

## LRC recommendations on winding-up provisions of Companies Ordinance

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The Law Reform Commission today (Tuesday) published a report on "The Winding-up Provisions of the Companies Ordinance". The report follows the issue of a Consultation Paper in April 1998 by the Commission's Sub-committee on insolvency.

The report is the third and final part of three reports produced by the Commission on insolvency related issues. The first, the Report on Bankruptcy was published in 1995. This resulted in the Bankruptcy (Amendment) Ordinance 1996, which came into effect on 1 April 1998. The second, the Report on Corporate Rescue and Insolvent Trading, was published in October 1996.

The Chairman of the Law Reform Commission's Sub-committee on Insolvency, Professor E. L. G. Tyler, said that the report contains over 250 recommendations relating to all aspects of the winding-up provisions of the Companies Ordinance and related issues, such as receivership. The recommendations address both policy considerations and procedural aspects of winding-up. The report has taken account of, and refers widely to, submissions made on the Consultation Paper which preceded the report.

### Policy Considerations

In terms of policy issues, Professor Tyler said that the report recommends that a new Ordinance should be created to bring together all insolvency and insolvency related matters in a single Ordinance. The Bankruptcy Ordinance, the Companies Ordinance provisions on winding-up, and receivership should be brought together in the new Ordinance, together with provisional supervision and insolvent trading (the Commission's recommendations for the introduction of a corporate rescue regime).

The report also recommends that a two-tier system for the licensing of insolvency practitioners should be established. The Official Receiver already operates a two-tiered "Administrative Panel of Insolvency Practitioners for the Court Winding-up of Companies" and the new system would develop this theme with the introduction of "Licensed Insolvency Practitioners" and "Registered Insolvency Practitioners".

Licensed Insolvency Practitioners would act in all forms of liquidation, receivership, bankruptcy and provisional supervision, while Registered Insolvency Practitioners would act in members' (solvent) voluntary winding-up, creditors' (insolvent) voluntary winding-up and individual voluntary arrangements in bankruptcy.

The report has also made recommendations for the establishment of a Panel to adjudicate on the remuneration or fees' claims of insolvency practitioners that are referred to the Panel. The Panel would operate under the auspices of the Official Receiver.

These recommendations are important as they have allowed the Commission to develop procedural recommendations in a way that would impart a considerable degree of trust on insolvency practitioners, with the aim of saving time and costs in insolvency procedures.

The Commission also recommends that the Government should take a more positive role in the establishment of regulatory procedures that would apply to all companies that go into liquidation. The Commission considers that the termination of businesses relates directly to the administration of business as a whole and that it is in the public interest to have a clean and open insolvency regime with a proper investigatory framework.

#### Procedural Aspects

Professor Tyler noted that a number of recommendations would have an effect on company directors. They would be able to petition to wind-up their company, be in contempt of court for failing, without reasonable excuse, to produce a statement of affairs, and directors may be obliged to obtain compensation insurance.

The preference payments to certain categories of creditors should be abolished. The preferences that would be abolished relate to the employees (who would be protected in any event under other provisions), the Government and landlords.

In relation to certain offences under the insolvency provisions, the burden of proving certain matters should fall on the officers of companies. The effect of the recommendation would shift the burden of proving intent in certain offences from the prosecution to the accused person.

Consideration ought to be given to providing recognition of foreign insolvency proceedings on a bilateral basis.

Copies of the report are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong, or can be downloaded from the Internet at <http://www.info.gov.hk/info/lrc.htm>.

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