

## **LEGISLATIVE COUNCIL BRIEF**

Bankruptcy Ordinance  
(Chapter 6)

### **BANKRUPTCY (AMENDMENT) RULES 2007**

### **BANKRUPTCY (FORMS) (AMENDMENT) RULES 2007**

### **BANKRUPTCY (FEES AND PERCENTAGES) (AMENDMENT) ORDER 2007**

### **PROOF OF DEBTS (AMENDMENT) RULES 2007**

#### **INTRODUCTION**

On 18 May 2007, the Chief Justice made –

- A           (a) the Bankruptcy (Amendment) Rules 2007, at **Annex A**, under section 113 of the Bankruptcy Ordinance (“BO”);
- B           (b) the Bankruptcy (Forms) (Amendment) Rules 2007, at **Annex B**, under section 113 of the BO;
- C           (c) the Bankruptcy (Fees and Percentages) (Amendment) Order 2007, at **Annex C**, under section 114 of the BO; and
- D           (d) the Proof of Debts (Amendment) Rules 2007, at **Annex D**, under section 36 of the BO.

They are collectively known as “the Amendment Rules/Order” for the purposes of this brief.

## **JUSTIFICATION**

2. On 6 July 2005, the Legislative Council enacted the Bankruptcy (Amendment) Ordinance 2005 to facilitate the Official Receiver (“OR”) to outsource administration of summary bankruptcy cases to private-sector insolvency practitioners (“PIPs”) <sup>(1)</sup> and make other minor miscellaneous amendments to the BO. Before the Bankruptcy (Amendment) Ordinance 2005 comes into operation, consequential amendments to the subsidiary legislation under the BO are necessary to implement the statutorily-empowered outsourcing scheme.

3. The Amendment Rules/Order provide for such consequential amendments, which are technical in nature mainly for adjusting the respective powers and duties of “OR”, “provisional trustee” and “trustee” in bankruptcy cases under the new outsourcing regime introduced under the Bankruptcy (Amendment) Ordinance 2005. The opportunity is also taken to modernise and streamline certain provisions in these sets of the subsidiary legislation under the BO.

## **THE AMENDMENT RULES AND ORDER**

4. Most of the amendments in the Amendment Rules/Order seek to adjust the references to “Official Receiver”, “trustee” and “provisional trustee” in the subsidiary legislation under the new outsourcing regime. The amendments correspond to the new provisions under the Bankruptcy (Amendment) Ordinance 2005.

5. Apart from these terminological changes and other minor amendments modernising the drafting of various rules and forms, we highlight the major amendments as follows -

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**Note** <sup>(1)</sup> Under section 12 of the BO (as amended under the Bankruptcy (Amendment) Ordinance 2005), on the making of a bankruptcy order, OR shall thereby become the provisional trustee of the property of the bankrupt. In the case of a debtor’s petition, the OR as the provisional trustee may at any time appoint any person to act as the provisional trustee of the property of the bankrupt in his place if he considers that the value of the property of the bankrupt is unlikely to exceed \$200,000 and the person has the relevant qualifications. Subject to satisfaction of the relevant conditions, the court may make an order under section 112A of the BO (as amended under the Bankruptcy (Amendment) Ordinance 2005) for the case to be administered by the provisional trustee (who then becomes the trustee in bankruptcy) in a summary manner.

### ***Bankruptcy (Amendment) Rules 2007***

- (a) Section 2 is modelled on new section 58(1B) of the BO (added under the Bankruptcy (Amendment) Ordinance 2005) to add **Rule 2A** to the Bankruptcy Rules to deem relevant references to “trustee” in such Rules to cover the meaning of “provisional trustee”;
- (b) Sections 6 and 7 are modelled on Rules 171 and 170 of the Companies (Winding-up) Rules (Cap. 32H) respectively, in order to amend **Rules 35 and 36** of the Bankruptcy Rules to streamline the arrangement for lodging the bill or charges with the provisional trustee/trustee and for giving notice of appointment to tax the same;
- (c) Section 9 repeals **Rule 39** as the priority of the cost of the shorthand notes is now provided under new section 37(3) of the Bankruptcy Ordinance (added under the Bankruptcy (Amendment) Ordinance 2005);
- (d) Section 11 modernises **Rule 52** to provide for an arrangement for the presentation of a petition and the accounting for the deposits paid in bankruptcy proceedings;
- (e) Section 42 repeals **Rule 102** by merging it with Rule 99E for greater clarity;
- (f) Sections 62 and 63, by amending **Rule 159** and adding **Rule 159A** respectively, provide for arrangements for accounting of the property of a bankrupt under different situations (including an outsourced case);
- (g) Section 67 adds **Rule 163A** to empower OR to require a trustee to provide him with information in connection with the relevant bankruptcy proceedings, as the trustee has a duty to report to and assist OR to perform his duties pursuant to section 76(4) and new section 86A (added under Bankruptcy (Amendment) Ordinance 2005) of the BO. With this general power in place, sections 43 and 76 repeal **Rules 104 and 193** accordingly to minimise the required filing of documents to OR;
- (h) Section 75 repeals **Rules 191(1) and (2)** as the relevant requirement for the audit of the trustee’s account by OR is provided under section 93 of the BO (as amended under Bankruptcy (Amendment) Ordinance 2005);

### ***Bankruptcy (Forms) (Amendment) Rules 2007***

- (i) We modernise **Form 137** (Statement to Accompany Application for Release) to better serve the purposes of section 94 of the BO; and

### ***Bankruptcy (Fees and Percentages) (Amendment) Order 2007***

- (j) We amend **items 3 and 5 in Table A** to clarify that the fee upon presentation of a bankruptcy petition or a petition under section 112 of the BO should include any fee on answering a petition or setting down for hearing. This is modelled on item 1 of Schedule 2 to the Companies (Fees and Percentages) Order (Cap. 32C).

