

**For discussion
on 8 April 2013**

**LEGISLATIVE COUNCIL
PANEL ON FINANCIAL AFFAIRS**

**Review of Statutory Fees, Charges and Deposits
of the Official Receiver's Office**

Purpose

This paper seeks Members' views on the Administration's proposal to revise 31 fees, charges and deposits payable to the Official Receiver's Office ("ORO") under the Bankruptcy Ordinance (Cap. 6) ("BO") and the Companies Ordinance (Cap. 32) ("CO") in relation to the provision of insolvency-related services.

Background

2. At present, ORO levies various statutory fees, charges and deposits for administering bankruptcy and winding-up cases. These fees, charges and deposits are set out in the Bankruptcy Rules (Cap. 6A), the Bankruptcy (Fees and Percentages) Order (Cap. 6C), the Companies (Fees and Percentages) Order (Cap. 32C) and the Companies (Winding-Up) Rules (Cap. 32H). It is Government policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the services. This ensures that the costs for providing the services do not fall on the general tax-payers.

3. It has been ORO's established practice to levy fees and charges for the provision of insolvency services without reference to the actual time spent in

any particular case. In general, the vast majority of insolvency cases administered by ORO are non-remunerative cases¹, which means there are no or inadequate assets to cover the costs incurred by ORO in administering these cases. On the other hand, the fees and charges collected in remunerative insolvency cases are higher than the actual costs incurred by ORO to administer these cases. This fee charging approach is intended to help defray ORO's costs of administering the vast majority of non-remunerative cases. In 1987, the Legislative Council (LegCo) passed legislative amendments to both BO and CO to expressly provide for ORO to levy fees for the recovery of costs generally without reference to the administrative or other costs incurred in any particular case².

4. ORO's statutory fees, charges and deposits were last revised in 1997, with a general increase of statutory fees and charges mostly in line with inflation ("the last fee revision exercise") to prevent further deterioration of the cost recovery rate³.

Proposals and Justifications

Revision of the levels of 31 fees, charges and deposits payable to ORO for bankruptcy and winding-up cases

5. ORO has recently conducted a review of its statutory fees, charges and deposits. After taking into account their existing levels and ORO's actual operating revenue and costs, it is projected that ORO will achieve cost recovery rate at 111% in the financial year 2013/14. Therefore, we propose to revise ORO's fees, charges and deposits, with details as follows —

¹ In 2011-12, 98% of new insolvency cases administered were non-remunerative cases. The percentage of non-remunerative cases has remained more or less the same for the past 5 years.

² Section 114(3) and (5) of the BO states that "The amount of any fees prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Official Receiver in proceedings in bankruptcy or in any particular bankruptcy" and "No fee prescribed under this section shall be invalid by reason only of the amount of that fee".

Section 296(4) and (7) of the CO also provides that "The amount of any fees prescribed under this section shall not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred by the Official Receiver in the winding up of companies or of any particular company" and "No fee prescribed under this section shall be invalid by reason only of the amount of that fee".

³ Before the last fee revision exercise in 1997, ORO's cost recovery rate for 1996-97 was 56%.

(a) Reducing the fixed fees and statutory minimum fees charged by ORO for bankruptcy and winding-up cases

In the last fee revision exercise, 13 fees applicable to bankruptcy and 13 fees relating to winding-up were increased. These include the statutory “minimum fees” charged by ORO where the Official Receiver (“OR”) acts as trustee in bankruptcy or liquidator, which were increased from \$11,250 to \$12,150 in line with inflation at that time. In the light of ORO’s latest cost recovery projection, we **propose** to revert the levels of these fees back to the levels prior to the last fee revision exercise. As a result, the statutory minimum fees will be reduced from \$12,150 to \$11,250 and other fixed fees will also be adjusted downwards accordingly. Details are set out in section (a) of Annex.

(b) Reducing the statutory deposits charged by ORO for bankruptcy and court winding-up cases

At present, petitioners for bankruptcy and court winding-up cases will need to make a deposit with ORO upon presentation of the petition. The deposit is \$8,650 for debtor-petition bankruptcy cases, and \$12,150 for creditor-petition bankruptcy and all court winding-up cases. The deposits are used to set off the statutory minimum fees as described in paragraph 5(a).

