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Legislative Council

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Date : 25 May 2007

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 13 June 2007

**Proposed resolutions under
the Bankruptcy Ordinance**

I forward for Members' consideration four proposed resolutions which the Secretary for Financial Services and the Treasury will move at the Council meeting of 13 June 2007 under the Bankruptcy Ordinance relating to the following subsidiary legislation respectively:

- (a) the Bankruptcy (Amendment) Rules 2007 (in *Appendix I*);
- (b) the Bankruptcy (Forms) (Amendment) Rules 2007 (in *Appendix II*);
- (c) the Bankruptcy (Fees and Percentages) (Amendment) Order 2007 (in *Appendix III*); and
- (d) the Proof of Debts (Amendment) Rules 2007 (in *Appendix IV*).

The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The draft speeches, in both English and Chinese versions, which the Secretary for Financial Services and the Treasury will deliver when moving the proposed resolutions, are also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

BANKRUPTCY ORDINANCE

RESOLUTION

(Under section 113 of the Bankruptcy Ordinance (Cap. 6))

RESOLVED that the Bankruptcy (Amendment) Rules 2007, made by the Chief Justice on 18 May 2007, be approved.

BANKRUPTCY (AMENDMENT) RULES 2007

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BANKRUPTCY (AMENDMENT) RULES 2007

(Made by the Chief Justice under section 113 of the
Bankruptcy Ordinance (Cap. 6) subject to the
approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on the day
appointed for the commencement of the Bankruptcy (Amendment)
Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32
of that Ordinance).

2. Rule added

The Bankruptcy Rules (Cap. 6 sub. leg. A) are amended by
adding -

"2A. Provisional trustee regarded as trustee

Save in rules 35, 36, 72A(3), 99A, 99B, 99E, 99F,
99G, 99Q(a), 99Y(2), 101, 113, 138, 141, 149A(2), 159(2),
159A, 162(1), 172 and 179, a provisional trustee shall,
unless the context otherwise requires, be regarded as a
trustee for the purposes of these rules."

3. Official Receiver to file copies of advertisements

Rule 11 is amended -

- (a) in the heading, by adding "**or trustee**" after
"**Receiver**";
- (b) in paragraph (1), by repealing everything after

"Ordinance," and substituting "the person specified in paragraph (3) shall, in respect of the bankruptcy proceedings concerned, file a copy of the advertisement with the court.";

(c) in paragraph (2), by repealing "paper, the Official Receiver" and substituting "newspaper, the person specified in paragraph (3)";

(d) by repealing paragraph (3) and substituting -

"(3) If the advertisement was inserted -

(a) by the Official Receiver, the Official Receiver is the person specified for the purposes of paragraphs (1) and (2); or

(b) by a trustee, the trustee is the person specified for the purposes of paragraphs (1) and (2).";

(e) in the English text, in paragraph (4), by repealing "paper" and substituting "newspaper".

4. Preparation of order

Rule 12 is amended -

(a) in paragraph (1) -

(i) in subparagraph (b), by adding "or" at the end;

(ii) by repealing subparagraph (c);

(iii) in the English text, by repealing
"such order" where it twice appears
and substituting "the order";

(iv) by repealing "Official Receiver" and
substituting "trustee";

(b) by adding -

"(1A) If an order made under section
20J of the Ordinance has not been
completed within 1 week from the making of
the order, the nominee shall prepare and
complete the order.".

5. Certificate of employment

Rule 34 is amended -

(a) by repealing "Official Receiver or" where it
twice appears;

(b) by repealing "as the case may be".

6. Rule substituted

Rule 35 is repealed and the following substituted -

"35. Lodgment of bill

(1) The bill or charges shall be lodged with -

(a) (if incurred before the appointment of a
trustee) the provisional trustee; or

(b) (if incurred after the appointment of a
trustee) the trustee.

(2) The provisional trustee or trustee, as the case may be, shall lodge the bill or charges with the taxing officer."

7. Rule substituted

Rule 36 is repealed and the following substituted -

"36. Notice of appointment

Where a bill of costs or charges has been lodged with the taxing officer, he shall give notice of appointment to tax the same to the provisional trustee or trustee, and to the person to or by whom the bill or charges is or are to be paid, as the case may be."

8. Applications for costs

Rule 38 is amended -

- (a) in paragraph (a), by repealing "Official Receiver, and if a trustee has been appointed, on the";
- (b) in paragraph (b), by repealing "Official Receiver and the".

9. Costs of shorthand notes

Rule 39 is repealed.

10. Apportionment of costs in case of partnership

Rule 41 is amended by repealing "Official Receiver" and

substituting "trustee".

11. Rule substituted

Rule 52 is repealed and the following substituted -

"52. Deposit by petitioner

(1) Upon the presentation of a petition, the petitioner shall pay to the Official Receiver a deposit of -

(a) in the case of a debtor's petition, the sum of \$8,650; or

(b) in the case of a creditor's petition, the sum of \$12,150.

