

Bills Committee on Bankruptcy (Amendment) Bill 2004
Seventh meeting on 21 April 2005

List of follow-up actions

Proposed tendering scheme for outsourcing summary bankruptcy cases to private-sector insolvency practitioners (PIPs)

- (a) A sample of the tender document for outsourcing summary bankruptcy cases***
- (b) Detailed proposals for setting out in subsidiary legislation the basic qualification criteria for appointment as provisional trustees or trustees for summary bankruptcy cases***

In the light of the views expressed by relevant stakeholders and the Bills Committee, we are now consulting the Law Draftsman and finalizing the proposals for setting out the basic qualification criteria in subsidiary legislation and the detailed qualification criteria in the tender document. We intend to present the proposals to the Bills Committee later this month.

2. As the provisions of the Bankruptcy (Amendment) Bill 2004 (“the Bill”) have not been finalized, we are not yet in a position to prepare the tender document for outsourcing summary bankruptcy cases. Our current plan is that the tender document should be similar to the one for outsourcing summary liquidation cases, a copy of which is at Annex I.

- (c) The Official Receiver’s Office’s internal guidelines for handling summary bankruptcy cases.***

3. A copy of the internal guidelines of the Official Receiver’s Office (ORO) for handling debtor-petition summary bankruptcy cases will be sent to Members separately.

Clause 11 – proposed section 37(1) of the Bankruptcy Ordinance:

- (a) ***Justifications for according a higher priority to the Official Receiver’s remuneration, commissions, percentages and charges than the remuneration and necessary disbursements of PIPs in outsourced summary bankruptcy cases;***

4. Existing section 37(1) of the Bankruptcy Ordinance (“BO”) provides for the order of priority for payments to be made from the assets of bankrupts. It applies to all bankruptcy cases, including both non-summary and summary cases. It is now proposed in the Bill that the order of priority in section 37(1) should be amended to follow the order in the existing Rule 179 of the Companies (Winding Up) Rules for payments in liquidation cases. Under the proposed section 37(1), a higher priority is accorded to the remuneration of, fees, commissions, percentages and charges payable to (see paragraph 8 below), and costs, charges and expenses incurred or authorized by, the ORO than the remuneration and expenses of PIPs acting as trustees.

5. There are mainly two reasons for such treatment of ORO’s fees, and expenses etc under the proposed section 37(1), namely consistency and multiple roles and functions of the ORO.

Consistency

6. First, the proposed treatment is consistent with the existing treatment under the existing Rule 179 of the Companies (Winding Up) Rules for payments in liquidation cases, which is applicable to both non-summary and summary cases (whether outsourced or not). This Rule has been operating smoothly and is considered to have struck a proper balance among the “conflicting” interests of relevant stakeholders. There is every good reason to adopt the same approach in bankruptcy cases.

Multiple roles and functions of the ORO

7. Second, the proposed treatment is made in recognition of the ORO’s multiple roles and duties under the BO. The ORO has a supervisory role (e.g. in examining annual statement of proceedings from trustees under section 89 and receiving and auditing the accounts of trustee under section 93) and another role of administering the bankrupt’s estate while acting as trustee in bankruptcy. The ORO also has many duties under the BO for which PIPs do not have, e.g. maintaining bankruptcy records which are available for search by members of the public, advertising bankruptcy orders, acting as

receivers, and as trustees in the event of vacancy etc. Unlike PIPs, the ORO also acts as the trustee in bankruptcy of the last resort, in order to ensure the smooth running of the insolvency regime. In view of these multiple roles and duties of the ORO, it is considered appropriate to accord a higher priority to the ORO's fees, and expenses etc.

- (b) ***Suggestion of recasting the proposed subsection (1)(a) of section 37 to the effect that only the necessary fees and charges incurred by the Official Receiver (OR) in handling outsourced summary bankruptcy cases would be accorded higher priority, and to review whether the commissions and percentages payable to the OR should be included in the proposed subsection (1)(a)***

8. Existing section 114 of the Bankruptcy Ordinance provides that the Chief Justice may, with the approval of the Legislative Council, by order prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Ordinance. Under this section, the Chief Justice has made the Bankruptcy (Fees and Percentages) Order ("Order") which sets out all the fees and percentages to be charged for proceedings in bankruptcy. "Remuneration of, fees, commissions, percentages and charges payable to" the OR referred to in the proposed section 37(1)(a) mean those fees, charges and percentages set out in the Order payable to the OR, and their levels are generally set on the basis of full cost-recovery. In other words, "remuneration", "commissions" and "percentages" are indeed fees but not profits made by the ORO in the administration of bankruptcy cases.

9. In any case, noting Members' views, we will give further thought to deleting the words "remuneration" and "commissions" under the proposed section 37(1)(a).

- (c) ***Concern about the lack of assurance for PIPs that they would be paid their remuneration and would recover their necessary disbursements***

10. In our earlier paper "Third meeting on 11 January 2005 – Responses to List of Follow-up Actions" (LC Paper No. CB(1)925/04-05(02)), we have set out the likely fees and expenses etc. charged by the ORO in a typical bankruptcy case that would be outsourced. The total amount is estimated to be in the range of \$2,000 to \$3,000. Therefore, the sum available to the PIPs for their remuneration and expenses, even without additional assets

realized and without income contribution, would be in the range of \$5,650 and \$6,650. The expenses of the PIPs are estimated to be in the range of \$900-\$1,500 and the sum available for the PIPs remuneration is thus estimated to be between \$4,150 and \$5,750 (see paragraphs B6-7 in LC Paper No. CB(1)925/04-05(02)). In the unlikely event that the balance of deposit i.e. after deducting the relevant fee and expenses incurred by the ORO from the deposit, is less than the likely amount of disbursements plus the remuneration tendered by the PIPs, the ORO will **not** outsource such cases (see paragraph A3 in LC Paper No. CB(1)925/04-05(02)). We consider that the scenario of the PIPs not being paid their remuneration nor being able to recover their necessary expenses is very unlikely. If such event occurred, such a risk would be borne by PIPs as part of their commercial decision on whether or not to take up the outsourced work. We would also like to re-iterate that the administration of summary bankruptcy cases by PIPs is believed to be viable because of the economies of scale brought by the batching of cases for outsourcing.

Amendments to the Bill

11. An updated mark-up version (as at 6 May 2005) of the relevant provisions to which we would like to propose amendments, taking into account views expressed at previous Bills Committee meetings is at Annex II. The wordings are not final and are subject to further consideration by the Law Draftsman. As the Bills Committee continues the clause-by-clause scrutiny of the Bill, more changes may be proposed.

