

**Mark-up version of Clauses 3 and 11
of the Bankruptcy (Amendment) Bill 2004
to which the Administration intends to propose
Committee Stage Amendments**

As at 7 June 2005

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, the Official Receiver 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 –

- (a) the value of the property of the bankrupt is unlikely to exceed \$200,000; and

- (b) the person has the qualifications prescribed in Schedule 3.

(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.

(1C) The Secretary for Financial Services and the Treasury may, by notice in the Gazette, amend Schedule 3.”.

11. Priority of costs and charges

Section 37 is amended -

- (a) in subsection (1) -
 - (i) by repealing “actual expenses incurred in” and substituting “expenses properly incurred in preserving, getting in or”;
 - (ii) by repealing paragraphs (a), (b), (c) and (d) and substituting -
 - “(a) the fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and payable to the Official Receiver~~remuneration of, fees, commissions, percentages and charges payable to,~~ 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;

- (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
- (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;
- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination under this Ordinance, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the Official Receiver, except expenses properly

- incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the Official Receiver;
 - (h) the remuneration of any trustee other than the Official Receiver; and
 - (i) the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.”;
- (b) by adding -
- “(3) For the purposes of subsection (1)(e), if the shorthand writer is appointed or authorized by the Official Receiver, the cost of the shorthand notes shall be regarded as an expense properly incurred in getting in or realizing the assets of the bankrupt.”.