### **LEGISLATIVE TIMETABLE**

- 6. We intend that the legislative timetable will be as follows -

Secretary for Financial Services      13 June 2007  
and the Treasury to move motions  
at the Legislative Council

Commencement of the                      To be appointed<sup>(2)</sup>  
Amendment Rules/Order

### **IMPLICATIONS OF THE PROPOSAL**

- 7. The financial, civil service and economic implications of the Amendment Rules/Order are set out at **Annex E**. The Amendment Rules/Order are in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of the BO, and have no environmental or sustainability implications.

E

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**Note** <sup>(2)</sup> We intend that the Amendment Rules/Order shall come into operation on the day to be appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (except sections 1, 12, 19 and 32 of that Ordinance which have already taken effect). Pending completion of the preparatory work by the Official Receiver's Office for the new outsourcing regime, we intend to commence the relevant provisions of the Bankruptcy (Amendment) Ordinance 2005 and the Amendment Rules/Order within 2007.

## **PUBLIC CONSULTATION**

8. The Amendment Rules/Order are made consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005. We consulted the public on the proposal to outsource administration of summary bankruptcy cases in June 2002 in the context of the review of the role of the Official Receiver's Office in the provision of insolvency administration service.

9. In September 2004 and October 2005, we consulted various stakeholders on the draft provisions of the Amendment Rules/Order. Respondents generally reaffirmed their support for the intent of the Regulation. We have taken on board the technical and drafting comments made by other respondents as appropriate.

## **PUBLICITY**

10. A spokesman will be available for answering any media enquiries.

## **ENQUIRY**

11. Enquiries should be directed to Mr. Jackie Liu, Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2527 3102 or Ms. May Lee, Assistant Official Receiver (Legal Services), at 2867 2468.

**Financial Services and the Treasury Bureau**  
**23 May 2007**

**BANKRUPTCY (AMENDMENT) RULES 2007**

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## **BANKRUPTCY (AMENDMENT) RULES 2007**

(Made by the Chief Justice under section 113 of the  
Bankruptcy Ordinance (Cap. 6) subject to the  
approval of the Legislative Council)

### **1. Commencement**

These Rules shall come into operation on the day  
appointed for the commencement of the Bankruptcy (Amendment)  
Ordinance 2005 (18 of 2005)(except sections 1, 12, 19 and 32  
of that Ordinance).

### **2. Rule added**

The Bankruptcy Rules (Cap. 6 sub. leg. A) are amended by  
adding -

#### **"2A. Provisional trustee regarded as trustee**

Save in rules 35, 36, 72A(3), 99A, 99B, 99E, 99F,  
99G, 99Q(a), 99Y(2), 101, 113, 138, 141, 149A(2), 159(2),  
159A, 162(1), 172 and 179, a provisional trustee shall,  
unless the context otherwise requires, be regarded as a  
trustee for the purposes of these rules."

### **3. Official Receiver to file copies of advertisements**

Rule 11 is amended -

(a) in the heading, by adding "**or trustee**" after

**"Receiver"**;

(b) in paragraph (1), by repealing everything after

"Ordinance," and substituting "the person specified in paragraph (3) shall, in respect of the bankruptcy proceedings concerned, file a copy of the advertisement with the court.";

(c) in paragraph (2), by repealing "paper, the Official Receiver" and substituting "newspaper, the person specified in paragraph (3)";

(d) by repealing paragraph (3) and substituting -

"(3) If the advertisement was inserted -

(a) by the Official Receiver, the Official Receiver is the person specified for the purposes of paragraphs (1) and (2); or

(b) by a trustee, the trustee is the person specified for the purposes of paragraphs (1) and (2).";

(e) in the English text, in paragraph (4), by repealing "paper" and substituting "newspaper".

#### **4. Preparation of order**

Rule 12 is amended -

(a) in paragraph (1) -

(i) in subparagraph (b), by adding "or" at the end;

(ii) by repealing subparagraph (c);

(iii) in the English text, by repealing  
"such order" where it twice appears  
and substituting "the order";

(iv) by repealing "Official Receiver" and  
substituting "trustee";

(b) by adding -

"(1A) If an order made under section  
20J of the Ordinance has not been  
completed within 1 week from the making of  
the order, the nominee shall prepare and  
complete the order."

**5. Certificate of employment**

Rule 34 is amended -

(a) by repealing "Official Receiver or" where it  
twice appears;

(b) by repealing "as the case may be".

