

立法會
Legislative Council

LC Paper No. LS 73/00-01

**Paper for the House Committee Meeting of the
Legislative Council
on 16 March 2001**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 9 March 2001**

Date of Tabling in LegCo : 14 March 2001

Amendment to be made by : 4 April 2001 (or 25 April 2001 if extended by resolution)

**Public Health and Municipal Services Ordinance (Cap. 132)
Designation of Libraries Order 2001 (L.N. 62)**

**Public Health and Municipal Services Ordinance (Cap. 132)
Public Health and Municipal Services Ordinance (Civic Centres) (Amendment of Thirteenth Schedule) Order 2001 (L.N. 63)**

The Designation of Libraries Order 2001 (L.N. 62) designates the Hong Kong Central Library (including the footbridge connected thereto and the associated structures of the footbridge but excluding the Lecture Theatre and the Exhibition Gallery) at 66 Causeway Road, Causeway Bay, Hong Kong as a library.

L.N. 63 sets aside the Lecture Theatre and the Exhibition Gallery of the Hong Kong Central Library at 66 Causeway Road, Causeway Bay, Hong Kong as a civic centre and makes consequential amendment to the Thirteenth Schedule to the Public Health and Municipal Services Ordinance (Cap. 132).

The effect of the two Orders is to vest the management and control of the said library and the said civic centre in the Director of Leisure and Cultural Services.

Audit Ordinance (Cap. 122)

Audit Ordinance (Amendment of Schedule 1) Notice 2001

(L.N. 64)

Section 8 (1) of the Audit Ordinance (Cap. 122) provides that the Director of Audit shall examine, inquire into and audit the accounts, statements and records specified in Column 2 of Schedule 1 of the Ordinance. This Notice adds the Official Receiver in Voluntary Arrangement Account operated by the Official Receiver under sections 2 (definition of "nominee") and 20H(1)(a)(ii) of the Bankruptcy Ordinance (Cap. 6) and rules 122C(2)(i) and 122D(3) and (4) of the Bankruptcy Rules (Cap. 6 sub. leg.) to that Schedule.

We have sought clarifications from the Administration on the background and the statutory provisions referred to in this Notice (please see Annex). According to the Administration, there is no reference to "Voluntary Arrangement Account" in the Bankruptcy Ordinance. The Official Receiver would get involved in handling funds under an Individual Voluntary Arrangement (and therefore subject to audit by the Director of Audit) if -

- (a) he is named as the nominee (section 2 of the Bankruptcy Ordinance);
- (b) he accepts the appointment as such nominee pursuant to Bankruptcy Rules 122D(3) & (4); and
- (c) the proposal made by the debtor which by virtue of Bankruptcy Rule 122C(2)(i) must contain a provision setting out the manner as to how the funds held for the purposes of the voluntary arrangement should be banked, invested or otherwise dealt with pending distribution to creditors, is approved by the creditors and takes effect pursuant to section 20H(1).

According to the Administration, it is the combined effect of the above quoted sections and rules in the Bankruptcy Ordinance which empowers the Official Receiver when acting as nominee under an approved voluntary arrangement to operate funds in the voluntary arrangement.

This Notice comes into effect on the date of gazettal i.e. on 9 March 2001.

Factories and Industrial Undertakings Ordinance (Cap. 59)
Factories and Industrial Undertakings Ordinance (Cap. 59) (Appointed Day
under Section 6BA(17)) Notice (L.N. 65)

The Secretary for Education and Manpower appoints 1 May 2001 for the purposes of section 6BA(5), (7) and (8) of the Factories and Industrial Undertakings Ordinance (Cap. 59). As from that date onwards, every proprietor of a relevant industrial undertaking (construction work and container handling) shall not employ a person who has not been issued with a certificate in respect of his attendance at a recognized safety training course. Every relevant employee of the relevant industrial undertaking has to carry the certificate with him while at work at the undertaking.

Encl.