(2) No petition shall be received unless the receipt of the Official Receiver for the deposit payable under paragraph (1) is produced to the Registrar.

(3) After presenting a petition, the petitioner shall deposit with the Official Receiver such further sum as the court may, on the application of the Official Receiver, from time to time direct.

(4) The deposit and any further deposit paid shall be applied to cover the 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.

(5) After the deposit and any further deposit have been so applied, the Official Receiver shall -

(a) in the case of a debtor's petition where a provisional trustee is appointed under section 12(1A) of the Ordinance -

(i) retain any balance of the deposit and further deposit, which shall be applied in accordance with section 37(1) of the Ordinance; and

(ii) after complying with subparagraph (i), account for and pay any unexpended balance of the deposit and further deposit to the trustee; or

(b) in the case of a debtor's petition other than that referred to in subparagraph (a) and in the case of a creditor's petition, account for and pay any unexpended balance of the deposit and further deposit to the trustee.

(6) The trustee shall account for any unexpended balance of the deposit and further deposit paid to him under paragraph (5) (a) (ii) or (b) -

(a) in the case of a debtor's petition, to the

bankrupt's estate; or

- (b) in the case of a creditor's petition, to that creditor.

(7) For the purposes of paragraph (6) (b), the trustee shall -

- (a) pay any unexpended balance of the deposit and further deposit to that creditor; and
- (b) repay the amount of the deposit and further deposit expended and applied under paragraph (4) to that creditor out of the assets of the bankrupt in accordance with section 37(1) of the Ordinance."

12. Cross-heading amended

The cross-heading immediately before rule 61 is amended by repealing "**receiver**" and substituting "**trustee**".

13. Form and contents of order

Rule 61 is amended by repealing "receiver" and substituting "trustee".

14. Further deposit necessary

Rule 63 is amended by repealing "receiver" and substituting "trustee".

15. Repayment of deposit

Rule 64 is amended by repealing "receiver" wherever it appears and substituting "trustee".

16. Damages if petition dismissed

Rule 65 is amended by repealing "receiver" and substituting "trustee".

17. Time of hearing

Rule 66 is amended -

- (a) by repealing "after reference to the Official Receiver";
- (b) by repealing everything after "sealed copy" and substituting ". Where the petition has not been served, the Registrar may appoint another time and place for such hearing."

18. Drawing up and contents of bankruptcy order

Rule 72A(3) is amended -

- (a) by repealing "receiver" and substituting "trustee";
- (b) by repealing "his solicitor" and substituting "the debtor";
- (c) by repealing "Official Receiver" and substituting "interim trustee, provisional trustee or trustee, as the case may be,".

**19. Registration of bankruptcy order
in Land Registry**

Rule 73 is amended by repealing "Official Receiver" and substituting "trustee".

**20. Registration of bankruptcy order
in Land Registry against partner**

Rule 74 is amended by repealing "Official Receiver" and substituting "trustee".

21. Service of bankruptcy order

Rule 75 is amended by repealing "Official Receiver" and substituting "trustee".

**22. Application to annul bankruptcy
order or to stay proceedings
thereunder**

Rule 80 is amended -

(a) in paragraph (2) -

(i) by adding "or trustee" after
"Receiver";

(ii) by adding "and the trustee where he
is not the applicant" after "any)";

(b) in paragraph (3) -

(i) by repealing "Official Receiver
shall" and substituting "trustee
shall and the Official Receiver

- (where he is not the trustee) may";
- (ii) by adding "by the Official Receiver, or" after "may be made";
 - (iii) by repealing "the report" and substituting "any report made by the Official Receiver under this paragraph";
- (c) in paragraph (3A), by repealing "Official Receiver" and substituting "trustee";
 - (d) in paragraph (4), by repealing "Official Receiver or".

23. How made out

Rule 81 is amended by repealing "Official Receiver" and substituting "trustee".

24. Extension of time

Rule 82 is amended by repealing "he shall apply to the Official Receiver" and substituting "the bankrupt shall apply to the trustee".

25. Application for public examination

Rule 82A(1) is amended by adding "or trustee" after "Receiver".

26. Preliminary public examination proceedings

Rule 82B is amended -

(a) in paragraph (1), by repealing everything after "orders," and substituting -

"attend -

(a) where the application for public examination is made by the Official Receiver, at a time and place to be notified to him by the Official Receiver in writing to be examined as to his affairs by the Official Receiver;

(b) where the application for public examination is made by the trustee, at a time and place to be notified to him by the trustee in writing to be examined as to his affairs by the trustee.";

(b) in paragraph (2), by adding "or trustee, as the case may be" after "Receiver";

(c) in paragraph (4), by adding "or trustee, as the case may be," after "Receiver";

- (d) in paragraph (5), by adding "or trustee, as the case may be" after "Receiver".

