

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

[As at 10 June 2005]

**2. Interpretation**

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

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

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

(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;”.

**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) 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.~~

(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 published in the Gazette, amend Schedule 3.

## 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 is appointed under section 12(1A), 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(1), 112(4), 112A(1)(i) or paragraph 6 of Part II of Schedule 1.~~”.

## 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 ~~remuneration of, fees, commissions, percentages and charges payable 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 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.”.

## 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~~, 58(2), 60~~(4)~~, 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”;
  - (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;”;
  - (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 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.

(3) A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised 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 term “provisional trustee” ~~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 term “trustee” ~~shall each be regarded as a trustee for the purposes of this Ordinance,~~ and shall be joint tenants of the property of the bankrupt.”.

## **27. Sections added**

The following is added –

### **“85A. Remuneration of provisional trustee and the first trustee constituted under section 112A**

(1) The remuneration of the following persons shall be fixed by the Official Receiver in accordance with a scale of fees or on such other basis as the Official Receiver may from time to time approve in writing -

- (a) a provisional trustee other than the Official Receiver;

- (b) in a case where section 112A applies and the first trustee constituted under subsection (1)(i) of that section is not the Official Receiver, that first trustee.

(2) If one-fourth in number or value of the creditors apply to the Official Receiver or the Official Receiver is of the opinion that the remuneration of the provisional trustee or first trustee referred to in subsection (1) should be reviewed, the Official Receiver may apply to the court and thereupon the court may confirm, increase or reduce such remuneration.

(3) Where the provisional trustee or first trustee referred to in subsection (1) ~~acts without remuneration, he shall be allowed out of the bankrupt's estate such expenses properly incurred by him in or about the proceedings of the bankruptcy as the court may approve~~has not received any remuneration<sup>1</sup>, the court may, on application, order the payment out of the bankrupt's estate to him 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.

(4) The provisional trustee or first trustee referred to in subsection (1) shall not under any circumstances whatever make any arrangement for, or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever to be made or payable to him beyond his said remuneration payable out of the estate, and he shall not make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy.”.

## 28. Sections added

The following are added immediately after section 86 -

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

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<sup>1</sup> Taking into account Members’ views expressed at the meeting on 9 June 2005, we propose to replace “acts without remuneration” by “has not received any remuneration”.



**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.

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

- ~~(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.~~

### **86B. Duties of trustee as regards the bankrupt's estate**

(1) As regards the estate of a bankrupt, it shall be the duty of the trustee -

- (a) to raise money in any case where in the interests of the creditors it appears necessary so to do;
- (b) to preside at the first meeting of creditors if it is summoned;
- (c) to issue forms of proxy for use at the meetings of creditors;
- (d) to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs;
- (e) to advertise the date of the first meeting of creditors and of the bankrupt's public examination, and such other matters as it may be necessary to advertise;
- (f) to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose to employ at the expense of the estate any person or persons to assist in its preparation.

(2) The trustee shall account to the court and pay over all moneys and deal with all securities in such manner as the court from time to time directs.”.

### **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)”.

**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.”.

**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)
  - (a) In section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.
  - (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”.
  
2. Drug Trafficking  
(Recovery of Proceeds)  
(Designated Countries  
and Territories) Order  
(Cap. 405 sub. leg. A)
  - (a) In Schedule 2, in section 16(5), repeal “receiver” where it twice 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”.

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