**6. Rule substituted**

Rule 35 is repealed and the following substituted -

**"35. Lodgment of bill**

(1) The bill or charges shall be lodged with -

(a) (if incurred before the appointment of a  
trustee) the provisional trustee; or

(b) (if incurred after the appointment of a  
trustee) the trustee.

(2) The provisional trustee or trustee, as the case may be, shall lodge the bill or charges with the taxing officer."

**7. Rule substituted**

Rule 36 is repealed and the following substituted -

**"36. Notice of appointment**

Where a bill of costs or charges has been lodged with the taxing officer, he shall give notice of appointment to tax the same to the provisional trustee or trustee, and to the person to or by whom the bill or charges is or are to be paid, as the case may be."

**8. Applications for costs**

Rule 38 is amended -

- (a) in paragraph (a), by repealing "Official Receiver, and if a trustee has been appointed, on the";
- (b) in paragraph (b), by repealing "Official Receiver and the".

**9. Costs of shorthand notes**

Rule 39 is repealed.

**10. Apportionment of costs in case of partnership**

Rule 41 is amended by repealing "Official Receiver" and

substituting "trustee".

**11. Rule substituted**

Rule 52 is repealed and the following substituted -

**"52. Deposit by petitioner**

(1) Upon the presentation of a petition, the petitioner shall pay to the Official Receiver a deposit of -

(a) in the case of a debtor's petition, the sum of \$8,650; or

(b) in the case of a creditor's petition, the sum of \$12,150.

(2) No petition shall be received unless the receipt of the Official Receiver for the deposit payable under paragraph (1) is produced to the Registrar.

(3) After presenting a petition, the petitioner shall deposit with the Official Receiver such further sum as the court may, on the application of the Official Receiver, from time to time direct.

(4) The deposit and any further deposit paid shall be applied to cover the fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and payable to the Official Receiver, and costs, charges and expenses incurred or authorized by the Official Receiver, whether acting as trustee or otherwise, including the costs of any person properly

employed by him.

(5) After the deposit and any further deposit have been so applied, the Official Receiver shall -

(a) in the case of a debtor's petition where a provisional trustee is appointed under section 12(1A) of the Ordinance -

(i) retain any balance of the deposit and further deposit, which shall be applied in accordance with section 37(1) of the Ordinance; and

(ii) after complying with subparagraph (i), account for and pay any unexpended balance of the deposit and further deposit to the trustee; or

(b) in the case of a debtor's petition other than that referred to in subparagraph (a) and in the case of a creditor's petition, account for and pay any unexpended balance of the deposit and further deposit to the trustee.

(6) The trustee shall account for any unexpended balance of the deposit and further deposit paid to him under paragraph (5)(a)(ii) or (b) -

(a) in the case of a debtor's petition, to the

bankrupt's estate; or

- (b) in the case of a creditor's petition, to that creditor.

(7) For the purposes of paragraph (6)(b), the trustee shall -

- (a) pay any unexpended balance of the deposit and further deposit to that creditor; and
- (b) repay the amount of the deposit and further deposit expended and applied under paragraph (4) to that creditor out of the assets of the bankrupt in accordance with section 37(1) of the Ordinance."

#### **12. Cross-heading amended**

The cross-heading immediately before rule 61 is amended by repealing "**receiver**" and substituting "**trustee**".

#### **13. Form and contents of order**

Rule 61 is amended by repealing "receiver" and substituting "trustee".

#### **14. Further deposit necessary**

Rule 63 is amended by repealing "receiver" and substituting "trustee".

**15. Repayment of deposit**

Rule 64 is amended by repealing "receiver" wherever it appears and substituting "trustee".

**16. Damages if petition dismissed**

Rule 65 is amended by repealing "receiver" and substituting "trustee".

**17. Time of hearing**

Rule 66 is amended -

- (a) by repealing "after reference to the Official Receiver";
- (b) by repealing everything after "sealed copy" and substituting ". Where the petition has not been served, the Registrar may appoint another time and place for such hearing."

**18. Drawing up and contents of bankruptcy order**

Rule 72A(3) is amended -

- (a) by repealing "receiver" and substituting "trustee";
- (b) by repealing "his solicitor" and substituting "the debtor";
- (c) by repealing "Official Receiver" and substituting "interim trustee, provisional trustee or trustee, as the case may be,".

**19. Registration of bankruptcy order  
in Land Registry**

Rule 73 is amended by repealing "Official Receiver" and substituting "trustee".

**20. Registration of bankruptcy order  
in Land Registry against partner**

Rule 74 is amended by repealing "Official Receiver" and substituting "trustee".

**21. Service of bankruptcy order**

Rule 75 is amended by repealing "Official Receiver" and substituting "trustee".

**22. Application to annul bankruptcy  
order or to stay proceedings  
thereunder**

Rule 80 is amended -

(a) in paragraph (2) -

(i) by adding "or trustee" after  
"Receiver";

(ii) by adding "and the trustee where he  
is not the applicant" after "any)";

(b) in paragraph (3) -

(i) by repealing "Official Receiver  
shall" and substituting "trustee  
shall and the Official Receiver

(where he is not the trustee) may";

(ii) by adding "by the Official Receiver,  
or" after "may be made";

(iii) by repealing "the report" and  
substituting "any report made by the  
Official Receiver under this  
paragraph";

(c) in paragraph (3A), by repealing "Official  
Receiver" and substituting "trustee";

(d) in paragraph (4), by repealing "Official  
Receiver or".