27. Application to proceed

Rule 84 is amended by repealing "either of the Official Receiver or of the" and substituting "of the Official Receiver, trustee or".

28. Proceeding after adjournment sine die

Rule 85 is amended by repealing "such sum as the Official Receiver may think" and substituting "or trustee, as the case may be, such sum as he may specify to the bankrupt that he considers".

29. Notice of public examination

Rule 86 is amended by repealing everything after "examination," and substituting -

"the Official Receiver or trustee (whoever makes the application under section 19(1) of the Ordinance) shall -

- (a) send notice of the date, time and place appointed for such public examination to all persons mentioned in section 19(5) of the Ordinance; and
- (b) gazette such notice at least 7 days before the day so appointed."

30. Four clear days' notice to be given of meeting

Rule 99A is amended by repealing "trustee, the Official Receiver" and substituting "first trustee, the provisional trustee".

31. Notice of meeting to be sent

Rule 99B is amended by repealing "trustee, the Official Receiver" and substituting "first trustee, the provisional trustee".

32. Place of meeting

Rule 99C is amended by repealing "Official Receiver" and substituting "provisional trustee".

33. Other meetings

Rule 99D is amended -

- (a) by repealing the heading and substituting
 "Summoning of creditors' meeting";
- (b) in paragraph (1), by repealing "Official Receiver or the";
- (c) by repealing paragraph (3);
- (d) in paragraph (4) -
 - (i) by repealing "(if any) or the Official Receiver (if no trustee has been appointed)";
 - (ii) by repealing "trustee or the Official

Receiver" and substituting "trustee".

34. Summoning of subsequent meetings

Rule 99E is amended -

- (a) by renumbering it as rule 99E(1);
- (b) by adding -

"(2) Where no special time is prescribed for the subsequent meeting, the notice shall be sent off not less than 3 days before the day appointed for the meeting."

35. Chairman

Rule 99F is amended -

- (a) by repealing "The Official Receiver" and substituting "The provisional trustee";
- (b) by repealing "appointing a trustee" and substituting "appointing a first trustee";
- (c) by repealing "other than the Official Receiver,".

36. Form of proxy

Rule 99N is amended by repealing "Official Receiver or, after the appointment of a trustee, by the".

37. Proxy forms to be sent to creditors

Rule 990 is amended by adding ", of the trustee" after "Receiver".

38. Time for lodging proxy

Rule 99R is amended -

- (a) in paragraph (1), by repealing "Official Receiver or";
- (b) in paragraph (2), by repealing "Official Receiver or trustee, as the case may be," and substituting "trustee".

39. Proxy to Official Receiver

Rule 99T is amended -

- (a) in the heading, by repealing "**Official Receiver**" and substituting "**trustee**";
- (b) by repealing "Official Receiver" and substituting "trustee".

40. Notice to bankrupt of meeting to appoint trustee

Rule 100 is amended -

- (a) by repealing "Official Receiver" and substituting "trustee";
- (b) by repealing "for the purpose of appointing a trustee" and substituting "mentioned in rules

99A and 101";

- (c) by repealing everything after "It shall" and substituting "be the duty of the bankrupt to attend such meeting."

41. Notice of meeting to appoint trustee

Rule 101 is amended -

- (a) in the heading, by adding "**successive**" before "**trustee**";
- (b) by repealing "Official Receiver" where it twice appears and substituting "trustee";
- (c) by adding "successive" after "a".

42. Notices of other meetings

Rule 102 is repealed.

43. Notice to Official Receiver of creditors' meetings

Rule 104 is repealed.

44. Proving debts

Rule 109 is amended -

- (a) in paragraph (1), by repealing "Official Receiver" and substituting "trustee";
- (b) in paragraph (2), by repealing "Official Receiver or, if a trustee is appointed, the";

- (c) in paragraph (3), by repealing "the Official Receiver, an assistant official receiver or".

45. Production of bills of exchange and promissory notes

Rule 111 is amended by repealing "Official Receiver,".

46. Time for lodging proofs

Rule 112 is amended by repealing "Official Receiver" and substituting "trustee".

47. Transmission of proofs to trustee

Rule 113 is amended by repealing "Official Receiver" where it twice appears and substituting "provisional trustee".

48. Appeal from rejection of proof

Rule 117 is amended -

- (a) by repealing "Official Receiver or";
- (b) by adding "Notice of appeal shall be given to the trustee upon such application." after "of."

49. Costs of appeals from decisions as to proofs

Rule 118 is amended by repealing "Official Receiver" and substituting "trustee".

50. Signature of proxy

Rule 120 is amended by repealing "Official Receiver" and substituting "trustee".

51. Nominee's report on proposal

Rule 122J(5) is amended by repealing "the Official Receiver, unless the Official Receiver is the nominee, and".