Financial Services and Treasury Bureau
Official Receiver's Office
May 2005

THE GOVERNMENT OF
THE HONG KONG SPECIAL ADMINISTRATIVE REGION
OFFICIAL RECEIVER'S OFFICE
TENDER FOR SERVICES

Tender Ref.: OR/T/2004
File Ref.: ES/7/18/3

TENDER FORM

Contract No. _____

LODGING OF TENDER

To be acceptable as a tender, this form, properly completed in duplicate and enclosed in a sealed plain envelope marked Tender for Taking up of appointment as provisional liquidators under s.194(1A) of the Companies Ordinance and addressed to the Chairman, Government Logistics Department Tender Opening Committee, in duplicate must be deposited in the Government Logistics Department Tender Box situated at Ground Floor, North Point Government Offices, 333 Java Road, North Point, Hong Kong before 12:00 noon (time) on 28 January 2004 (date). Late tenders will not be accepted.

INTERPRETATION

PART 1 — TERMS OF TENDER

PART 2 — GENERAL CONDITIONS OF CONTRACT

Details on Interpretation, Terms of Tender and General Conditions of Contract used for tendering for provision of services to the Government of the Hong Kong Special Administrative Region are contained in the Standard Tender Terms and General Conditions of Contract issued by the tender issuing department and any subsequent addendum issued.

The above documents are deposited with tenderers upon successful registration with the tender issuing departments for receiving tender invitations. Copies can also be obtained from the following:

- (a) ~~The Procurement Division, Government Logistics Department
North Point Government Offices, 9/F
333 Java Road, North Point, Hong Kong
(Internet Homepage-<http://www.gld.gov.hk>)~~
- (b) The tender issuing government departments
(name of department and address as shown in tender documents)
- (c) The Central & Western District Office Public Enquiry Service Centre
Harbour Building, G/F, 38 Pier Road, Central, Hong Kong
- (d) ~~The Yau Tsim Mong District Office Public Enquiry Service Centre
Ming Kok Government Offices, G/F, 28 Leun Wan Street, Kowloon~~

Official Receiver's Office
10th Floor
Queensway Government Offices
66 Queensway
Hong Kong

PART 3 — SPECIAL CONDITIONS OF CONTRACT

Attached to this tender (if any).

Dated this 19th day of December 2003.

*Insert appropriate department.

(Steve TSOI)

Government Representative

PART 4 — OFFER TO BE BOUND

1. Having read the Terms of Tender, the General Conditions of Contract and (if any) the Special Conditions of Contract set out in Parts 1-3 hereof, I/we agree to be bound by the terms and conditions as stipulated therein.
2. I/We do hereby agree to carry out the whole (or any part) of the Services mentioned in the attached Schedule which may, during the Contract period or any extension thereof be required, by or on behalf of the Government Representative to be carried out, at the charges quoted by me/us in the said Schedule free of all other charges, subject to and in accordance with the Terms of Tender, the General Conditions of Contract and (if any) the Special Conditions of Contract.
3. ~~I/We understand and agree that in the event that I/we withdraw or revoke the tender hereby submitted within the period stipulated in clause 3.4 of the Terms of Tender or refuse or fail to carry out all or any of the Services provided for in the Contract upon acceptance of the tender hereby submitted, the sum deposited will be absolutely forfeited to the Government in accordance with the Terms of Tender and the Special Conditions set out in Parts 1 & 2 hereof.~~

4. I/We also certify that the particulars given by me/us below, are correct :

(a) The number of my/our/the Company's Business Registration Certificate
is

(b) The date of expiry of my/our/the Company's Business Registration Certificate
is

(c) I am/We are/The Company is covered by an Employees' Compensation Insurance Policy, the particulars of which are as follows :-

Policy No.

Name of Insurance Company

Period covered by the Policy is from

to

Brief particulars of the cover provided and any special conditions are as follows :
.....
.....

5. I am/We are duly authorised to bind the said Company hereafter mentioned by my/our signature(s).
..... or

I am a partner/We are partners in the firm hereinafter mentioned and duly authorised to bind the said firm and the partners therein for the time being.

6. The name of the Company/Firm is

7. The registered office of the Company is situated at (English and Chinese address)
.....

..... Hong Kong.

..... or
The names and residential addresses of the partners of the firm are as follows :-

Telephone Number :

Fax Number :

8. Name(s) and address(es) of person(s) signing :
.....
.....

Signature(s) :
.....
.....

Dated this day of 20

Note (i) All the particulars required above must be provided.
(ii) Strike out clearly alternatives which are not applicable.

PART 5 MEMORANDUM OF ACCEPTANCE

On behalf of the Government of the Hong Kong Special Administrative Region,

I
(Name and position of officer)

accept your offer upon the terms of this Contract so far as such offer relates to the following item(s) in the Schedule :
.....
.....

Dated this day of 20

Signed by the said

in the presence of :

Official Receiver's Office
The Government of the Hong Kong Special Administrative Region

**Tender for Taking up of Appointment as Provisional Liquidators under
Section 194(1A) of the Companies Ordinance**

Terms of Tender (supplement)

(1) Tender Documents

These Tender documents identified as ORT/2004 consist of TWO (2) **complete sets of documents**, comprising:

- a. Tender Form (G.F. 231 *with Part 4 completed*)
- b. Interpretation (page 1-3 Annex 1)
- c. Terms of Tender (page 4-6 Annex 1)
- d. Schedule [Part I- Work Specification] (page 7-8 Annex 1)
- e. Schedule [Part II- Qualification Criteria] (page 9 Annex 1)
- f. Schedule [Part III- Special Conditions] (page 10-15 Annex 1)
- g. Schedule [Part IV- General Conditions] (page 16-17 Annex 1)
- h. Quotation Sheet (page 18 Annex 1)
- i. Declaration on Details of the Tenderer (Forms A & B)

- (2) The tender and all accompanying documents** must be submitted in the manner stipulated under 'Lodging of Tender' on the front page of the Tender Form GF.231.