**23. How made out**

Rule 81 is amended by repealing "Official Receiver" and  
substituting "trustee".

**24. Extension of time**

Rule 82 is amended by repealing "he shall apply to the  
Official Receiver" and substituting "the bankrupt shall apply  
to the trustee".

**25. Application for public examination**

Rule 82A(1) is amended by adding "or trustee" after  
"Receiver".

**26. Preliminary public examination proceedings**

Rule 82B is amended -

(a) in paragraph (1), by repealing everything after "orders," and substituting -

"attend -

(a) where the application for public examination is made by the Official Receiver, at a time and place to be notified to him by the Official Receiver in writing to be examined as to his affairs by the Official Receiver;

(b) where the application for public examination is made by the trustee, at a time and place to be notified to him by the trustee in writing to be examined as to his affairs by the trustee.";

(b) in paragraph (2), by adding "or trustee, as the case may be" after "Receiver";

(c) in paragraph (4), by adding "or trustee, as the case may be," after "Receiver";

- (d) in paragraph (5), by adding "or trustee, as the case may be" after "Receiver".

**27. Application to proceed**

Rule 84 is amended by repealing "either of the Official Receiver or of the" and substituting "of the Official Receiver, trustee or".

**28. Proceeding after adjournment sine die**

Rule 85 is amended by repealing "such sum as the Official Receiver may think" and substituting "or trustee, as the case may be, such sum as he may specify to the bankrupt that he considers".

**29. Notice of public examination**

Rule 86 is amended by repealing everything after "examination," and substituting -

"the Official Receiver or trustee (whoever makes the application under section 19(1) of the Ordinance) shall -

- (a) send notice of the date, time and place appointed for such public examination to all persons mentioned in section 19(5) of the Ordinance; and
- (b) gazette such notice at least 7 days before the day so appointed."

**30. Four clear days' notice to be given of meeting**

Rule 99A is amended by repealing "trustee, the Official Receiver" and substituting "first trustee, the provisional trustee".

**31. Notice of meeting to be sent**

Rule 99B is amended by repealing "trustee, the Official Receiver" and substituting "first trustee, the provisional trustee".

**32. Place of meeting**

Rule 99C is amended by repealing "Official Receiver" and substituting "provisional trustee".

**33. Other meetings**

Rule 99D is amended -

(a) by repealing the heading and substituting  
"Summoning of creditors' meeting";

(b) in paragraph (1), by repealing "Official Receiver or the";

(c) by repealing paragraph (3);

(d) in paragraph (4) -

(i) by repealing "(if any) or the Official Receiver (if no trustee has been appointed)";

(ii) by repealing "trustee or the Official

Receiver" and substituting "trustee".

**34. Summoning of subsequent meetings**

Rule 99E is amended -

- (a) by renumbering it as rule 99E(1);
- (b) by adding -

"(2) Where no special time is prescribed for the subsequent meeting, the notice shall be sent off not less than 3 days before the day appointed for the meeting."

**35. Chairman**

Rule 99F is amended -

- (a) by repealing "The Official Receiver" and substituting "The provisional trustee";
- (b) by repealing "appointing a trustee" and substituting "appointing a first trustee";
- (c) by repealing "other than the Official Receiver,".

**36. Form of proxy**

Rule 99N is amended by repealing "Official Receiver or, after the appointment of a trustee, by the".

**37. Proxy forms to be sent to creditors**

Rule 990 is amended by adding ", of the trustee" after "Receiver".

**38. Time for lodging proxy**

Rule 99R is amended -

- (a) in paragraph (1), by repealing "Official Receiver or";
- (b) in paragraph (2), by repealing "Official Receiver or trustee, as the case may be," and substituting "trustee".

**39. Proxy to Official Receiver**

Rule 99T is amended -

- (a) in the heading, by repealing "**Official Receiver**" and substituting "**trustee**";
- (b) by repealing "Official Receiver" and substituting "trustee".

**40. Notice to bankrupt of meeting to appoint trustee**

Rule 100 is amended -

- (a) by repealing "Official Receiver" and substituting "trustee";
- (b) by repealing "for the purpose of appointing a trustee" and substituting "mentioned in rules

99A and 101";

- (c) by repealing everything after "It shall" and substituting "be the duty of the bankrupt to attend such meeting."

**41. Notice of meeting to appoint trustee**

Rule 101 is amended -

- (a) in the heading, by adding "**successive**" before "**trustee**";
- (b) by repealing "Official Receiver" where it twice appears and substituting "trustee";
- (c) by adding "successive" after "a".

**42. Notices of other meetings**

Rule 102 is repealed.

**43. Notice to Official Receiver of creditors' meetings**

Rule 104 is repealed.

**44. Proving debts**

Rule 109 is amended -

- (a) in paragraph (1), by repealing "Official Receiver" and substituting "trustee";
- (b) in paragraph (2), by repealing "Official Receiver or, if a trustee is appointed, the";

- (c) in paragraph (3), by repealing "the Official Receiver, an assistant official receiver or".