52. Hand-over of property, etc. to nominee

Rule 122U is amended -

(a) in paragraph (1), by repealing "Official Receiver or";

(b) in paragraph (2)(b), by repealing "Supreme" and substituting "High".

53. Report of creditors' meeting

Rule 122V(4) is amended by repealing "the Official Receiver and (if any)".

54. Revocation or suspension of arrangement

Rule 122Y(4) is amended by repealing ", or if there is no trustee, the Official Receiver".

55. Fees, costs, charges and expenses

Rule 122ZB(a) is amended by repealing ", the Official

Receiver".

56. Bankruptcy order, trustee

Rule 141 is amended by repealing "23(4) or".

57. Administration of small bankruptcies

Rule 149A(2) is amended by repealing "Official Receiver" and substituting "trustee".

58. Cross-heading amended

The cross-heading immediately before rule 150 is amended by repealing "**Receivers**" and substituting "**Receiver and trustee**".

59. Duties as to bankrupt's statement of affairs

Rule 150 is amended -

(a) in paragraph (1), by repealing "the Official Receiver has been appointed to the receivership of an estate, he shall furnish" and substituting "a bankruptcy order is made, the trustee shall provide";

(b) by repealing paragraph (2) and substituting -

"(2) The trustee may hold interviews with the bankrupt for the purpose of investigating the bankrupt's affairs.";

- (c) in paragraph (3), by repealing "Official Receiver" and substituting "trustee".

60. Subsistence allowance to bankrupt

Rule 151 is amended by repealing "Official Receiver" and substituting "trustee".

61. Special report as to person employed to assist bankrupt

Rule 152 is amended -

- (a) by repealing "78" and substituting "86B";
- (b) by repealing "Official Receiver" and substituting "trustee";
- (c) in the English text, by repealing "he" and substituting "the trustee".

62. Accounting by Official Receiver

Rule 159 is amended -

- (a) in paragraph (1) -
 - (i) by adding "the Official Receiver is the trustee and where" after "Where";
 - (ii) by repealing "debtor or, as the case may be, the";
- (b) in paragraph (2), by repealing everything after "debtor" and substituting -

"and -

- (a) a provisional trustee is

appointed under section
12(1A) of the Ordinance,
the Official Receiver shall
account to the provisional
trustee; or

- (b) where the Official Receiver
remains as the provisional
trustee and a trustee other
than the Official Receiver
is appointed, the Official
Receiver shall account to
the trustee."

63. Rule added

The following is added -

"159A. Accounting by provisional trustee

Where -

- (a) rule 159(2)(a) applies; and
(b) a person other than the provisional
trustee is subsequently appointed as the
trustee,

the provisional trustee shall account to the trustee."

64. Accounts of bankrupt

Rule 160 is amended -

- (a) by repealing "furnish" and substituting "or

trustee, as the case may be, provide";

- (b) by repealing "Receiver shall" and substituting "Receiver or trustee, as the case may be, shall".

65. Liability for costs, expenses and damages

Rule 161(2) is amended -

- (a) by repealing "trustee by the creditors" and substituting "trustee";
- (b) by repealing "appointed by the creditors".

66. Cross-heading repealed

The cross-heading immediately before rule 162 is repealed.

67. Rule added

The following is added -

"163A. Trustee to provide information to Official Receiver

The Official Receiver may at any time require a trustee to provide him with any information or produce to him any document in connection with the bankruptcy proceedings for which the trustee is appointed, and the trustee shall comply with the requirement within the time specified by the Official Receiver."

68. Statements of accounts to be furnished to creditors

Rule 176 is amended -

- (a) in the English text, in the heading, by repealing "**furnished**" and substituting "**provided**";
- (b) by repealing "Official Receiver or";
- (c) by repealing "transmit to creditors" and substituting "provide the creditors with";
- (d) by repealing "furnishing and transmitting" and substituting "providing".

69. Discharge of costs, etc., before estate handed over to trustee

Rule 179 is amended -

- (a) in paragraph (1) -
 - (i) by repealing "Official Receiver shall" and substituting "provisional trustee shall";
 - (ii) by repealing "Official Receiver may" and substituting "provisional trustee may";
 - (iii) by repealing "Official Receiver," and substituting "provisional trustee,";
 - (iv) by repealing "Official Receiver on" and substituting "Official Receiver and provisional trustee on";

- (v) by repealing "by him" where it twice appears and substituting "by them";
 - (vi) by repealing "Official Receiver for" and substituting "Official Receiver or provisional trustee for";
 - (vii) by repealing "Official Receiver which" and substituting "Official Receiver and provisional trustee which";
- (b) in paragraph (2), by adding "and provisional trustee" after "Receiver";
 - (c) in paragraph (3), by repealing "Official Receiver" and substituting "provisional trustee".

