

立法會
Legislative Council

LC Paper No. CB(3) 707/12-13

Ref. : CB(3)/M/OR

Tel : 3919 3302

Date : 21 June 2013

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 10 July 2013

**Four proposed resolutions under the
Bankruptcy Ordinance and the Companies Ordinance**

The Secretary for Financial Services and the Treasury will move the following four proposed resolutions at the Council meeting of 10 July 2013:

Proposed resolution	To be moved under the following Ordinance	Amendment Order/ Amendment Rules to be made	Appendix
(1)	Section 113 of the Bankruptcy Ordinance (Cap. 6)	Bankruptcy (Amendment) Rules 2013	1
(2)	Section 114 of the Bankruptcy Ordinance (Cap. 6)	Bankruptcy (Fees and Percentages) (Amendment) Order 2013	2
(3)	Section 296 of the Companies Ordinance (Cap. 32)	Companies (Fees and Percentages) (Amendment) Order 2013	3
(4)	Section 296 of the Companies Ordinance (Cap. 32)	Companies (Winding-up) (Amendment) Rules 2013	4

The President has directed that they be printed in the terms in which they were handed in on the Agenda of the Council.

2. The speeches, in both Chinese and English, which the Secretary will deliver when moving the four proposed resolutions are in **Appendices 5 to 8**.

(Ms Dora WAI)
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 2013, made by the Chief Justice on 18 June 2013, be approved.

Bankruptcy (Amendment) Rules 2013

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

1. Bankruptcy Rules amended

The Bankruptcy Rules (Cap. 6 sub. leg. A) are amended as set out in rule 2.

2. Rule 52 amended (deposit by petitioner)

(1) Rule 52(1)(a)—

Repeal

“\$8,650”

Substitute

“\$8,000”.

(2) Rule 52(1)(b)—

Repeal

“\$12,150”

Substitute

“\$11,250”.



Chief Justice

18 June 2013

Explanatory Note

These Rules amend the Bankruptcy Rules (Cap. 6 sub. leg. A) to reduce the deposit payable by a petitioner to the Official Receiver on the presentation of a petition.

Bankruptcy Ordinance

Resolution

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

Resolved that the Bankruptcy (Fees and Percentages) (Amendment) Order 2013, made by the Chief Justice on 18 June 2013, be approved.

Bankruptcy (Fees and Percentages) (Amendment) Order 2013

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

1. **Bankruptcy (Fees and Percentages) Order amended**
The Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended as set out in section 2.
2. **Schedule amended**
 - (1) The Schedule, Table A, item 4—
Repeal
“40.00”
Substitute
“35.00”.
 - (2) The Schedule, Table A, item 6(b)—
Repeal
“35.00”
Substitute
“28.00”.
 - (3) The Schedule, Table A, item 10—
Repeal
“85.00”
Substitute
“80.00”.
 - (4) The Schedule, Table A, item 11(b)—

Repeal

“\$45,000”

Substitute

“\$37,500”.

- (5) The Schedule, Table A, item 16—

Repeal

“85.00”

Substitute

“80.00”.

- (6) The Schedule, Table A, item 17—

Repeal

“205.00”

Substitute

“190.00”.

- (7) The Schedule, Table A, item 18—

Repeal

“355.00”

Substitute

“330.00”.

- (8) The Schedule, Table B, paragraph 1—

(a) **Repeal**

“payments made by the Official Receiver into the Official Receiver in Bankruptcy Account, whether acting as interim trustee or trustee to administer a debtor’s or bankrupt’s property, and on”;

(b) **Repeal**

“or bankrupt”.

(9) The Schedule, Table B, after paragraph 1—

Add

“1A. For the Official Receiver acting as interim trustee, or trustee to administer a debtor’s or bankrupt’s property, on every payment made into the Official Receiver in Bankruptcy Account \$170

The payment referred to in this paragraph does not include any of the following—

- (a) sums that are payable to secured creditors in respect of their securities;
- (b) money received in carrying on the business of the debtor or bankrupt.”.