**45. Production of bills of exchange and promissory notes**

Rule 111 is amended by repealing "Official Receiver,".

**46. Time for lodging proofs**

Rule 112 is amended by repealing "Official Receiver" and substituting "trustee".

**47. Transmission of proofs to trustee**

Rule 113 is amended by repealing "Official Receiver" where it twice appears and substituting "provisional trustee".

**48. Appeal from rejection of proof**

Rule 117 is amended -

- (a) by repealing "Official Receiver or";
- (b) by adding "Notice of appeal shall be given to the trustee upon such application." after "of.".

**49. Costs of appeals from decisions as to proofs**

Rule 118 is amended by repealing "Official Receiver" and substituting "trustee".

**50. Signature of proxy**

Rule 120 is amended by repealing "Official Receiver" and substituting "trustee".

**51. Nominee's report on proposal**

Rule 122J(5) is amended by repealing "the Official Receiver, unless the Official Receiver is the nominee, and".

**52. Hand-over of property, etc. to nominee**

Rule 122U is amended -

(a) in paragraph (1), by repealing "Official Receiver or";

(b) in paragraph (2)(b), by repealing "Supreme" and substituting "High".

**53. Report of creditors' meeting**

Rule 122V(4) is amended by repealing "the Official Receiver and (if any)".

**54. Revocation or suspension of arrangement**

Rule 122Y(4) is amended by repealing ", or if there is no trustee, the Official Receiver".

**55. Fees, costs, charges and expenses**

Rule 122ZB(a) is amended by repealing ", the Official

Receiver".

**56. Bankruptcy order, trustee**

Rule 141 is amended by repealing "23(4) or".

**57. Administration of small bankruptcies**

Rule 149A(2) is amended by repealing "Official Receiver" and substituting "trustee".

**58. Cross-heading amended**

The cross-heading immediately before rule 150 is amended by repealing "**Receivers**" and substituting "**Receiver and trustee**".

**59. Duties as to bankrupt's statement of affairs**

Rule 150 is amended -

(a) in paragraph (1), by repealing "the Official Receiver has been appointed to the receivership of an estate, he shall furnish" and substituting "a bankruptcy order is made, the trustee shall provide";

(b) by repealing paragraph (2) and substituting -

"(2) The trustee may hold interviews with the bankrupt for the purpose of investigating the bankrupt's affairs.";

- (c) in paragraph (3), by repealing "Official Receiver" and substituting "trustee".

**60. Subsistence allowance to bankrupt**

Rule 151 is amended by repealing "Official Receiver" and substituting "trustee".

**61. Special report as to person employed to assist bankrupt**

Rule 152 is amended -

- (a) by repealing "78" and substituting "86B";
- (b) by repealing "Official Receiver" and substituting "trustee";
- (c) in the English text, by repealing "he" and substituting "the trustee".

**62. Accounting by Official Receiver**

Rule 159 is amended -

- (a) in paragraph (1) -
  - (i) by adding "the Official Receiver is the trustee and where" after "Where";
  - (ii) by repealing "debtor or, as the case may be, the";
- (b) in paragraph (2), by repealing everything after "debtor" and substituting -
  - "and -
    - (a) a provisional trustee is

appointed under section  
12(1A) of the Ordinance,  
the Official Receiver shall  
account to the provisional  
trustee; or

- (b) where the Official Receiver  
remains as the provisional  
trustee and a trustee other  
than the Official Receiver  
is appointed, the Official  
Receiver shall account to  
the trustee."

**63. Rule added**

The following is added -

**"159A. Accounting by provisional trustee**

Where -

- (a) rule 159(2)(a) applies; and  
(b) a person other than the provisional  
trustee is subsequently appointed as the  
trustee,

the provisional trustee shall account to the trustee."

**64. Accounts of bankrupt**

Rule 160 is amended -

- (a) by repealing "furnish" and substituting "or

trustee, as the case may be, provide";

- (b) by repealing "Receiver shall" and substituting "Receiver or trustee, as the case may be, shall".

**65. Liability for costs, expenses and damages**

Rule 161(2) is amended -

- (a) by repealing "trustee by the creditors" and substituting "trustee";
- (b) by repealing "appointed by the creditors".

**66. Cross-heading repealed**

The cross-heading immediately before rule 162 is repealed.

**67. Rule added**

The following is added -

**"163A. Trustee to provide information to Official Receiver**

The Official Receiver may at any time require a trustee to provide him with any information or produce to him any document in connection with the bankruptcy proceedings for which the trustee is appointed, and the trustee shall comply with the requirement within the time specified by the Official Receiver."

**68. Statements of accounts to be furnished to creditors**

Rule 176 is amended -

- (a) in the English text, in the heading, by repealing "**furnished**" and substituting "**provided**";
- (b) by repealing "Official Receiver or";
- (c) by repealing "transmit to creditors" and substituting "provide the creditors with";
- (d) by repealing "furnishing and transmitting" and substituting "providing".