70. Accounts

Rule 182 is amended -

- (a) by repealing "Official Receiver," where it twice appears and substituting "trustee,";
- (b) in the English text, by repealing "Official Receiver's" and substituting "trustee's".

71. Gazetting notices

Rule 184(2) is repealed.

72. Re-gazetting

Rule 185 is amended by adding ", as the case may be," after "trustee".

73. Record of minutes, etc.

Rule 187 is amended by repealing "Official Receiver until a trustee is appointed, and thereafter the trustee," and substituting "trustee".

74. Cash book

Rule 188 is amended by repealing "Official Receiver until a trustee is appointed, and thereafter the trustee," and substituting "trustee".

75. Official Receiver's audit of trustee's accounts

Rule 191(1) and (2) is repealed.

76. Affidavit of no receipts

Rule 193 is repealed.

77. Transitional and savings provisions

(1) Notwithstanding anything contained in these Rules, the amendments effected under these Rules shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if these Rules had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

Explanatory Note

The purpose of these Rules is to make amendments to the Bankruptcy Rules (Cap. 6 sub. leg. A) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in bankruptcy cases, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005);
- (b) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in rule 122U of the principal Rules;
- (c) correct certain minor mistakes.

Draft

Speech by Secretary for Financial Services and the Treasury in Legislative Council on 13 June 2007

Bankruptcy (Amendment) Rules 2007

Madam President,

I move the first resolution standing in my name on the agenda. The resolution seeks this Council's approval of the Bankruptcy (Amendment) Rules 2007, which were made by the Chief Justice under section 113 of the Bankruptcy Ordinance.

2. This Council enacted the Bankruptcy (Amendment) Ordinance 2005 on 6 July 2005 to facilitate the Official Receiver to outsource administration of summary bankruptcy cases to private-sector insolvency practitioners, and to make other miscellaneous amendments to the Bankruptcy Ordinance. Before the Bankruptcy (Amendment) Ordinance 2005 can come into operation, consequential amendments to the subsidiary legislation under the Bankruptcy Ordinance are necessary to implement the statutorily-empowered outsourcing scheme. This resolution, together with the three that follow, serves this purpose.

3. The Bankruptcy (Amendment) Rules 2007 contain mostly technical amendments to adjust the respective powers and duties of the "Official Receiver", "provisional trustee" and "trustee" in bankruptcy cases under the new outsourcing regime. The opportunity is also taken to modernise and streamline the drafting of certain provisions.

4. In finalising the Amendment Rules, we have benefitted from the advice of the Judiciary and other market stakeholders. We have taken on board their technical and drafting comments as appropriate.

5. Madam President, these Amendment Rules are essential to the implementation of the Bankruptcy (Amendment) Ordinance 2005, which empowers private-sector insolvency practitioners to provide trusteeship service in summary bankruptcy cases. This represents new business opportunities to qualified professionals. It will also raise efficiency in dealing with bankruptcy cases, and will make our

bankruptcy law more business-friendly. Subject to Members' approval of the Amendment Rules, and pending completion of the preparatory work, the Official Receiver's Office will start to run a pilot outsourcing scheme for summary bankruptcy cases later this year.

6. On this note, I invite Members to approve the resolution.
Thank you.

BANKRUPTCY ORDINANCE

RESOLUTION

(Under section 113 of the Bankruptcy Ordinance (Cap. 6))

RESOLVED that the Bankruptcy (Forms) (Amendment) Rules 2007, made by the Chief Justice on 18 May 2007, be approved.

BANKRUPTCY (FORMS) (AMENDMENT) RULES 2007

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BANKRUPTCY (FORMS) (AMENDMENT) RULES 2007

(Made by the Chief Justice under section 113 of the
Bankruptcy Ordinance (Cap. 6) subject to the
approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on the day
appointed for the commencement of the Bankruptcy (Amendment)
Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32
of that Ordinance).

2. Forms

The Schedule to the Bankruptcy (Forms) Rules (Cap. 6 sub.
leg. B) is amended -

(a) in the Index of Forms -

- (i) in the English text, under the heading
"Bankruptcy Order:", by repealing
"paper" and substituting "newspaper";
- (ii) by repealing "Interim receiver:" and
substituting "Interim trustee:";
- (iii) under the heading "Public
examination:" -
 - (A) by adding "or trustee" after
"Official Receiver";
 - (B) in the English text, by
repealing "paper" and

substituting "newspaper";

(b) in Form 13 -

(i) in the heading, by repealing

"RECEIVER" and substituting "TRUSTEE";

(ii) by repealing "receiver" where it

twice appears and substituting

"trustee";

(iii) by repealing "receiver" and

substituting "*interim trustee*";

(c) in Form 19, by repealing "one thousand nine hundred";