(10) The Schedule, Table B, paragraph 4—

Repeal

“\$1,100” (wherever appearing)

Substitute

“\$1,000”.

(11) The Schedule, Table B, paragraph 5(a)—

Repeal

“\$670”

Substitute

“\$620”.

(12) The Schedule, Table B, paragraph 5(b)—

Repeal

“\$670”

Substitute

“\$620”.

(13) The Schedule, Table B, paragraph 6—

Repeal

“\$1,560”

Substitute

“\$1,440”.

(14) The Schedule, Table B, paragraph 11—

Repeal

“\$12,150”

Substitute

“\$11,250”.



Chief Justice

18 June 2013

Explanatory Note

This Order amends the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to revise certain fees to be charged for bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6).

Companies Ordinance

Resolution

(Under section 296 of the Companies Ordinance (Cap. 32))

Resolved that the Companies (Fees and Percentages) (Amendment) Order 2013, made by the Chief Justice on 18 June 2013, be approved.

Companies (Fees and Percentages) (Amendment) Order 2013

(Made by the Chief Justice under section 296 of the Companies Ordinance (Cap. 32) with the approval of the Legislative Council)

1. Companies (Fees and Percentages) Order amended

The Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C) is amended as set out in section 2.

2. Schedule 3 amended

(1) Schedule 3, Table A, item 1A—

Repeal

“12.00”

Substitute

“11.00”.

(2) Schedule 3, Table A, item 3—

Repeal

“390.00”

Substitute

“360.00”.

(3) Schedule 3, Table A, item 4—

Repeal

“390.00”

Substitute

“360.00”.

(4) Schedule 3, Table A, item 4A—

Repeal

“390.00”

Substitute

“360.00”.

(5) Schedule 3, Table A, item 5—

Repeal

“60.00”

Substitute

“55.00”.

(6) Schedule 3, Table A, item 6(b)—

Repeal

“\$45,000”

Substitute

“\$37,500”.

(7) Schedule 3, Table A, item 7—

Repeal

“355.00”

Substitute

“330.00”.

(8) Schedule 3, Table A, item 8—

Repeal

“85.00”

Substitute

“80.00”.

(9) Schedule 3, Table A, item 10—

Repeal

“40.00”

Substitute

“35.00”.

- (10) Schedule 3, Table B, number IV(1)—

Repeal

“\$670”

Substitute

“\$620”.

- (11) Schedule 3, Table B, number IV—

Repeal paragraph (2)

Substitute

“(2) On every payment made into the Companies Liquidation Account under section 202 \$170

The payment referred to in this paragraph does not include any of the following—

- (a) where the Official Receiver collects, calls or realizes property for debenture holders—the total assets, including the produce of calls on contributories, realized or brought to credit by the Official Receiver;
- (b) money received in carrying on the business of the company.”.

- (12) Schedule 3, Table B, number V—

Repeal

everything after “debenture holders”

Substitute

“, the following fees are to be paid out of the proceeds of the calls or property—

- (1) On the total assets, including the produce of calls on contributories, realized or brought to credit by the Official Receiver, after deducting the amount spent out of the money received in carrying on the business of the company, 10%.

- (2) The same fee as under number IV(3) of this Table.”.

- (13) Schedule 3, Table B, number VI—

Repeal

everything after “debenture holders”

Substitute

“, the following fee is to be paid out of the proceeds of the property—

On the total assets, including the produce of calls on contributories, realized or brought to credit by the Official Receiver, after deducting the amount spent out of the money received in carrying on the business of the company, 10%.”.

- (14) Schedule 3, Table B, number IX—

Repeal

“\$12,150”

Substitute

“\$11,250”.



Chief Justice

18 June 2013

Explanatory Note

This Order amends the Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C) to revise certain fees and percentages prescribed for winding-up proceedings of companies.