The amounts of the deposits were increased in the last fee revision exercise along with the adjustments to the statutory minimum fees and the fixed fees. In line with the proposed reduction in the statutory minimum fees and the fixed fees, we **propose** to reduce the deposits back to their levels prior to the last fee revision exercise, i.e. from \$8,650 to \$8,000 for debtor-petition bankruptcy cases and from \$12,150 to \$11,250 for creditor-petition bankruptcy and all court winding-up cases. Details are set out in section (b) of Annex.

We note that the Hong Kong Institute of Certified Public Accounts (“HKICPA”) and the Hong Kong Association of Banks (“HKAB”) have expressed concerns that reducing the deposit amount may have

the effect of encouraging people to pursue the bankruptcy route. Some market participants have suggested that the current level of statutory deposit for a debtor to petition for bankruptcy (i.e. \$8,650) does not appear to be too high and there is no indication that it is discouraging people from recourse to bankruptcy proceedings.

In this regard, Members may wish to note that the proposed adjustment to the deposit would only represent a small amount when compared with the overall debt incurred by a bankrupt, and hence should have little bearing on a debtor's decision on whether or not to pursue bankruptcy action. Besides, with the revision of the various statutory fees payable to ORO as proposed in paragraph 5(a), it would be reasonable to introduce corresponding changes to the levels of the deposits such that both the statutory fees and the deposits will be reduced to their original levels before the last fee revision exercise.

(c) Replacing the “realisation fee” by a fixed fee

At present, a “realisation fee” is levied by ORO at a rate of 10% on –

- (i) payments made by OR into the Bankruptcy Account when acting as the interim trustee in bankruptcy or trustee in bankruptcy cases; or
- (ii) the amount of assets realised by OR when acting as the liquidator in court winding-up cases.

When OR acts as the interim trustee in bankruptcy or trustee in bankruptcy cases or as the liquidator in court winding-up cases, ORO's efforts in realising the assets mainly involve transferring money into the bank accounts of the estates of the bankrupts or companies being wound up. As such, we **propose** to replace the present mechanism for charging the “realisation fee” by a fixed fee on each payment made into the Bankruptcy Account (for a bankruptcy case) and the Companies Liquidation Account⁴ (for a court

⁴ Under section 202 of CO, all assets realised by OR when acting as the liquidator in court winding-up cases are required to be paid into the Companies Liquidation Account.

winding-up case). We propose that the fixed fee should be set at \$170 on a full-cost recovery basis. The detailed proposed changes are set out in section (c) of Annex.

Financial Implications

6. Based on our estimates, if the proposed fee adjustments are implemented, it is estimated that the annual revenue would be reduced by about \$17.3 million, comprising \$11.1 million of realisation fees and \$6.2 million of the other fees. If the proposed fee revision comes into effect in June 2013, ORO's projected cost recovery rate for 2013-14 will be around 100%. We will monitor ORO's cost recovery rate after implementation of the fee proposals and review the need to further revise the levels of its fees as appropriate in future.

Consultation with Stakeholders

7. In September 2012 and March 2013, ORO consulted the ORO Services Advisory Committee ("SAC"), which comprises representatives from the banking, accounting and legal sectors as well as the insolvency practitioners, on the above proposals. Submissions were received from HKICPA and HKAB on the proposed adjustment of deposits which are highlighted in paragraph 5(b). Besides, HKAB further suggested that the Administration should consider the revision of other statutory fees. In this regard, we have explained that the present fee proposals seek to revert the fees, charges and deposits back to their levels before the last fee revision exercise, and by implementing these proposals, ORO would only just be able to achieve the target of full cost recovery. Therefore, there is no plan to reduce other fees in this exercise.

Next Steps

8. In accordance with section 113 of BO and section 296(1) of CO, any amendments to the Bankruptcy Rules (Cap. 6A) and the Companies (Winding-Up) Rules (Cap. 32H) are to be made by the Chief Justice, with the approval of LegCo by the positive vetting procedure. And in accordance with section 114 of BO and

section 296(3) of CO, any amendments to the Bankruptcy (Fees and Percentages) Order (Cap. 6C) and the Companies (Fees and Percentages) Order (Cap. 32C) are to be made by the Chief Justice, with the approval of LegCo by the positive vetting procedure.