Official Receiver's Office
The Government of the Hong Kong Special Administrative Region

**TENDER FOR TAKING UP OF APPOINTMENT
AS PROVISIONAL LIQUIDATOR UNDER
SECTION 194(1A) OF THE COMPANIES ORDINANCE**

INTERPRETATION

In these Tender documents,

- | | |
|---------------------|--|
| "Allocation Period" | means the period commencing from the date of acceptance of the offer referred to in Clause 5(a) of this Tender and ending on 31 March 2006. |
| "Appointment Taker" | means the person, who may be a partner, director or employee of the Tenderer, who will take up the appointment as joint and several provisional liquidators and/or liquidators in a Qualified Case, in accordance with Part I of the Schedule. |
| "Contract" | means the contract referred to in Clause 5(a) of the Terms of Tender and includes the Terms of Tender, the Schedule, the Quotation Sheet and the Declaration on Details of the Tenderer. |
| "Firm" | means the Tenderer whose Tender is accepted. |
| "Government" | means the Government of the Hong Kong SAR. |
| "Official Receiver" | means the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6). |

"Panel A Scheme"	means the administrative panel of insolvency practitioners operated by the Official Receiver for the appointment of firms of accountants as liquidators and special managers in compulsory winding-up cases estimated to have assets exceeding \$200,000 in value.
"Professional Person"	means a person who meets the requirements under Clause 1(ii) of Part II of the Schedule.
"Qualified Case"	means the liquidation case of a company compulsorily winding up by the court and where Section 194(1A) of the Companies Ordinance (Cap. 32) applies.
"Recognised Professional"	means a person who is a registered member of one or more of the Recognised Professions.
"Recognised Professions"	mean the accounting profession, the legal profession, the company secretarial profession and any other profession which the Official Receiver may recognise in writing as Recognised Profession for the purpose of this Tender.
"Required Subsidy"	means the amount of Subsidy stated by a Tenderer in its Tender as the maximum amount of Subsidy it will demand from the Government for the performance and discharge of the Services when Appointment Takers of the Tenderer are appointed as joint and several provisional liquidators in a Qualified Case by the Official Receiver, and as liquidators thereafter under Section 227F of the Companies Ordinance.
"Schedule"	means the schedule attached to this Tender and includes the

Quotation Sheet.

- "Services" means the work referred to in Part I of the Schedule.
- "Subsidy" means the subsidy payable by the Government in respect a Qualified Case to meet the Appointment Takers' remuneration and fees for the performance and discharge by them of the Services when the net realised assets of the wound up company is insufficient for that purpose.
- "Tender" means the tender hereunder.
- "Tenderer" means the firm or the company who meets the criteria referred to in Part II of the Schedule, and who submits a tender in accordance with the terms and conditions of this Tender.

If the context permits or requests, the singular number shall include the plural, the masculine and neuter gender shall include the others of them.

TERMS OF TENDER

1. Invitation to tender

Tenders are invited for the taking up of appointments as joint and several provisional liquidators in Qualified Cases in two separate groups, namely, "Group A" and "Group B", subject to and in accordance with the terms and conditions in these Terms of Tender, the Schedule and Quotation Sheet attached to this Tender.

2. Tender

- (a) This Tender relates to the appointment of the Firm's Appointment Takers as the joint and several provisional liquidators in place of the Official Receiver in accordance with Section 194(1A) of the Companies Ordinance in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period.
- (b) The maximum number of Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period under Group A and Group B will be as stated in Special Condition 3 in Part III of the Schedule.
- (c) A Tenderer may only tender for Qualified Cases either under Group A or Group B. A tenderer who is not a registered member of the "Panel A Scheme" or who has not, prior to this Tender, undertaken any insolvency cases contracted out by the Official Receiver's Office under any tender, may only bid under Group B. Each Tenderer must state in the Quotation Sheet under which group his Tender was submitted.
- (d) The Tenders will be considered for acceptance on a group-by-group basis.
- (e) The Schedule issued with the Tender must not be altered by the Tenderer, and the Tenderer must not put in additional terms and conditions of his own or make his tender subject to any term or condition not being a term or condition in these Terms of Tender and the Schedule attached to this Tender. Figures should not be altered or erased; any alternation should be effected by striking through the

incorrect figures and inserting the correct figures in ink above the original figures.

All such amendments should be initialled by the Tenderer in ink.

- (f) Tenders are to be submitted in duplicate and are to be completed in ink or typescript; tenders not so completed may not be considered.
- (g) Every Tenderer must complete and submit with his Tender the Declaration on Details of the Tenderer.
- (h) Tenders may not be considered if complete information is not given with the Tender or if any particulars and data asked for in the Schedule are not furnished in full.
- (i) Each Tenderer shall not submit more than one tender in this Tender.

3. Tenders to Remain Open

- (a) Tenders shall remain open for 60 days after the closing date of the Tender.
- (b) Tender closing time in case of Typhoon/Rainstorm:

In case a rainstorm black warning or typhoon signal No. 8 or above is hoisted between 7:00 a.m. and 9:00 a.m., the tender closing time will be extended to 9:00 a.m. on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

4. Required Subsidy

The Required Subsidy should be shown in Hong Kong Dollars.

Tenderers should make certain that the Required Subsidy is correct and final before submitting their tenders. Under no circumstances will the Government accept any request for subsidy adjustment on grounds that a mistake has been made in assessing the Required Subsidy.

5. Acceptance

- (a) The Tender, if accepted, will be concluded as a contract with the Official Receiver. The Firm will receive a letter from the Official Receiver for acceptance of the offer. Tenderers who do not receive any notification within the validity period of their offer shall assume that their offers have not been accepted.
- (b) The Official Receiver is not bound to accept the lowest or any tender. The Official Receiver expressly reserves the right to accept more than one offer in this Tender.

SCHEDULE

Part I - Work Specifications

1. The Firm's Appointment Takers shall take up the appointment as joint and several provisional liquidators in place of the Official Receiver in Qualified Cases allocated to the Firm by the Official Receiver during the Allocation Period. The Firm shall have no right to reject or to refuse to accept any such allocation. At least one of the Appointment Takers must be a partner or director of the Firm, or a person who is acceptable to the Official Receiver as a partner or director equivalent of the Firm.
2. The Firm shall keep under its direct full time employment sufficient staff resources to ensure that all Qualified Cases allocated to the Firm are handled in a professional and expeditious manner. In this regard, the Firm shall not utilize staff from other firms or companies, or to delegate the performance of any part of the Services to any person not being a person under its employment.
3. The Firm's Appointment Takers shall in respect of a Qualified Case allocated to the Firm by the Official Receiver, perform with professionally acceptable standards, all such tasks and duties as are necessary or may be required of a provisional liquidator under Section 194(1A) of the Companies Ordinance; and all such tasks and duties as are necessary or may be required under the Companies Ordinances of a liquidator appointed under Section 227F thereof (when the Appointment Takers are so appointed) and such other tasks or duties as may be imposed on them by the Official Receiver pursuant to this Contract, including but not limited to the duty to convene the meetings of creditors and contributories under Section 194(1)(b) of the Companies Ordinance if the assets of the company turn out to be more than \$200,000 in value.
4. The Firm's Appointment Takers when appointed as joint and several provisional liquidators in a Qualified Case, shall apply to the court within 3 months of the date of the winding-up order of that company for a summary procedure order pursuant to Section

227F of the Companies Ordinance unless there is evidence that the value of the asset of the company will exceed \$200,000, in which case, they shall forthwith but in any event not later than 8 weeks after the date of the winding-up order notify the Official Receiver of the same, and shall arrange to convene the meetings of creditors and contributories under Section 194(1)(b) of the Companies Ordinance.