Companies Ordinance

Resolution

(Under section 296 of the Companies Ordinance (Cap. 32))

Resolved that the Companies (Winding-up) (Amendment) Rules 2013, made by the Chief Justice on 18 June 2013, be approved.

Companies (Winding-up) (Amendment) Rules 2013

(Made by the Chief Justice under section 296 of the Companies Ordinance (Cap. 32) with the approval of the Legislative Council)

1. Companies (Winding-up) Rules amended

The Companies (Winding-up) Rules (Cap. 32 sub. leg. H) are amended as set out in rules 2 and 3.

2. Rule 22A amended (deposit by petitioner)

Rule 22A(1)—

Repeal

“\$12,150”

Substitute

“\$11,250”.

3. Rule 117 amended (costs of calling meeting)

Rule 117—

Repeal

“\$1,560”

Substitute

“\$1,440”.



Chief Justice

18 June 2013

Explanatory Note

These Rules amend the Companies (Winding-up) Rules (Cap. 32 sub. leg. H) to reduce—

- (a) the deposit payable by a petitioner before presenting a petition for covering the fees and expenses to be incurred by the Official Receiver; and
- (b) the costs of summoning a meeting of creditors or contributories in winding-up proceedings of companies.

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the meeting of the Legislative Council on 10 July 2013**

**Bankruptcy Ordinance (Cap 6)
Bankruptcy (Amendment) Rules 2013**

President,

I move that the first motion under my name, as printed on the Agenda, be passed to approve the Bankruptcy (Amendment) Rules 2013 (“Amendment Rules”) made by the Chief Justice (“CJ”) on 18 June 2013.

2. The Amendment Rules, together with the Bankruptcy (Fees and Percentages (Amendment) Order 2013, Companies (Fees and Percentages) (Amendment) Order 2013 and Companies (Winding-Up) (Amendment) Rules 2013 covered in the three motions I am going to introduce, were all made by the CJ and are subject to the positive vetting procedures of the Legislative Council. These Amendment Rules and Amendment Orders seek to revise the relevant fees, charges and deposits payable to the Official Receiver’s Office (“ORO”) under the Bankruptcy Ordinance and the Companies Ordinance for the provision of services in respect of personal bankruptcy and company winding-up.

3. Regarding statutory fees, charges and deposits, it is the Government’s long-standing policy that fees should in general be set at levels adequate to recover the full costs of the services provided. This ensures that such costs do not fall on the general taxpayers.

4. The ORO has recently conducted a review of its statutory fees, charges and deposits. After taking into account the existing levels of these fees, charges and deposits as well as the ORO’s actual operating revenue and costs, we project that the ORO’s cost recovery rate for the 2013-14 financial year will be 111%. We propose to reduce a total of 26 items of the fees and charges for bankruptcy and winding-up cases as well as the deposits payable upon presentation of a

bankruptcy or court winding-up petition, bringing the levels back to those prior to the last fee revision exercise i.e. the levels in 1997.

5. As regards the fee payable when the Official Receiver (“OR”) acts as the interim trustee or trustee in bankruptcy cases or as the liquidator in court winding-up cases, we propose to charge a fixed fee of \$170 on a full-cost recovery basis to replace the present charging mechanism of “realisation fee” under which the ORO levies a fee at a rate of 10% on the payments made into the Official Receiver in Bankruptcy Account in bankruptcy cases or on the amount of assets realised in court winding-up cases.

6. If the proposed fee revisions are implemented, it is estimated that the annual revenue of the ORO will be reduced by about \$17.3 million, comprising \$11.1 million of “realisation fees” and \$6.2 million of the other fees. Assuming that the revised fees take effect in July 2013, the ORO’s projected cost recovery rate for 2013-14 will be around 100%.

7. As far as this motion is concerned, with the passage of the Amendment Rules, the two types of deposits payable by a petitioner upon presentation of a bankruptcy petition will be reduced. The deposit for debtor-petition bankruptcy cases will be reduced from \$8,650 to \$8,000, while that for creditor-petition bankruptcy cases will be reduced from \$12,150 to \$11,250, both reverting to the levels in 1997.