**69. Discharge of costs, etc., before estate handed over to trustee**

Rule 179 is amended -

- (a) in paragraph (1) -
  - (i) by repealing "Official Receiver shall" and substituting "provisional trustee shall";
  - (ii) by repealing "Official Receiver may" and substituting "provisional trustee may";
  - (iii) by repealing "Official Receiver," and substituting "provisional trustee,";
  - (iv) by repealing "Official Receiver on" and substituting "Official Receiver and provisional trustee on";

- (v) by repealing "by him" where it twice appears and substituting "by them";
  - (vi) by repealing "Official Receiver for" and substituting "Official Receiver or provisional trustee for";
  - (vii) by repealing "Official Receiver which" and substituting "Official Receiver and provisional trustee which";
- (b) in paragraph (2), by adding "and provisional trustee" after "Receiver";
  - (c) in paragraph (3), by repealing "Official Receiver" and substituting "provisional trustee".

#### **70. Accounts**

Rule 182 is amended -

- (a) by repealing "Official Receiver," where it twice appears and substituting "trustee,";
- (b) in the English text, by repealing "Official Receiver's" and substituting "trustee's".

#### **71. Gazetting notices**

Rule 184(2) is repealed.

**72. Re-gazetting**

Rule 185 is amended by adding ", as the case may be," after "trustee".

**73. Record of minutes, etc.**

Rule 187 is amended by repealing "Official Receiver until a trustee is appointed, and thereafter the trustee," and substituting "trustee".

**74. Cash book**

Rule 188 is amended by repealing "Official Receiver until a trustee is appointed, and thereafter the trustee," and substituting "trustee".

**75. Official Receiver's audit of trustee's accounts**

Rule 191(1) and (2) is repealed.

**76. Affidavit of no receipts**

Rule 193 is repealed.

**77. Transitional and savings provisions**

(1) Notwithstanding anything contained in these Rules, the amendments effected under these Rules shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if these Rules had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

#### **Explanatory Note**

The purpose of these Rules is to make amendments to the Bankruptcy Rules (Cap. 6 sub. leg. A) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in bankruptcy cases, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005);
- (b) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in rule 122U of the principal Rules;
- (c) correct certain minor mistakes.

**BANKRUPTCY (FORMS) (AMENDMENT) RULES 2007**

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## **BANKRUPTCY (FORMS) (AMENDMENT) RULES 2007**

(Made by the Chief Justice under section 113 of the  
Bankruptcy Ordinance (Cap. 6) subject to the  
approval of the Legislative Council)

### **1. Commencement**

These Rules shall come into operation on the day  
appointed for the commencement of the Bankruptcy (Amendment)  
Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32  
of that Ordinance).

### **2. Forms**

The Schedule to the Bankruptcy (Forms) Rules (Cap. 6 sub.  
leg. B) is amended -

(a) in the Index of Forms -

- (i) in the English text, under the heading  
"**Bankruptcy Order:**", by repealing  
"paper" and substituting "newspaper";
- (ii) by repealing "**Interim receiver:**" and  
substituting "**Interim trustee:**";
- (iii) under the heading "**Public  
examination:**" -
  - (A) by adding "or trustee" after  
"Official Receiver";
  - (B) in the English text, by  
repealing "paper" and

substituting "newspaper";

(b) in Form 13 -

(i) in the heading, by repealing

"RECEIVER" and substituting "TRUSTEE";

(ii) by repealing "receiver" where it

twice appears and substituting

"trustee";

(iii) by repealing "receiver" and

substituting "*interim trustee*";

(c) in Form 19, by repealing "one thousand nine hundred";

(d) in Form 25 -

(i) by repealing "[s. 5; rules 69, 75]"

and substituting "[s. 12; rule

72A(3)]";

(ii) by repealing "is hereby constituted

receiver" and substituting "hereby

becomes the provisional trustee";

(iii) in the Note -

(A) by repealing "*immediately*";

(B) by repealing everything after

"*attend the*" and substituting

"*trustee at such time and place*

*as the trustee may specify.*";

(e) in Form 26 -

(i) by repealing "[s. 5" and substituting

"[ss. 12, 72A(3)";

(ii) by repealing "is hereby constituted receiver" and substituting "hereby becomes the provisional trustee";

(iii) in the Note -

(A) by repealing "*immediately*";

(B) by repealing everything after "*attend the*" and substituting "*trustee at such time and place as the trustee may specify.*";

(f) in Form 27 -

(i) by repealing "[ss. 22(2), 78(1)(f)" and substituting "[s. 78(1)(f)";

(ii) in the Note, by repealing "me" and substituting "the trustee";

(g) in Form 28A, by repealing the year reference of

— "19";

(h) in Form 28B, by repealing the year reference of

— "19";

(i) in Form 29 -

(i) by repealing "[Official Receiver]" and substituting "[provisional trustee]";

(ii) by repealing "Official Receiver/" and substituting "Provisional trustee/";