5. The Firm's Appointment Takers appointed as joint and several provisional liquidators in a Qualified Case shall (unless the Court orders otherwise) continue to act as the company's liquidators when the summary procedure order is granted by the court under Section 227F of the Companies Ordinance, and shall perform with professionally acceptable standards, all such tasks and duties as are necessary or may be required of a liquidator under and pursuant to the provisions of the Companies Ordinance, until the completion of the case and his obtaining a release order from the court under Section 205 of the Companies Ordinance and an order for the dissolution of the company under Section 227 of the Companies Ordinance. The Firm's Appointment Takers shall still be required to deal with and complete all outstanding matters and issues arising in the Qualified Case for whatever reasons after their obtaining the release order under Section 205 of the Companies Ordinance and the order for the dissolution of the company under Section 227 of the Companies Ordinance.
6. The Recognized Professionals of the Firm shall ensure that the performance of the Firm complies in all respect with the accepted professional standards and ethical guidelines of the relevant Recognized Profession.

Part II - Qualification Criteria

A firm or a company must meet the following criteria in order to qualify as a Tenderer:

1.
 - (i) There must be in the firm or the company at least two persons who are Recognized Professionals.
 - (ii) At least one of the Recognized Professionals must be a Professional Person who must
 - (a) have at least 3 years of post-qualification experience;
 - (b) have a minimum of 300 chargeable hours ("the Qualifying Chargeable Hours") over the last 3 years:
 - i) of which, at least 150 hours must be related to insolvency work (creditors or compulsory liquidations) or receiverships [Note: a pass in the HKSA Diploma in Insolvency Programme is equivalent to 50 hours of insolvency work];
 - ii) the remaining hours may be on solvent liquidations [in which case, the chargeable hours counting towards the Qualifying Chargeable Hours would be reduced by 50%, so that two chargeable hours on solvent liquidation will be counted as one Qualifying Chargeable Hour]; and
 - iii) which must have been performed on a minimum of 4 separate winding-up cases of unconnected companies,
 - (c) be a current member of either one or more of the following professional bodies:
 - i) Hong Kong Society of Accountants,
 - ii) Law Society of Hong Kong,
 - iii) Hong Kong Institute of Company Secretaries.
2. The firm or the company must have a minimum of two Appointment Takers. At least one of the Appointment Takers must be a Professional Person.

Part III - Special Conditions

1. Total Services

The services to be performed by the Firm under this Contract shall be as specified in the Work Specification in Part I of the Schedule and shall be carried out in respect of all Qualified Cases allocated to the Firm during the Allocation Period by the Official Receiver.

2. Assignment

The Firm is strictly prohibited from assigning or otherwise transferring this Contract or any part, share or interest therein and the performance of this Contract by the Firm shall be deemed to be personal to the Firm.

3. Estimate of number of Qualified Cases to be allocated to the Firm

(a) Group A

Up to 300 in number of Qualified Cases (which may be varied by the Official Receiver solely at his discretion up by 30 percent) may be allocated to the Firm during the Allocation Period but the number of Qualified Cases allocated to the Firm per month will not be more than 25.

(b) Group B

Up to 60 in number of Qualified Cases (which may be varied by the Official Receiver solely at his discretion up by 30 percent) may be allocated to the Firm during the Allocation Period but the number of Qualified Cases allocated to the Firm per month will not be more than 4.

(c) The numbers referred to in this Special Condition are just estimates and must be regarded as being given for the Firm's information only and not as figures which the Official Receiver binds himself to adhere.

(d) If the Official Receiver accepts more than one offer in Group A and/or Group B in this Tender, he is not bound to allocate an equal number of Qualified Cases to

each Firm. A larger number of Qualified Cases may be allocated to the Firm who has tendered the lower Required Subsidy per case.

4. Security

- (a) The Firm must be covered by professional indemnity insurance to the satisfaction of the Official Receiver.
- (b) The Firm may, in respect of the Qualified Cases allocated to it, be required to give separate security to the satisfaction of the Official Receiver.

5. Quotation Sheet

Tenderers are required to complete the Quotation Sheet. Failure to do so will render their tenders invalid and disqualified.

6. Fees and Remuneration

- (a) Subject to the Official Receiver's right to scrutinize the bill (and if necessary, taxation by the Court), the Firm's Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case, shall be entitled to charge their fees and remuneration for the work they performed when acting as such provisional liquidators on a time-cost basis. The actual charge out rate per grade of staff shall in no circumstances be in excess of the rates set out by the Firm in the Quotation Sheet.
- (b) The Firm's Appointment Takers when acting as liquidators under Section 227F of the Companies Ordinance following from their appointment as joint and several provisional liquidators in a Qualified Case shall be entitled to charge such fees and remuneration as may be approved by the Court, out of the assets of the winding-up company.
- (c) If the assets of the winding-up company are insufficient to meet the Firm's Appointment Takers' fees and remuneration as provided in Special Condition 6(a) and (b) above, the shortfall will be met from the Subsidy but only to the

extent of the Required Subsidy set out by the Firm in the Quotation Sheet and only at or below the charge out rates set out by the Firm in the Quotation Sheet.

- (d) The Subsidy and the Required Subsidy shall be calculated and payable strictly on a case by case basis. Under no circumstances will such Subsidy or Required Subsidy or any balance thereof be transferred between cases.
- (e) No Subsidy will be payable in respect of any Qualified Case allocated to the Firm unless a summary procedure order under Section 227F of the Companies Ordinance is made in respect of the Qualified Case. The Firm's Appointment Takers' fees and remuneration as joint and several provisional liquidators or liquidators in a case where no summary procedure order is made under Section 227F shall be paid out of the assets of the company in accordance with the provisions of the Companies Ordinance.
- (f) Subsequent rescission of the summary procedure order made under Section 227F of the Companies Ordinance in respect of a Qualified case shall not affect any payment of Subsidy already effected unless the summary procedure order was obtained by material non-disclosure or misrepresentation to the Court.

