

**Bills Committee on Bankruptcy (Amendment) Bill 2004
Proposed Committee Stage Amendments (CSAs)**

After discussing with the Legislative Council Assistant Legal Adviser, we have refined the CSAs. The latest version of the CSAs is enclosed at Annex.

2. Compared to the version circulated to Members (LC Paper No. CB(1)1689/04-05(02)), the few refinements made are -

- (a) In clause 3(b) of the English version, the words “the person meets the requirement prescribed” in the proposed section 12(1A)(b) have been refined to “the person has the qualifications prescribed”;
- (b) In clause 11 of the English version, “fees, charges and percentages payable to the Official Receiver as prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C)” in the proposed section 37(1)(a) has been refined to “fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and payable to the Official Receiver”; and
- (c) In clause 3(b) of the Chinese version, “該人符合附表 3 所訂明的規定” in the proposed section 12(1A)(b) has been refined to “該人具有附表 3 所訂明的資格”.

BANKRUPTCY (AMENDMENT) BILL 2004

COMMITTEE STAGE
[As at 7 June 2005]

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By adding before paragraph (a) -</p> <p>“(aa) in the definition of “trustee”, by adding “, subject to section 58(1B),” after “means”;</p>
3(b)	<p>(a) By deleting the proposed section 12(1A) and substituting -</p> <p>“(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 -</p> <p>(a) the value of the property of the bankrupt is unlikely to exceed \$200,000; and</p> <p>(b) the person has the</p>

qualifications prescribed in
Schedule 3."

(b) By adding -

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

5(b) In the proposed section 15(4) -

(a) in paragraph (a), by deleting "person other
than the Official Receiver is appointed as
provisional trustee" and substituting
"provisional trustee is appointed under
section 12(1A)";

(b) in paragraph (b), by deleting "there is a
trustee in relation to the bankrupt's estate"
and substituting "a trustee is appointed or
constituted under section 17, 100D(1), 112(4)
or 112A(1)(i) or paragraph 6 of Part II of
Schedule 1".

11 In paragraph (a)(ii) -

(a) in the proposed section 37(1)(a), by deleting
"remuneration of, fees, commissions,

percentages and charges payable to" and substituting "fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and payable to the Official Receiver";

(b) in the proposed section 37(1)(c), by adding "墊付" before "支出";

(c) in the proposed section 37(1)(f), by adding "墊付" before "支出".

15 In the proposed section 58(1B) -

(a) by deleting "43A, 43B, 43C,";

(b) by deleting "60(1)" and substituting "60".

17 (a) In paragraph (b), by adding -

"(ia) by adding before paragraph (a) -

"(aa) take into his custody or under his control all the property to which the bankrupt is or appears to be entitled;" ;".

(b) In paragraph (c), in the proposed section 60(2) -

- (i) in paragraph (c), by deleting the full stop and substituting a semicolon;
- (ii) by adding -

"(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 Ordinance;

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

24 (a) In the proposed section 80(1), by deleting "shall each be regarded as a provisional trustee for the purposes of this Ordinance" and substituting "are in this Ordinance included under the term "provisional trustee"".

(b) In the proposed section 80(1A), by deleting "shall each be regarded as a trustee for the purposes of this Ordinance" and substituting "are in this Ordinance included under the term "trustee"".

27 In the proposed section 85A(3), by deleting everything after "remuneration," and substituting "the court may, on application, order the payment out of the bankrupt's estate to him of such amount as the court considers sufficient to reimburse him for any necessary disbursements incurred by him in the course of the administration of the estate. Such application may be made by the trustee or the Official Receiver.".

28 By deleting the proposed section 86A and substituting -

"86A. Duties of trustee as regards the bankrupt's conduct

(1) It shall be the duty of the trustee -

(a) to investigate the conduct of the

bankrupt; and

- (b) 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 there is reason to believe 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 the bankrupt as the Secretary for Justice or the Official Receiver may direct."

"36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing "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)".

New By adding immediately after clause 46 -

"46A. Schedule 3 added

The following is added -

"SCHEDULE 3 [s. 12(1A)&
(1C)]

QUALIFICATIONS FOR APPOINTMENT
UNDER SECTION 12(1A)

To qualify for appointment under section 12(1A) of this Ordinance, a person shall -

(a) be -

(i) a certified public
accountant within
the meaning of

section 2 of the
Professional
Accountants
Ordinance (Cap. 50);

(ii) a solicitor within
the meaning of
section 2(1) of the
Legal Practitioners
Ordinance (Cap.
159); or

(iii) a current member of
The Hong Kong
Institute of Company
Secretaries; and

(b) satisfy any reasonable
conditions that the Official
Receiver may impose and has
made accessible to the
public."."

Schedule By adding -

"6. Clearing and In section 2, in the
Settlement Systems definition of "relevant

Ordinance
(Cap. 584)

insolvency office-
holder", in paragraph
(c), repeal "receiver"
and substitute
"trustee".