- (ii) by repealing "*Official Receiver*" and substituting "*Provisional trustee*";
- (n) in Form 39 -
  - (i) by repealing "[s. 17; rules 10," and substituting "[s. 17B; rule";
  - (ii) by repealing "Official Receiver" and substituting "provisional trustee";
- (o) in Form 40 -
  - (i) by repealing "101]" and substituting "99E]";
  - (ii) by repealing "(Signed)(a)" and substituting "*Trustee.*";
  - (iii) in the margin, by repealing note (a);
- (p) in Form 43, by repealing "102]" and substituting "99E]";
- (q) in Form 44, by repealing "102]" and substituting "99E]";
- (r) in Form 46A -
  - (i) in column 2 opposite to item 4, by repealing "Official Receiver or";
  - (ii) by repealing "Official Receiver/";
  - (iii) by repealing "**Official Receiver or, if a trustee has been appointed, to the**";
  - (iv) in the Note, by repealing "Official Receiver" and substituting "trustee";

- (s) in Form 46B, by repealing "**Official Receiver or, if a trustee has been appointed, to the**";
- (t) in Form 47, by repealing -
  - "*Official Receiver*
  - or"where it twice appears;
- (u) in Form 49 -
  - (i) by repealing "Official Receiver [or trustee]" and substituting "the trustee";
  - (ii) by repealing -
    - "*Official Receiver*
    - or";
- (v) in Form 50 -
  - (i) by repealing "[s. 78(1)(d); rule 119]" and substituting "[s. 86B(1)(c)]";
  - (ii) by repealing "*or the Official Receiver*";
  - (iii) by repealing "the Official Receiver or trustee" and substituting "the trustee";
  - (iv) in the margin -
    - (A) in note (b), by repealing "Official Receiver" and substituting "trustee";

(B) in note (f), by repealing  
"Official Receiver" and  
substituting "trustee";

(C) in note (g), by repealing  
"Official Receiver or";

(w) in Form 51 -

(i) by repealing "[s. 78(1)(d); rule  
119]" and substituting "[s.  
86B(1)(c)]";

(ii) in the Notes, in paragraph 1(c), in  
the English text, by repealing  
*"arising any specified meeting"* and  
substituting *"arising from any  
specified meeting"*;

(iii) by repealing *"or the Official  
Receiver"*;

(iv) by repealing "the Official Receiver  
or trustee" and substituting "the  
trustee";

(v) in the margin -

(A) in note (b), by repealing  
"Official Receiver" and  
substituting "trustee";

(B) in note (f), by repealing  
"Official Receiver or";

(x) in Form 52 -

- (i) in the heading, by adding "OR TRUSTEE" after "RECEIVER";
  - (ii) by adding "or trustee" after "Receiver";
  - (iii) by repealing -  
    "*Official Receiver.*"  
and substituting -  
    "*Official Receiver  
or Trustee.*";
- (y) in Form 53 -
- (i) by adding "or Trustee" after "Receiver";
  - (ii) in the English text, by repealing "WARING" and substituting "WARNING";
- (z) in Form 54 -
- (i) in the heading, in the English text, by repealing "PAPER" and substituting "NEWSPAPER";
  - (ii) by repealing -  
    "*Official Receiver.*"  
and substituting -  
    "*Official Receiver  
or Trustee.*";
- (za) in Form 55, by adding "or trustee" after "Receiver";
- (zb) in Form 59, by adding "or trustee" after

"Receiver";

(zc) in Form 62 -

(i) by repealing "19(8)]" and  
substituting "19]";

(ii) by repealing "Official Receiver or  
the";

(zd) in Form 79 -

(i) by repealing "[rule" and substituting  
"[s. 33; rule";

(ii) by adding "/trustee (a)" after  
"Receiver";

(iii) in the margin opposite to the first  
paragraph, by adding -

"(a) Delete as appropriate.";

(ze) in Form 80 -

(i) by adding "/trustee (a)" after  
"Receiver";

(ii) in the margin opposite to the first  
paragraph, by adding -

"(a) Delete as appropriate.";

(zf) in Form 96 -

(i) by repealing "[the trustee of the  
property of the said bankrupt]" and  
substituting "/the trustee of the  
property of the said bankrupt (a)";

(ii) in the margin opposite to the first

paragraph, by adding -

"(a) Delete as appropriate.";

(zg) in Form 112, in the Note, by repealing

"Receiver," and substituting "Receiver or trustee,";

(zh) by repealing Form 137 and substituting -

"FORM 137

[s. 94;  
rule 169]

STATEMENT TO ACCOMPANY APPLICATION FOR RELEASE

(Title.)

Statement showing the position of estate at the date  
of application for release

\$ \$

**Receipts**

- Cash found
- Bank balance
- Refund of utility deposits
- Receipts for termination of insurance policies
- Proceeds from Court
- Proceeds of sale
- Book debts collected
- Payment by debtor/bankrupt
- Others

\_\_\_\_\_

NET REALIZATIONS

Money paid by third party  
Less: Refund

\_\_\_\_\_

Petitioner's deposit  
Less: Refund

\_\_\_\_\_





Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

### **Explanatory Note**

The purposes of these Rules are to make amendments to the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in bankruptcy cases as reflected in the various forms, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005);
- (b) update Form 137 of the principal Rules to reflect current practice;
- (c) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in Form 142 of the principal Rules; and
- (d) remove references to the year "19" (however expressed) in the forms of the principal Rules.