7. Performance of the Firm

- (a) The performance of the Firm will be closely monitored by the Official Receiver in terms of the time taken to complete the case, the quality of work, and also in accordance with Sections 203 and 204 of the Companies Ordinance and other relevant provisions therein.
- (b) The Firm's Appointment Takers, in respect of a Qualified Case allocated to the Firm by the Official Receiver, are expected to complete the case by obtaining a release order from the Court under Section 205 of the Companies Ordinance in an expeditious and professional manner. If a case cannot be completed within one year of the appointment, a report is required to be submitted by them to the Official Receiver before the expiration of the first year of their appointment giving explanations as to why the case cannot be so completed.

- (c) As joint and several provisional liquidators or as liquidators in a Qualified Case, the Firm's Appointment Takers are required to submit accounts to the Official Receiver pursuant to Section 203 of the Companies Ordinance and to submit together with the first accounts under Section 203, a progress report giving details on what has been done; what needs to be done and also an indication with reasons on whether or not the case can be completed within one year of the appointment.
- (d) If the Firm or its Appointment Takers when acting as joint and several provisional liquidators in a Qualified Case or as liquidators following from its appointment as joint and several provisional liquidators in a Qualified Case:
 - (i) shall fail to carry out all or any of the Services; or
 - (ii) if the quality of the service provided in respect of the Services is considered by the Official Receiver as unsatisfactory; or
 - (iii) if there is any breach of any terms or conditions of the Contract by the Firm or its Appointment Takers, (which shall be determined solely by the Official Receiver and whose decision shall be final),

the Official Receiver may:

- (1) terminate the Contract at any time by giving 7 days notice in writing, and if the Official Receiver so terminates the Contract, he may:
 - (i) assign to another firm or firms ("the new firm") the balance of any uncompleted service in respect of any Qualified Cases allocated to the Firm of which the Firm's Appointment Takers were still the joint and several provisional liquidators at the time of the termination of the Contract, (in which case, the outgoing Firm's Appointment Takers shall forthwith at their own costs and expenses put the new firm into possession of all property of those uncompleted Qualified Cases) and/or;
 - (ii) arrange for another firm or firms to take up the appointment as provisional liquidators in Qualified Cases which, if not because of the

termination of the Contract, would be allocated to the Firm during the Allocation Period; and/or

- (2) disallow any payment from the Required Subsidy in respect of any Qualified Cases allocated to the Firm prior to the termination of the Contract.

Any deficiency in fees and remuneration and/or in the Required Subsidy and all costs and expenses arising from the termination of the Contract and/or the assignment of the balance of any uncompleted service in respect of any Qualified Cases to the new firm under this special condition shall be borne by the original Firm and its Appointment Takers and recoverable by the Official Receiver as liquidated damages.

- (e) Without prejudice to the provisions in Special Condition No. 7(d) hereof, the Official Receiver may, in those circumstances mentioned in Special Condition 7(d)(i), (ii) and (iii),
 - (1) suspend the Firm's or its Appointment Takers' right to participate in the Panel A Scheme if the Firm is a registered member of the Panel A Scheme; and/or
 - (2) disqualify the Firm or its Appointment Takers from participating in any future tender exercises called by the Official Receiver's Office for such period of time as may be determined by the Official Receiver.

8. Payment of Services

- (a) Payment of fees and remuneration shall be in accordance with Special Condition 6 and shall be paid out in the first instance from the net realised assets of the wound up company after all priority disbursements and charges have been paid as stipulated in Rule 179 of the Companies (Winding-up) Rules.
- (b) Subject to Special Condition 6, the Appointment Takers of the Firm shall as soon as possible and in any event not later than 12 weeks after their

appointment, advise the Official Receiver whether the net realised assets available are unlikely to be sufficient to fully pay his fees and remuneration. In which case, an interim payment of the Firm's time-cost charges may be paid out of the Required Subsidy to the Appointment Takers of the Firm up to a ceiling of 60 percent thereof. The application for the interim payment out of the Required Subsidy must be supported by a narrative history of the work undertaken so far together with details of the billable hours and the names and grade of staff employed on the liquidation. The balance of the Required Subsidy, if any, will be paid upon the completion of the case and the Appointment Takers obtaining a release order from the court under Section 205 of the Companies Ordinance. All claims for payment under this Special Condition shall be made in such form as the Official Receiver may prescribe. Any overpayment of the Required Subsidy shall be reimbursed to the Official Receiver.

9. Change in Qualification Status

The Firm shall inform the Official Receiver in writing immediately of any change in or any factor which may affect its qualification status. The Official Receiver reserves the right to review the Firm's qualification status in the light of any new information relevant to its qualification.

Part IV - General Conditions

1. Additional Information

- (a) At any time after receiving the tender and before acceptance, the Official Receiver may require the Tenderer to furnish additional information.
- (b) Requirements imposed under (a) above may differ as between different Tenderers.

2. Personal and other Data Provided

- (a) Tenderer's personal data provided in the Tender will be used for tender evaluation and contract award purposes. If insufficient and inaccurate information is provided, the Tender may not be considered.
- (b) Tenderer's personal data provided in the Tender may be disclosed to the parties responsible for tender evaluation in other government departments and non-government organisations.
- (c) Tenderers have the right of access and correction with respect to personal data as provided for in Sections 18 and 22 and Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the Tender.
- (d) Enquiries concerning the personal data collected by means of the Tender, including the making of access and corrections, should be addressed to Personal Data Privacy Officer of the Official Receiver's Office.

3. Consent to Disclosure

The Government shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise), without any further reference to the Tenderer, the name and address of the Tenderer and the Required Subsidy per case it stated in its Tender.

4. Completion of Tender

All Tender documents must be completed in English, signed and lodged to the Government Logistics Department Tender Box situated at G/F, North Point Government Offices, 333 Java Road, North Point, Hong Kong, no later than the closing date of the Tender. Every Tender is a formal offer by the Tenderer for the appointment of the Tenderer's Appointment Taker as provisional liquidator by the Official Receiver in Qualified cases on the terms and conditions set out in the Terms of Tender and the Schedule.

5. Notices

Any notice given under the Contract shall be in written English and deemed to be received as follows:-

- (i) Fax, on the date when sent.
- (ii) Letter, 7 days after being sent in the post postage prepaid.

6. Law and Jurisdiction

The Tender and the Contract shall be governed by and construed in accordance with the Laws of the Hong Kong SAR and the parties thereto shall submit to the jurisdiction of the courts of the Hong Kong SAR.