9. Subject to Members' views on the proposed revision to the fees, charges and deposits, we plan to table the proposed amendments to the subsidiary legislation into LegCo in June 2013. Should the LegCo House Committee decide not to appoint a subcommittee to consider the concerned subsidiary legislation, the proposed revision shall come into effect upon the resolution of LegCo.

Advice Sought

10. Members are invited to give their views on the proposed revision to the fees, charges and deposits payable under BO and CO as set out in paragraph 5 above.

Financial Services and the Treasury Bureau (Financial Services Branch)
Official Receiver's Office
26 March 2013

Fee Proposals - Reducing the fixed fees and statutory minimum fees

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
(a) Reducing the fixed fees and statutory minimum fees charged by ORO for bankruptcy and winding-up cases				
	(1) to (13)	Bankruptcy (Fees and Percentages) Order (Cap. 6C) Schedule		
(1)	Table A Item 4	Fees payable for proof of debt above \$250, including filing (other than a proof for workmen's wages)	40	35
(2)	Table A Item 6(b)	Fees payable for each creditor notified of an application for early discharge, for the suspension of discharge or for the lifting of a suspension of discharge	35	28
(3)	Table A Item 10	Fees payable for application to the Official Receiver for payment of money out of the Bankruptcy Estates Account	85	80
(4)	Table A Item 11 (b)	Fees payable on every payment of money out of the Bankruptcy Estates Account where the money consists of undistributed funds or balances	Total fees taken under Table A Item 11(a)(ii) shall not exceed \$45,000 in each bankruptcy.	Total fees taken under Table A Item 11(a)(ii) shall not exceed \$37,500 in each bankruptcy.

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
(5)	Table A Item 16	Fees payable for application by a member of the public to the Official Receiver for a search on whether a bankruptcy petition has been presented against a person or firm	85	80
(6)	Table A Item 17	Fees payable for application by a member of the public to the Official Receiver for issue of a non-bankruptcy certificate for a person	205	190
(7)	Table A Item 18	Fees payable for insertion in the Gazette of a notice relating to bankruptcy	355	330
(8)	Table B Item 4	Fees payable on every order made by the court for the Official Receiver to act as interim trustee in bankruptcy of the property of a debtor under section 13 of BO	1,100	1,000
(9)		Fees payable where the order made by the court for the Official Receiver to act as interim trustee in bankruptcy of the property of a debtor under section 13 of BO is in force for a longer period than 14 days	1,100 for every 7 days after the first 14, and for every fraction of 7 days	1,000 for every 7 days after the first 14, and for every fraction of 7 days
(10)	Table B Item 5(a)	Fees payable for all official stationery, printing and postage within Hong Kong including notices to creditors of meetings and sittings of the court and	670 for a number of creditors and	620 for a number of creditors and bankrupts not

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
		room hire	bankrupts not exceeding 10	exceeding 10
(11)	Table B Item 5(b)	Fees payable for all official stationery, printing and postage within Hong Kong including notices to creditors of meetings and sittings of the court and room hire	670 for every 10 additional creditors and bankrupts or part thereof	620 for every 10 additional creditors and bankrupts or part thereof
(12)	Table B Item 6	Fees payable for the costs of summoning a meeting where the Official Receiver calls the meeting at the request of the creditors, which shall be deemed to include all disbursements for stationery, printing and postage within Hong Kong. Any charge for hiring a room outside the Official Receiver's Office by reason of the large number of creditors shall be additional to the said fees.	1,560	1,440
(13)	Table B Item 11	Notwithstanding the fees and charges prescribed in Table B, but subject to the availability of funds, the total fees and charges under this Table where the Official Receiver acts as trustee in bankruptcy to administer a bankrupt's property (i.e. the "minimum fee")	Not less than 12,150	Not less than 11,250

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
(14) to (25) Companies (Fees and Percentages) Order (Cap. 32C) Schedule 3				
(14)	Table A Item 1A	Fees payable on an inspection of a copy of the liquidator's accounts filed under section 203(4) or (6) of CO	12	11
(15)	Table A Item 3	Fees payable on an application by a liquidator to the Official Receiver for a special bank account under section 202 of CO	390	360
(16)	Table A Item 4	Fees payable on an order by the Official Receiver for a special bank account	390	360
(17)	Table A Item 4A	Fees payable on an application by a liquidator to the Official Receiver acting as a committee of inspection	390	360
(18)	Table A Item 5(a)	Fees payable on an application to the Official Receiver under section 285 of CO for payment of money out of the Companies Liquidation Account	60	55
(19)	Table A Item 5(b)	Fees payable on an application to the Official Receiver after 6 months from the date of issue, for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account	60	55