8. President, I hope this Council will support this motion so that the ORO can implement the proposed reduction in the deposits for bankruptcy cases as soon as possible. I move that the motion be passed. Thank you.

Financial Services and the Treasury Bureau

10 July 2013

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the meeting of the Legislative Council on 10 July 2013**

**Bankruptcy Ordinance (Cap 6)
Bankruptcy (Fees and Percentages) (Amendment) Order 2013**

President,

I move that the second motion under my name, as printed on the Agenda, be passed to approve the Bankruptcy (Fees and Percentages) (Amendment) Order 2013 (“Amendment Order”) made by the Chief Justice on 18 June 2013.

2. I have just explained the proposals for reducing fees and revising the present mechanism for charging the “realisation fee”, which were made in the light of the outcome of the recent review of statutory fees, charges and deposits conducted by the Official Receiver’s Office (“ORO”).

3. As far as this motion is concerned, with the passage of the Amendment Order, 13 items of statutory fees charged by the ORO for administering bankruptcy cases will be adjusted downwards, while the mechanism for charging the “realisation fee” when the Official Receiver acts as the interim trustee or trustee in bankruptcy cases will be replaced by a fixed fee of \$170.

4. President, I hope this Council will support this motion to facilitate the ORO’s early implementation of the said proposals. I move that the motion be passed. Thank you.

**Financial Services and the Treasury Bureau
10 July 2013**

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the meeting of the Legislative Council on 10 July 2013**

**Companies Ordinance (Cap 32)
Companies (Fees and Percentages) (Amendment) Order 2013**

President,

I move that the third motion under my name, as printed on the Agenda, be passed to approve the Companies (Fees and Percentages) (Amendment) Order 2013 (“Amendment Order”) made by the Chief Justice on 18 June 2013.

2. I have just explained the proposals for reducing fees and revising the present mechanism for charging the “realisation fee”, which were made in the light of the outcome of the recent review of statutory fees, charges and deposits conducted by the Official Receiver’s Office (“ORO”).

3. As far as this motion is concerned, with the passage of the Amendment Order, 12 items of statutory fees charged by the ORO for administering winding-up cases will be adjusted downwards, while the mechanism for charging the “realisation fee” when the Official Receiver acts as the liquidator in court winding-up cases will be replaced by a fixed fee of \$170.

4. President, I hope this Council will support this motion to facilitate the ORO’s early implementation of the said proposals. I move that the motion be passed. Thank you.

**Financial Services and the Treasury Bureau
10 July 2013**

(Translation)

**Speech by the Secretary for Financial Services and the Treasury
at the meeting of the Legislative Council on 10 July 2013**

**Companies Ordinance (Cap 32)
Companies (Winding-Up) (Amendment) Rules 2013**

President,

I move that the fourth motion under my name, as printed on the Agenda, be passed to approve the Companies (Winding-Up) (Amendment) Rules 2013 (“Amendment Rules”) made by the Chief Justice on 18 June 2013.

2. I have just explained the proposals for reducing fees and revising the present mechanism for charging the “realisation fee”, which were made in the light of the outcome of the recent review of statutory fees, charges and deposits conducted by the Official Receiver’s Office (“ORO”).

3. As far as this motion is concerned, with the passage of the Amendment Rules, the deposit payable by a petitioner upon presentation of a court winding-up petition will be reduced from \$12,150 to \$11,250. A fee charged by the ORO to cover the costs of summoning meetings of creditors or contributories in relation to the winding-up proceedings of companies will also be reduced from \$1,560 to \$1,440.

4. President, I hope this Council will support this motion to facilitate the ORO’s early implementation of the said proposals. I move that the motion be passed. Thank you.

**Financial Services and the Treasury Bureau
10 July 2013**