QUOTATION SHEET

Name of firm/company

*Tender under Group A or
Group B*

Required Subsidy per case **HKD**

*Hourly Charge out rate
per grade of staff*

*Number and grade of staff
available to perform
insolvency work*

*Signature of partner/director
authorised to sign the offer*

Date

Declaration on Details of the Tenderer

Form A

To: Official Receiver

Part 1

I. Full Name of Tenderer firm/company _____

II. Address _____

III. Shareholding details in the case of a limited company:

Number of issued shares: _____

Shareholders' information:

	<u>Name</u>	<u>Position in the Company</u>	<u>Number of shares held</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____

IV. Details of Partners/Directors in the case of a partnership/sole proprietor

	<u>Name</u>	<u>Position in the Company</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

V. Number of Recognised Professional _____

VI. Number of support staff _____

VII. Details of Appointment Takers ("AT") and Recognised Professional ("RP") [*at least two*] of the firm/company who perform insolvency work.

	<u>Name</u>	<u>Recognised professional bodies & membership No.</u>	<u>Position in firm/ company</u>	<u>Length of service with the firm/ company</u>	<u>Year of post- qualification experience</u>	<u>As AT and/or RP</u>
1.	_____	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____	_____
5.	_____	_____	_____	_____	_____	_____
6.	_____	_____	_____	_____	_____	_____
7.	_____	_____	_____	_____	_____	_____
8.	_____	_____	_____	_____	_____	_____

VIII. Each of the persons named under VII above has also completed an "Individual Experience Return" (i.e. Form B). These returns are returned together with this Form.

I declare and confirm that the information provided above is true and correct.

Signed By: _____
Partners/Director authorized to sign
on behalf of the Tenderer firm/company

Full Name of Tenderer firm/company in
Block Letters

Date: _____

Declaration on Details of the Tenderer

Form B

Individual Experience Return
for Appointment Takers (AT) and Recognized Professionals (RP)

Name of AT/RP: _____

Recognised Professional Bodies: _____

Membership Number: _____

Position in the Firm: _____

I. Details of work and hours involved

	Hours involved		
(Period to 31 December)	<u>2001</u>	<u>2002</u>	<u>2003</u>
Members' Voluntary Liquidations	_____	_____	_____
Creditors Voluntary Liquidations	_____	_____	_____
Compulsory Liquidations	_____	_____	_____
Appointment of Special Managers	_____	_____	_____
Court Appointed Receivers	_____	_____	_____
Section 228(A) Provisional Liquidators	_____	_____	_____
Receivers and Managers under Debentures	_____	_____	_____
Trustees in Bankruptcy	_____	_____	_____
Voluntary Arrangements under the Supervision of the Court	_____	_____	_____
Others (please specify)	_____	_____	_____

II. (a) Number and names of winding up
cases of unconnected Companies
conducted over the last 3 years

(b) Details of the nature of the work
performed on the above cases

I declare and confirm that the above information provided is true and correct.

Signed By: _____

Name of AT/RP

Name in Block Letters

Date: _____

**Mark-up version of those provisions
in the Bankruptcy (Amendment) Bill 2004
to which the Administration intends to propose amendments**

2. Interpretation

Section 2 of the Bankruptcy Ordinance (Cap. 6) is amended -

- (a) in the definition of “誓章”, by repealing the full stop at the end and substituting a semicolon;

- (aa) in the definition of “trustee”, by adding “subject to section 58(1B),” before “means”¹;

- (b) by adding -

““provisional trustee” (暫行受託人), in relation to a bankrupt, means -

- (a) where no person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the Official Receiver; or
- (b) where any person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the person;”.

¹ This is in response to the suggestion that the definition of “trustee” in section 2, the interpretation provision, should make reference to the new subsection (1B) of section 58.

3. Effect of bankruptcy order

Section 12 is amended -

- (a) in subsection (1), by repealing “the Official Receiver shall be thereby constituted receiver” and substituting “, the Official Receiver shall thereby become the provisional trustee”;
- (b) by adding -

“(1A) In the case of a debtor’s petition, if²
~~Where~~ the Official Receiver as the provisional trustee considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, he may at any time appoint any person as provisional trustee of the property of the bankrupt in his place.

(1B) The power of the Official Receiver to appoint a person as provisional trustee includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

² This amendment aims to reflect the policy intent that only debtor-petitioned bankruptcy cases may be outsourced.

5. Power to appoint special manager

Section 15 is amended -

- (a) in subsection (1), by repealing “to act until a trustee is appointed, and with” and substituting “, who shall have”;
- (b) by adding -

“(4) The term of office of the special manager shall last until -

- (a) in a case where a person other than the Official Receiver is appointed as provisional trustee under section 12(1A)³, the appointment; or
- (b) in any other case, ~~there is a trustee in relation to the bankrupt’s estate~~ a trustee is appointed or constituted under sections 17, 78(1)(g), 81(4), 100D, 112(4), 112A(1)(i) or paragraph 6 of Part II of Schedule 1.⁴.

³ The proposed change is in response to the discussion at the Bills Committee on 1 April 2005.

⁴ Same as footnote 3 above.

15. Vesting and transfer of property

Section 58(1) is repealed and the following substituted -

“(1) On the making of a bankruptcy order, the property of the bankrupt shall vest in the Official Receiver.

(1A) On the appointment of a person other than the Official Receiver as provisional trustee, the property shall forthwith pass to and vest in the provisional trustee appointed.

(1B) Save in sections 15(4), 17, 17A, 17B, 42(3), ~~43A, 43B, 43C~~,⁵ 58(2), 60~~(1)~~⁶, 79, 80, 81, 85, 85A, 96(1) and 112A, the provisional trustee shall, unless the context otherwise requires, be regarded as the trustee for the purposes of this Ordinance.”.

17. Powers of provisional trustee and trustee to deal with property of the bankrupt

Section 60 is amended -

- (a) by renumbering it as section 60(1);
- (b) in subsection (1) -
 - (i) by repealing “, the trustee” and substituting “, a trustee or the Official Receiver when acting as provisional trustee”;

⁵ This amendment aims to enable provisional trustees to have the same power of trustees in claiming after-acquired property and certain items of excess value under existing sections 43A, 43B and 43C of the Bankruptcy Ordinance (BO).

⁶ This amendment is consequential to the amendments made to clause 17 below.