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
(20)	Table A Item 6(b)	Fees payable on every payment under section 285 of CO of money out of the Companies Liquidation Account where the money consists of undistributed funds or balances	Total fees taken under Table A Item 6(a) shall not exceed \$45,000 in each liquidation.	Total fees taken under Table A Item 6(a) shall not exceed \$37,500 in each liquidation.
(21)	Table A Item 7	Fees payable for insertion in the Gazette of a notice relating to a company which is being wound up by the court	355	330
(22)	Table A Item 8	Fees payable on an application by a member of the public to the Official Receiver for a search on whether a winding-up petition has been presented against a company	85	80
(23)	Table A Item 10	Fees payable on proof of debt above \$250 (other than a proof for workmen's wages). This fee includes administering oath and filing.	40	35
(24)	Table B Item IV(1)	Fees payable for cost of official stationery, printing, books, forms and postages in Hong Kong in all cases where the Official Receiver acts as liquidator of the company (to include his services as provisional liquidator)	670 in respect of every 10 members, creditors and	620 in respect of every 10 members, creditors and debtors, and every fraction of 10

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (\$)	Proposed Fee (i.e. reversion to level before the last fee revision exercise) (\$)
			debtors, and every fraction of 10	
(25)	Table B Item IX	Notwithstanding the fees and percentages prescribed in number I and numbers III to VII of Table B, the total fees under those numbers where the Official Receiver acts as liquidator of the company (i.e. the “minimum fee”)	Not less than 12,150	Not less than 11,250
	(26) Companies (Winding-up) Rules (Cap. 32H)			
(26)	Rule 117	Fees payable for the costs of summoning a meeting of creditors or contributories at the instance of any person other than the Official Receiver or liquidator, which shall be deemed to include all disbursements for stationery, printing and postage within Hong Kong. Any charge for hiring a room outside the Official Receiver’s Office by reason of the large number of creditors or contributories shall be additional to the said fees.	1,560	1,440

Fee Proposals - Reducing the statutory deposits

Item	Relevant Ordinance Reference	Fee Description	Existing Amount (\$)	Proposed Amount (i.e. reversion to level before the last fee revision exercise) (\$)
(b) Reducing the statutory deposits charged by ORO for bankruptcy and winding-up cases				
(1) – (2) Bankruptcy Rules (Cap. 6A)				
(1)	Rule 52(1)(a)	Deposit payable by a petitioner to the Official Receiver in the case of a debtor’s petition for bankruptcy	8,650	8,000
(2)	Rule 52(1)(b)	Deposit payable by a petitioner to the Official Receiver in the case of a creditor’s petition for bankruptcy	12,150	11,250
(3) Companies (Winding-up) Rules (Cap. 32H)				
(3)	Rule 22A(1)	Deposit payable by a petitioner to the Official Receiver for winding up a company	12,150	11,250

Fee Proposals - Replacing the “realisation fee” by a fixed fee

Item	Relevant Ordinance Reference	Fee Description	Existing Fee (%)	Proposed Fee (\$)
(c) Replacing the “realisation fee” by a fixed fee				
(1)	Bankruptcy (Fees and Percentages) Order (Cap. 6C) Schedule Table B Item 1	Fees payable on payments made by the Official Receiver into the Official Receiver in Bankruptcy Account, whether acting as interim trustee in bankruptcy or trustee in bankruptcy to administer a debtor’s or bankrupt’s property, after deducting any sums paid to secured creditors in respect of their securities, and not being monies received and spent in carrying on the business of a debtor or bankrupt	10% of payment made into the Bankruptcy Account	\$170 for each payment made into the Bankruptcy Account
(2)	Companies (Fees and Percentages) Order (Cap. 32C) Schedule 3 Table B Item IV(2)	Fees payable in all cases where the Official Receiver acts as liquidator of the company (to include his services as provisional liquidator)	10% of the total assets, including the produce of calls on contributories, realized or brought to credit by the Official Receiver, after deducting sums on which fees are chargeable under number V of Table B, and the amount spent out of the money received in carrying on the business of the company	\$170 for each payment made into the Companies Liquidation Account