

10. Is there any transitional and saving arrangement?

Yes. The transitional and saving provisions can be found in Part 7 of the CWUMP Amendment Ordinance.