- (ii) in paragraph (a), by repealing “Official Receiver or” and substituting “trustee or the Official Receiver when acting as provisional”;
- (c) by adding -
 - “(2) Notwithstanding any other provisions of this Ordinance but subject to subsections (3) and (4), a provisional trustee other than the Official Receiver may do all or any of the following things -
 - (a) take into his custody or under his control all the property to which the bankrupt is or appears to be entitled;
 - (b) sell or dispose of perishable goods, or any property (other than derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if such property is not immediately sold or disposed of;
 - (c) subject to section 61, do all such other things as may be necessary for protecting or

preserving the bankrupt's property;

(d) exercise any power the capacity to exercise which is vested in the provisional trustee under this Ordinance and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Ordinance⁷; and

(e) subject to section 61, do all such other things as may be necessary for administering the estate pending the appointment of a trustee.⁸

(3) A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised

⁷ This amendment aims to clarify that a provisional trustee may exercise all the powers vested in him — including monitoring the conduct of a bankrupt and ensuring that the bankrupt performs his duties. Similar provision can be found in the existing section 60(d) of the BO.

⁸ This amendment aims to clarify that a provisional trustee has powers to administer the estate — which include interviewing a bankrupt and taking possession of his property. The phrase “administering the estate” is also used in section 60(e) of the BO.

under an order of the court or with the prior approval of the Official Receiver.

(4) A provisional trustee other than the Official Receiver shall not sell or dispose of anything under subsection (2)(b) to a person who is an associate of the bankrupt, unless the sale or disposal is under an order of the court or with the prior approval of the Official Receiver.

(5) For the purposes of subsection (4), any question whether a person is an associate of another person shall be determined in accordance with section 51B as if -

- (a) that section were applicable also for the purposes of such determination; and
- (b) references to the “debtor” in that section were references to the “bankrupt” in subsection (4).

(6) The Official Receiver shall not be personally liable for any costs and charges incurred by any person as a result of any refusal to grant approval under subsection (3) or (4).”.

24. Power to appoint joint or successive trustees and provisional trustees

Section 80(1) is repealed and the following substituted -

“(1) When 2 or more persons are appointed as provisional trustees, the appointment shall state whether any act required or authorized to be done by a provisional trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the “provisional trustee”⁹ ~~shall each be regarded as a provisional trustee for the purposes of this Ordinance~~, and shall be joint tenants of the property of the bankrupt.

(1A) When 2 or more persons are appointed as trustees, the appointment shall state whether any act required or authorized to be done by a trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the “trustee”¹⁰ ~~shall each be regarded as a trustee for the purposes of this Ordinance~~, and shall be joint tenants of the property of the bankrupt.”.

28. Sections added

The following are added immediately after section 86 -

“Duties of trustee as regards the bankrupt’s conduct and estate

86A. Duties of trustee as regards the bankrupt’s conduct¹¹

⁹ Upon further review, we consider the wording used in the existing section 80(1) better reflects our policy intent.

¹⁰ See footnote (9).

¹¹ Section 86A of the Bill originally provides that it shall be the duty of a trustee to (a) report to the court on any conduct of the bankrupt that justifies the court in refusing, suspending or qualifying an order for the bankrupt’s discharge; and (b) investigate the conduct of a bankrupt, and to submit a report to the court (if the trustee is the OR) or OR (if the trustee is a person other than OR), stating whether there is reason to believe that the bankrupt has committed any act that constitutes an indictable offence under the BO. On the former duty, new section 86A(1) aims to clarify that the trustee should also investigate the conduct of the bankrupt (a similar duty is also found in existing section 77 of the BO). As regards the latter duty, the existing

(1) As regards the conduct of a bankrupt, it shall be the duty of the trustee to investigate the conduct of the bankrupt and to report to the court on any conduct that justifies the court in refusing, suspending or qualifying an order for the bankrupt's discharge.

(2) In the case of a trustee other than the Official Receiver, it shall also be the duty of the trustee –

(a) to investigate the conduct of the bankrupt and to immediately report to the Official Receiver when he reasonably believes that the bankrupt has committed an act that constitutes an offence under this Ordinance; and

(b) to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice or the Official Receiver may direct.

~~_(1) As regards the conduct of a bankrupt, it shall be the duty of the trustee—~~

arrangement is that whenever there is any report of an offence (whether indictable or not) under the BO, the OR will initiate the prosecution action, where appropriate. In view of this, it is not considered necessary to impose a reporting duty on the OR in relation to any conduct which constitutes an indictable offence under the BO. Furthermore, the scope of the reporting duty imposed on a trustee (other than the OR) should be expanded to cover both indictable and summary (not indictable) offences. New section 86A(2) aims to give effect to these changes.

~~(a) to investigate the conduct of the bankrupt and to submit a report in accordance with subsection (2) or (3), as the case may be, stating whether there is reason to believe that the bankrupt has committed any act that constitutes an indictable offence under this Ordinance;~~

~~(b) to report to the court on any conduct of the bankrupt that justifies the court in refusing, suspending or qualifying an order for the bankrupt's discharge;~~

~~(c) to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice or the Official Receiver may direct.~~

~~(2) — Where the trustee is a person other than the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the Official Receiver.~~

~~(3) — Where the trustee is the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the court.~~

36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing ~~“21” and substituting “28”~~ “The appeal shall be commenced within 21 days from the time when the decision appealed against is pronounced or made” and substituting “The notice of appeal shall be served within the time for appealing against an order made

in the matter of any bankruptcy as specified in Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A)”¹².

47. Consequential amendments

The enactments specified in column 2 of the Schedule are amended in the manner set out in column 3 of the Schedule.

SCHEDULE

[s. 47]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Amendment
1.	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	<p>(a) In section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
2.	Drug Trafficking (Recovery of Proceeds)	(a) In Schedule 2, in section 16(5), repeal “receiver” where it twice

¹² Existing section 98(2) sets out the time limit for the lodging of appeal against orders of the court or the Registrar of the High Court in bankruptcy proceedings. The proposed amendment aims to make section 98(2) in line with the Order 59, rule 4(1)(b) of the Rules of the High Court. At present, the time limit prescribed in the latter provision is 28 days.

