

## BANKRUPTCY ORDINANCE

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### **RESOLUTION**

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

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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 99O 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.