(d) in Form 25 -

(i) by repealing "[s. 5; rules 69, 75]"

and substituting "[s. 12; rule

72A(3)]";

(ii) by repealing "is hereby constituted

receiver" and substituting "hereby

becomes the provisional trustee";

(iii) in the Note -

(A) by repealing "*immediately*";

(B) by repealing everything after

"*attend the*" and substituting

"*trustee at such time and place*

as the trustee may specify.";

(e) in Form 26 -

(i) by repealing "[s. 5" and substituting

- "[ss. 12, 72A(3)";
- (ii) by repealing "is hereby constituted receiver" and substituting "hereby becomes the provisional trustee";
 - (iii) in the Note -
 - (A) by repealing "*immediately*";
 - (B) by repealing everything after "*attend the*" and substituting "*trustee at such time and place as the trustee may specify.*";
- (f) in Form 27 -
- (i) by repealing "[ss. 22(2), 78(1)(f)]" and substituting "[s. 78(1)(f)]";
 - (ii) in the Note, by repealing "me" and substituting "the trustee";
- (g) in Form 28A, by repealing the year reference of "19";
- (h) in Form 28B, by repealing the year reference of "19";
- (i) in Form 29 -
- (i) by repealing "[Official Receiver]" and substituting "[provisional trustee]";
 - (ii) by repealing "Official Receiver/" and substituting "Provisional trustee/";
- (j) in Form 32 -

substituting "*Provisional trustee*";

(n) in Form 39 -

(i) by repealing "[s. 17; rules 10," and

substituting "[s. 17B; rule";

(ii) by repealing "Official Receiver" and

substituting "provisional trustee";

(o) in Form 40 -

(i) by repealing "101]" and substituting

"99E]";

(ii) by repealing "(Signed) (a)" and

substituting "Trustee.";

(iii) in the margin, by repealing note (a);

(p) in Form 43, by repealing "102]" and

substituting "99E]";

(q) in Form 44, by repealing "102]" and

substituting "99E]";

(r) in Form 46A -

(i) in column 2 opposite to item 4, by
repealing "Official Receiver or";

(ii) by repealing "Official Receiver/";

(iii) by repealing "**Official Receiver or,
if a trustee has been appointed, to
the**";

(iv) in the Note, by repealing "Official
Receiver" and substituting "trustee";

(s) in Form 46B, by repealing "**Official Receiver or,**

if a trustee has been appointed, to the”;

(t) in Form 47, by repealing -

“*Official Receiver*

or”

where it twice appears;

(u) in Form 49 -

(i) by repealing “Official Receiver [or trustee]” and substituting “the trustee”;

(ii) by repealing -

“*Official Receiver*

or”;

(v) in Form 50 -

(i) by repealing “[s. 78(1)(d); rule 119]” and substituting “[s. 86B(1)(c)]”;

(ii) by repealing “*or the Official Receiver*”;

(iii) by repealing “the Official Receiver or trustee” and substituting “the trustee”;

(iv) in the margin -

(A) in note (b), by repealing “Official Receiver” and substituting “trustee”;

(B) in note (f), by repealing

"Official Receiver" and
substituting "trustee";

(C) in note (g), by repealing
"Official Receiver or";

(w) in Form 51 -

(i) by repealing "[s. 78(1)(d); rule
119]" and substituting "[s.
86B(1)(c)]";

(ii) in the Notes, in paragraph 1(c), in
the English text, by repealing
"arising any specified meeting" and
substituting *"arising from any
specified meeting"*;

(iii) by repealing *"or the Official
Receiver"*;

(iv) by repealing "the Official Receiver
or trustee" and substituting "the
trustee";

(v) in the margin -

(A) in note (b), by repealing
"Official Receiver" and
substituting "trustee";

(B) in note (f), by repealing
"Official Receiver or";

(x) in Form 52 -

(i) in the heading, by adding "OR

TRUSTEE" after "RECEIVER";

(ii) by adding "or trustee" after
"Receiver";

(iii) by repealing -
"Official Receiver."

and substituting -

"Official Receiver
or Trustee.";

(y) in Form 53 -

(i) by adding "or Trustee" after
"Receiver";

(ii) in the English text, by repealing
"WARING" and substituting "WARNING";

(z) in Form 54 -

(i) in the heading, in the English text,
by repealing "PAPER" and substituting
"NEWSPAPER";

(ii) by repealing -
"Official Receiver."

and substituting -

"Official Receiver
or Trustee.";

(za) in Form 55, by adding "or trustee" after
"Receiver";

(zb) in Form 59, by adding "or trustee" after
"Receiver";

(zc) in Form 62 -

- (i) by repealing "19(8)]" and substituting "19]";
- (ii) by repealing "Official Receiver or the";

(zd) in Form 79 -

- (i) by repealing "[rule" and substituting "[s. 33; rule";
- (ii) by adding "/trustee (a)" after "Receiver";
- (iii) in the margin opposite to the first paragraph, by adding -