- | | |
|---|---|
| (Designated Countries
and Territories) Order
(Cap. 405 sub. leg. A) | appears and substitute “trustee”. |
| | (b) In Schedule 2, in section
18(3)(b)(i), repeal “receiver,
interim receiver, special manager
or trustee” and substitute “trustee
(including provisional trustee),
interim trustee or special
manager”. |
| 3. Organized and Serious
Crimes Ordinance (Cap.
455) | (a) In section 2(1), in the definition of
“insolvency officer”, in paragraph
(b)(i), repeal “receiver, interim
receiver, special manager or
trustee” and substitute “trustee
(including provisional trustee),
interim trustee or special
manager”. |
| | (b) In section 21(5), repeal “receiver”
where it twice appears and
substitute “trustee”. |
| 4. Mutual Legal Assistance
in Criminal Matters
Ordinance (Cap. 525) | (a) In Schedule 2, in section 12(5),
repeal “receiver” where it twice
appears and substitute “trustee”. |
| | (b) In Schedule 2, in section
14(3)(b)(i), repeal “receiver,
interim receiver, special manager |

or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.

- | | |
|--|--|
| <p>5. Securities and Futures
 (Licensing and
 Registration)
 (Information) Rules
 (Cap. 571 sub. leg. S)</p> | <p>In Schedule 1, in Part 2, in section 1(k),
repeal “receiver” and substitute
“provisional trustee”.</p> |
| <p>6. <u>Clearing and Settlement</u>
 <u>Systems Ordinance</u>
 (Cap. 584)</p> | <p><u>In section 2</u>¹³, in the definition of
<u>“relevant insolvency office-holder”,</u>
<u>repeal “receiver” and substitute for</u>
<u>“trustee”</u>¹⁴.</p> |

¹³ Copy of section 2, Cap. 584 at Appendix.

¹⁴ This is a consequential amendment to the Clearing and Settlement Systems Ordinance, which was enacted in July 2004.

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▼ Chapter:	584	Title:	CLEARING AND SETTLEMENT SYSTEMS ORDINANCE	Gazette Number:	L.N. 145 of 2004
Section:	2	Heading:	Interpretation	Version Date:	04/11/2004

In this Ordinance, unless the context otherwise requires—

“applicant” (申請人), in relation to any proceedings under Part 4, means the person who refers a decision to the Tribunal for review under section 35(1);

“book-entry securities” (記帳證券) means any securities issued under any law transferable by a book-entry (whether on a register or of any other kind);

“certificate of finality” (終局性證明書) means a certificate issued by the Monetary Authority under section 16(3);

“Chairman of the Tribunal” (審裁處主席) means the person appointed as such under section 34(3);

“clearing and settlement system” (結算及交收系統) means a system established for—

- (a) the clearing or settlement of payment obligations; or
- (b) the clearing or settlement of obligations for the transfer of book-entry securities, or the transfer of such securities;

“collateral security” (附屬抵押品), in relation to a clearing and settlement system, means any realizable assets provided, whether under a charge or a re-purchase or similar agreement or otherwise (including money provided under a charge), for the purpose of securing rights and obligations potentially arising in connection with participation in the system;

“default arrangements” (違責處理安排), in relation to a clearing and settlement system, means the arrangements in place within the system for limiting systemic and other types of risk in the event of a participant appearing to be, or likely to become, unable to meet his obligations in respect of a transfer order; and, without affecting the generality of the foregoing, includes any arrangements for—

- (a) the netting of obligations owed to or by the participant;
- (b) the closing out of open positions held by the participant; or
- (c) the realizing of collateral security securing obligations owed by the participant;

“defaulting participant” (違責參與者), in relation to a clearing and settlement system, means a participant in respect of whom action has been taken by the system operator or settlement institution under the system’s default arrangements;

“designated system” (指定系統) means a clearing and settlement system that has been designated for the purposes of this Ordinance by the Monetary Authority under section 4(1);

“directors’ voluntary winding up statement” (董事自動清盤陳述書) means a statement made under section 228A(1) of the Companies Ordinance (Cap 32), and a reference to such a statement taking effect is a reference to it being delivered for registration as specified in section 228A(3) of that Ordinance;

“disposition of property” (財產產權處置), in the context of a disposition made to or by a participant in a designated system, includes a payment made to or by the participant in the designated system or in a clearing and settlement system, wherever located, that is utilized by the designated system to effect payments;

“Monetary Authority” (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap 66);

“netting” (淨額計算), in relation to a clearing and settlement system, means the conversion of the various obligations owed to or by a participant, as between that participant and all the other participants in the system, into one net obligation owed to or by the participant;

“obligations” (義務), in the context of the default arrangements under a clearing and settlement system, means obligations resulting from the issue and receipt of transfer orders between participants, or otherwise resulting from action taken under the operating rules of the system;

“officer” (高級人員), in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation and, where the corporation is a system operator or settlement institution of a designated system, means in addition the chief executive of the designated system;

“operating rules” (運作規則), in relation to a clearing and settlement system, means the rules or terms that govern the functioning or operations of the system;

“participant” (參與者), in relation to a clearing and settlement system, means a person who for the time being is a party to the arrangement by which the system is established;

“relevant insolvency office-holder” (有關破產清盤人員) means—

- (a) the Official Receiver appointed under section 75 of the Bankruptcy Ordinance (Cap 6);
- (b) a person acting under the laws of Hong Kong in relation to a company as its liquidator, provisional liquidator, receiver or manager or an equivalent officer;
- (c) a person acting under the laws of Hong Kong in relation to an individual as his trustee in bankruptcy or interim receiver of his property or an equivalent officer; or
- (d) a person appointed under the laws of Hong Kong pursuant to an order for the administration in bankruptcy of an insolvent estate of a deceased person;

“resolution for voluntary winding up” (自動清盤決議) means a resolution under section 228(1)(c) of the Companies Ordinance (Cap 32);

“settlement account” (交收帳戶), in relation to a clearing and settlement system, means an account at a settlement institution used to hold funds or securities (or both) and to settle transfer orders between participants in the system;

“settlement institution” (交收機構), in relation to a clearing and settlement system, means a person providing settlement accounts to the participants and to any central counterparty in the system for the settlement of transfer orders within the system and, as the case may be, for extending credit to such participants and any such central counterparty for settlement purposes;

“system operator” (系統營運者), in relation to a clearing and settlement system, means any person who, for the purposes of the system’s operating rules, is responsible for the operation of the clearing or settlement functions of the system;

“transfer order” (轉撥指令), in relation to a clearing and settlement system, means either of the following instructions—

- (a) an instruction—
 - (i) by a participant to place at the disposal of another participant an amount of money by means of a book-entry on the accounts of a settlement institution for the system; or
 - (ii) which results in the assumption or discharge of a payment obligation for the purposes of the operating rules of the system; or
- (b) an instruction by a participant either to settle an obligation for the transfer of book-entry securities, or for the transfer of such securities;

“Tribunal” (審裁處) means the Tribunal established under section 34(1).

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