**BANKRUPTCY (FEES AND PERCENTAGES)(AMENDMENT) ORDER 2007**

(Made by the Chief Justice under section 114 of the  
Bankruptcy Ordinance (Cap. 6) subject to the  
approval of the Legislative Council)

**1. Commencement**

This Order shall come into operation on the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005)(except sections 1, 12, 19 and 32 of that Ordinance).

**2. Schedule amended**

The Schedule to the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended -

(a) in Table A -

(i) by repealing item 3 and  
substituting -

"3. Bankruptcy petition ..... 1,045.00";

This fee includes any  
fee on answering a  
petition or setting down  
for hearing.

(ii) by repealing item 5 and substituting -

"5. Petition under section

112 ..... 1,045.00";

This fee includes any  
fee on answering a  
petition or setting down  
for hearing.

(iii) in item 21, in the English text, by  
repealing "furnishing" and  
substituting "providing";

(b) in Table B -

(i) in paragraph 1, by repealing  
"receiver, receiver" and substituting  
"trustee";

(ii) in paragraph 4, by repealing  
"receiver" and substituting "trustee";

(iii) in paragraph 9 -

(A) in subparagraph (a), by  
repealing "78(3)" and  
substituting "86B(2)";

(B) in subparagraph (b), by  
repealing "sends his accounts to  
the Official Receiver under  
section 93(1)" and substituting  
"provides his accounts to the  
Official Receiver under section  
93(1A)".

**3. Transitional and savings provisions**

(1) Notwithstanding anything contained in this Order, the amendments effected under this Order shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if this Order had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

**Explanatory Note**

The purpose of this Order is to make amendments to the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in relation to fees and percentages to

be charged for in bankruptcy cases,  
consequential to the enactment of the  
Bankruptcy (Amendment) Ordinance 2005 (18 of  
2005); and

- (b) clarify the fees for a bankruptcy petition or  
petition for a small bankruptcy to be inclusive  
of any fee on answering a petition or setting  
down for hearing.

**PROOF OF DEBTS (AMENDMENT) RULES 2007**

(Made by the Chief Justice under section 36 of the  
Bankruptcy Ordinance (Cap. 6) subject to the  
approval of the Legislative Council)

**1. Commencement**

These Rules shall come into operation on the day  
appointed for the commencement of the Bankruptcy (Amendment)  
Ordinance 2005 (18 of 2005)(except sections 1, 12, 19 and 32  
of that Ordinance).

**2. Rules amended**

The Proof of Debts Rules (Cap. 6 sub. leg. E) are amended -

- (a) in rule 2, by repealing "Official Receiver or,  
if a trustee has been appointed, to the";
- (b) in rule 4(3), by repealing "Official Receiver  
or the";
- (c) in rule 5 -
  - (i) in paragraph (1), by repealing  
"Official Receiver or the trustee, as  
the case may be," and substituting  
"trustee";
  - (ii) in paragraph (2), by repealing "the  
Official Receiver, an assistant  
official receiver or";
- (d) in rule 5A, by repealing "Official Receiver or,

where a trustee has been appointed, the trustee," and substituting "trustee";

(e) in rule 10, by repealing "Official Receiver or";

(f) in rule 20, by repealing "Supreme" and substituting "High";

(g) in rule 24, by repealing "Official Receiver or";

(h) by repealing rule 26.

### **3. Transitional and savings**

#### **provisions**

(1) Notwithstanding anything contained in these Rules, the amendments effected under these Rules shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if these Rules had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

### **Explanatory Note**

The main purpose of these Rules is to make amendments to the Proof of Debts Rules (Cap. 6 sub. leg. E) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in relation to proof of debts in bankruptcy cases, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005); and
- (b) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in rule 20 of the principal Rules.

## **Financial and Civil Service Implications**

Private-sector insolvency practitioners (“PIPs”) appointed by the Official Receiver’s Office (“ORO”) to deal with outsourced cases will be paid from deposits given by bankrupts and any remaining assets of the bankrupts’ estates. Under Rule 52 of the Bankruptcy Rules (proposed to be amended in the Bankruptcy (Amendment) Rules 2007), the ORO will, after deducting the costs and disbursements incurred by the ORO, apply the balance of such deposits in accordance with section 37(1) of the BO (as amended under the Bankruptcy (Amendment) Ordinance 2005), and thus the PIPs in question shall receive their remunerations accordingly. No additional resources are required to meet the remunerations for the PIPs.

2. With bankruptcy cases being outsourced to PIPs, the ORO can redeploy more resources to enhance its role as a regulator in the insolvency regime. The outsourcing henceforth eases the otherwise ever-mounting administrative burden of the ORO and reduces the demand for additional staff to cope with the enhanced service. The staffing level of the ORO will remain broadly at the current level after the outsourcing exercise.

## **Economic Implications**

3. The Amendment Rules/Order are essential to the implementation of the Bankruptcy (Amendment) Ordinance 2005 to enable PIPs to provide trusteeship service in summary bankruptcy cases. This represents new business opportunities to qualified professionals. It will also raise efficiency in dealing with such cases. This will in turn make our bankruptcy law more business-friendly, and ensure that Hong Kong continues to be provided with the commercial legal infrastructure commensurate with its status as a major international commercial centre.