"(a) Delete as appropriate.";

(ze) in Form 80 -

- (i) by adding "/trustee (a)" after "Receiver";
- (ii) in the margin opposite to the first paragraph, by adding -

"(a) Delete as appropriate.";

(zf) in Form 96 -

- (i) by repealing "[the trustee of the property of the said bankrupt]" and substituting "/the trustee of the property of the said bankrupt (a)";
- (ii) in the margin opposite to the first paragraph, by adding -

"(a) Delete as appropriate.";

(zg) in Form 112, in the Note, by repealing

"Receiver," and substituting "Receiver or trustee,";

(zh) by repealing Form 137 and substituting -

"FORM 137

[s. 94;
rule 169]

STATEMENT TO ACCOMPANY APPLICATION FOR RELEASE

(Title.)

Statement showing the position of estate at the date
of application for release

	\$	\$
Receipts		
Cash found		
Bank balance		
Refund of utility deposits		
Receipts for termination of insurance policies		
Proceeds from court		
Proceeds of sale		
Book debts collected		
Payment by debtor/bankrupt		
Others		
NET REALIZATIONS		
Money paid by third party		
Less: refund		
Petitioner's deposit		
Less: refund		
Distrain money		
Less: refund		
Payments		
Petitioner's taxed costs		
Court fees and taxing fees		
Gazetting and advertising		

	charges	
	Travelling expenses and transportation charges	
	Professional fees	
	Photocopying charges	
	Official receiver's fees	
	Trustee's remuneration	
	Distribution to creditors	
	Preferential payment	_____ %
	Deferred preferential payment	_____ %
	Ordinary dividend (a)	_____ %
	Deferred ordinary dividend	_____ %
	Storage charges	
	Others	

	Balance	_____

(a) First or final or as the case may be. If more than one payment was made, state each payment separately.

NOTES: 1. There are no further assets to be realized and no further payments to be made to creditors.

(b) Insert number of creditors.

2. Creditors - _____ (b) preferential creditors \$ _____
 _____ (b) ordinary creditors \$ _____

3. Creditors can obtain any further information by enquiry at the office of the trustee (add here the trustee's address, contact telephone number and contact person).

Dated this _____ day of _____ .

Trustee." ;

(zi) in Form 142, by repealing "Supreme" and substituting "High";

(zj) by repealing the year references of ", 19" and "19" wherever they appear.

3. Transitional and savings provisions

(1) Notwithstanding anything contained in these Rules, the amendments effected under these Rules shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if these Rules had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

Explanatory Note

The purposes of these Rules are to make amendments to the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in bankruptcy cases as reflected in the various forms, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005);
- (b) update Form 137 of the principal Rules to reflect current practice;
- (c) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in Form 142 of the principal Rules; and
- (d) remove references to the year "19" (however expressed) in the forms of the principal Rules.

Draft

Speech by Secretary for Financial Services and the Treasury in Legislative Council on 13 June 2007

Bankruptcy (Forms) (Amendment) Rules 2007

Madam President,

I move the second resolution standing in my name on the agenda. The resolution seeks this Council's approval of the Bankruptcy (Forms) (Amendment) Rules 2007, which were made by the Chief Justice under section 113 of the Bankruptcy Ordinance.

2. These Rules are part and parcel of the amendments to the subsidiary legislation under the Bankruptcy Ordinance to implement the Bankruptcy (Amendment) Ordinance 2005 enacted by this Council in July 2005. These amendments to the forms used in bankruptcy proceedings are technical in nature, and I have just explained the broad intent of such amendments in my speech for the last resolution.

3. Madam President, I hope Members will support the passage of these Amendment Rules. Thank you.

BANKRUPTCY ORDINANCE

RESOLUTION

(Under section 114 of the Bankruptcy Ordinance (Cap. 6))

RESOLVED that the Bankruptcy (Fees and Percentages) (Amendment) Order 2007, made by the Chief Justice on 18 May 2007, be approved.

BANKRUPTCY (FEES AND PERCENTAGES) (AMENDMENT) ORDER 2007

(Made by the Chief Justice under section 114 of the
Bankruptcy Ordinance (Cap. 6) subject to the
approval of the Legislative Council)

1. Commencement

This Order shall come into operation on the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

2. Schedule amended

The Schedule to the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended -

(a) in Table A -

(i) by repealing item 3 and
substituting -

"3. Bankruptcy petition 1,045.00";

This fee includes any
fee on answering a
petition or setting down
for hearing.

(ii) by repealing item 5 and substituting -

"5. Petition under section

112 1,045.00";

This fee includes any
fee on answering a
petition or setting down
for hearing.