Prepared by

Ho Ying-chu, Anita
Assistant Legal Adviser
Legislative Council Secretariat
15 March 2001

LS/S/21/00-01

Annex

LS/S/21/00-01
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Secretary for Treasury
(Attention: Mr. Wilson CHAN,
Assistant Secretary(Tsy)(E)1)
4/F Main and East Wings
East Wing, Central Government Offices
Hong Kong

13 March 2001

BY FAX
Fax No. : 2869 4531
Total no. of page(s) : 1

Dear Mr. Chan,

**Audit Ordinance (Amendment of Schedule 1)
Notice 2001 (L.N. 64 of 2001)**

I am scrutinizing the above subsidiary legislation gazetted on 9 March 2001 and would like to seek your clarifications on the following:

2. This Notice refers to the Voluntary Arrangement Account by the Official Receiver. Sections 2 and 20H(1)(a)(ii) of the Bankruptcy Ordinance and rules 122C(2)(I) and 122D(3) and (4) of the Bankruptcy Rules are cited but none of the provisions refer to the Voluntary Arrangement Account direct and the connection of these provisions are not clear. Could you please elaborate on how these provisions are relevant to the Voluntary Arrangement Account?
3. The relevant amendment to the Bankruptcy Ordinance was passed in 1996 and took effect in mid-1998 but this Notice only takes effect as from the date of Gazettal i.e. 9 March 2001. Meantime, has there been any Voluntary Arrangement Account audited by the Director of Audit?
4. Since a report has to be submitted to the House Committee on 16 March 2001, your early reply in Chinese and English before that date is most appreciated.

Yours sincerely,

(Anita Ho)
Assistant Legal Adviser

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Annex

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15 March 2001

Miss Anita Ho
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Central
Hong Kong

Dear Miss Ho,

**Audit Ordinance (Amendment of Schedule 1)
Notice 2001 (L.N. 64 of 2001)**

Thank you for your letter dated 13 March 2001.

For background, the voluntary arrangement (VA) was introduced in April 1998 following the enactment of the Bankruptcy (Amendment) Ordinance. This allows a debtor to propose to his creditors a voluntary arrangement for repayment of debts, instead of going bankrupt. The Official Receiver in VA Account was created by the Official Receiver to handle the voluntary arrangement transactions.

You are right, in your paragraph 2, that there is no direct reference to the VA Account in the Bankruptcy Ordinance. However, the Official Receiver is, from time to time, involved in handling funds under a VA when if, and only if,

- (a) he is named as the nominee under Section 2 of the Bankruptcy Ordinance which expressly provides that the Official Receiver or some other person whom the court considers suitable can act as a nominee;

- (b) he accepts the appointment as such nominee pursuant to Bankruptcy Rules 122D(3) & (4); and
- (c) the proposal made by the debtor, which by virtue of Bankruptcy Rule 122C(2)(i) must contain a provision setting out the manner as to how the funds held for the purposes of the voluntary arrangement should be banked, invested or otherwise dealt with pending distribute to creditors, is approved by the creditors and takes effect pursuant to Section 20H(1).

It is the combined effect of the above quoted Sections and Rules in the Bankruptcy Ordinance which empowers the Official Receiver when acting as nominee under an approved voluntary arrangement to operate funds in the voluntary arrangement.

For clarity of understanding, it is relevant to point out that before the enactment of the Statute Law (Miscellaneous Provisions) Ordinance (Ord. No. 32 of 2000) on 9 June 2000, moneys accounted for in the books or records of account of the Official Receiver were deemed as “public moneys” under the former section 2 (definition of “public moneys”) of the Audit Ordinance. Therefore, under the former section 8(1) of the Audit Ordinance, the Director of Audit had legal backing to audit the VA Account (being moneys accounted for in the books of the Official Receiver). The first set of financial statements of the VA Account for the year ended 31 March 1999 was audited and certified by the Director of Audit in February 2000 under the former section 8(1) of the Audit Ordinance (Cap. 122).

However, upon the enactment of the Statute Law (Miscellaneous Provisions) Ordinance on 9 June 2000, the definition of “public moneys” in section 2 of the Audit Ordinance was amended to exclude those funds which are not public money in the ordinary sense of the word. Therefore, the Director of Audit no longer has the legal backing for auditing the VA Account.

On the specific question raised in your paragraph 3, I can confirm that the Director of Audit has not certified any VA Account (i.e. for the year ended 31 March 2000) since the enactment of the Statute Law (Miscellaneous

Provisions) Ordinance. The Director of Audit will certify the VA Account for the year ended 31 March 2000 after the completion of all necessary legislative amendment procedures.

Yours sincerely,

(Wilson Chan)
for Secretary for the Treasury