(iii) in item 21, in the English text, by
repealing "furnishing" and
substituting "providing";

(b) in Table B -

(i) in paragraph 1, by repealing
"receiver, receiver" and substituting
"trustee";

(ii) in paragraph 4, by repealing
"receiver" and substituting "trustee";

(iii) in paragraph 9 -

(A) in subparagraph (a), by
repealing "78(3)" and
substituting "86B(2)";

(B) in subparagraph (b), by
repealing "sends his accounts to
the Official Receiver under
section 93(1)" and substituting
"provides his accounts to the
Official Receiver under section
93(1A)".

3. Transitional and savings provisions

(1) Notwithstanding anything contained in this Order, the amendments effected under this Order shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if this Order had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

Explanatory Note

The purpose of this Order is to make amendments to the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in relation to fees and percentages to

be charged for in bankruptcy cases,
consequential to the enactment of the
Bankruptcy (Amendment) Ordinance 2005 (18 of
2005); and

- (b) clarify the fees for a bankruptcy petition or
petition for a small bankruptcy to be inclusive
of any fee on answering a petition or setting
down for hearing.

Draft

Speech by Secretary for Financial Services and the Treasury in Legislative Council on 13 June 2007

Bankruptcy (Fees and Percentages) (Amendment) Order 2007

Madam President,

I move the third resolution standing in my name on the agenda. The resolution seeks this Council's approval of the Bankruptcy (Fees and Percentages) (Amendment) Order 2007, which was made by the Chief Justice under section 114 of the Bankruptcy Ordinance.

2. Again, the Amendment Order is part and parcel of the amendments to the subsidiary legislation under the Bankruptcy Ordinance to implement the Bankruptcy (Amendment) Ordinance 2005 enacted by this Council in July 2005. The amendments to the fee schedules are merely technical and terminological in nature, and do not represent any adjustment to the fee levels. We have also taken the opportunity to adopt the Judiciary's view to clarify that the fees for a bankruptcy petition are inclusive of any fee on answering a petition or setting down for hearing.

3. Madam President, I beg to move. Thank you.

BANKRUPTCY ORDINANCE

RESOLUTION

(Under section 36 of the Bankruptcy Ordinance (Cap. 6))

RESOLVED that the Proof of Debts (Amendment) Rules 2007, made by the Chief Justice on 18 May 2007, be approved.

PROOF OF DEBTS (AMENDMENT) RULES 2007

(Made by the Chief Justice under section 36 of the
Bankruptcy Ordinance (Cap. 6) subject to the
approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on the day
appointed for the commencement of the Bankruptcy (Amendment)
Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32
of that Ordinance).

2. Rules amended

The Proof of Debts Rules (Cap. 6 sub. leg. E) are amended -

- (a) in rule 2, by repealing "Official Receiver or,
if a trustee has been appointed, to the";
- (b) in rule 4(3), by repealing "Official Receiver
or the";
- (c) in rule 5 -
 - (i) in paragraph (1), by repealing
"Official Receiver or the trustee, as
the case may be," and substituting
"trustee";
 - (ii) in paragraph (2), by repealing "the
Official Receiver, an assistant
official receiver or";
- (d) in rule 5A, by repealing "Official Receiver or,

where a trustee has been appointed, the trustee," and substituting "trustee";

(e) in rule 10, by repealing "Official Receiver or";

(f) in rule 20, by repealing "Supreme" and substituting "High";

(g) in rule 24, by repealing "Official Receiver or";

(h) by repealing rule 26.

3. Transitional and savings

provisions

(1) Notwithstanding anything contained in these Rules, the amendments effected under these Rules shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if these Rules had not been made.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, "commencement date" (生效日期) means the day appointed for the commencement of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005) (except sections 1, 12, 19 and 32 of that Ordinance).

Chief Justice

18 May 2007

Explanatory Note

The main purpose of these Rules is to make amendments to the Proof of Debts Rules (Cap. 6 sub. leg. E) ("principal Rules") to -

- (a) adjust the respective powers and duties of the Official Receiver, provisional trustee and trustee in relation to proof of debts in bankruptcy cases, consequential to the enactment of the Bankruptcy (Amendment) Ordinance 2005 (18 of 2005); and
- (b) substitute the reference of "High Court Ordinance" for "Supreme Court Ordinance" in rule 20 of the principal Rules.

Draft

Speech by Secretary for Financial Services and the Treasury in Legislative Council on 13 June 2007

Proof of Debts (Amendment) Rules 2007

Madam President,

I move the fourth resolution standing in my name on the agenda. The resolution seeks this Council's approval of the Proof of Debts (Amendment) Rules 2007, which were made by the Chief Justice under section 36 of the Bankruptcy Ordinance.

2. Like what I have explained, the Amendment Rules are consequential amendments essential to implementing the Bankruptcy (Amendment) Ordinance 2005 enacted by this Council in July 2005. I invite Members to approve them.

3. Madam President, I beg to move. Thank you.