

LEGISLATIVE COUNCIL BRIEF

The Secretary for Financial Services and the Treasury submits the following note for Members' information :

<u>Title of the Note</u>	<u>Date of ExCo</u>	<u>Date of Gazette</u>
Bankruptcy (Amendment) Bill 2003	11 November 2003	28 November 2003

26 November 2003

Financial Services and the Treasury Bureau

LEGISLATIVE COUNCIL BRIEF

BANKRUPTCY (AMENDMENT) BILL 2003

INTRODUCTION

A At the meeting of the Executive Council on 11 November 2003, the Council ADVISED and the Acting Chief Executive ORDERED that the Bankruptcy (Amendment) Bill 2003 (the Bill), at **Annex A**, should be introduced into the Legislative Council to facilitate Official Receiver (OR) to outsource summary bankruptcy cases to private-sector insolvency practitioners (PIPs) and make other minor miscellaneous amendments.

JUSTIFICATIONS

2. The economic downturn in recent years, amongst other reasons, has resulted in a drastic increase in bankruptcy cases. The number of bankruptcy orders made by the court amounted to 25 328 in 2002 as opposed to 639 in 1997. The establishment of the OR's Office (ORO) is not geared to such an extent of increase.

3. The Bankruptcy Ordinance (BO) provides that OR shall become the receiver of the bankrupt's property on the making of a bankruptcy order by the court. For bankruptcy cases where the value of the bankrupt's property exceeds \$200,000 (i.e. non-summary cases), OR shall summon a meeting of creditors for the purpose of appointing a PIP as the trustee of the bankrupt's property. For cases where the value of the bankrupt's property does not exceed \$200,000 (i.e. summary cases), no meeting of creditors is called and, upon an order made by the court that the case be administered in a summary manner, OR shall automatically be the trustee. Unlike the Companies Ordinance (CO) which allows OR to outsource summary cases for liquidation of companies without the need to convene a meeting of creditors¹, the BO does

¹ According to section 194(1A) of the CO, where OR as the provisional liquidator of the company is of the opinion that the company's property unlikely exceeds in value \$200,000, he may appoint one or more persons as provisional liquidator in his place. In such a case, the court may, under section 227F of the CO, further order that the company be wound up under a summary procedure. The provisional liquidator shall then become the liquidator. There shall be no meetings of creditors or contributories henceforth for the purpose of appointing a liquidator.

not have similar provisions for summary cases of bankruptcy. Since summary cases accounted for over 90% of the total number of bankruptcy cases, ORO had taken up the trusteeship for over 25 000 cases in 2002.

4. In order to deal with the expanding caseload in a more cost-effective and rapid manner, we **propose** to amend the BO to provide OR with the authority to appoint directly a PIP to handle summary bankruptcy cases, without the need for convening a creditors' meeting which is time consuming and impracticable given the large number of cases. PIPs are mostly professionals in the accountancy and legal sectors. They will be subject to the control of the Court of First Instance and OR under various sections of the BO. The duties and obligations imposed under the BO aside, these PIPs will be expected to perform their duties in accordance with the guidelines and rules of their professional bodies.

5. The Bill also seeks to update a number of provisions in the Ordinance.

THE BILL

6. The main provisions are -

(A) The appointment, powers and duties of a provisional trustee

- (a) **Clause 2** introduces a new definition of "provisional trustee" to section 2. **Clause 3** amends sections 12 to provide that OR shall become the provisional trustee (instead of being called "receiver") on the making of a bankruptcy order. Where he considers that the bankrupt's property is unlikely to exceed \$200,000 in value, OR as the provisional trustee may appoint another person as the provisional trustee in his place under the new section 12(1A). **Clause 42** amends section 112A so that, where the court has made an order for summary administration of a bankrupt's estate, the provisional trustee shall become the trustee thereafter.
- (b) **Clause 15** amends section 58 to provide that the bankrupt's property shall, on the making of the bankruptcy order, vest in the provisional trustee who shall, subject to qualifications, be regarded as the trustee for the purposes of the BO.

- (c) **Clause 17** amends section 60 to empower a provisional trustee appointed by OR to take possession of the bankrupt's property and to sell or dispose of perishable goods or other specified property².
 - (d) **Clause 25** adds a new section 81A to set up the arrangement during any vacancy in the office of a provisional trustee.
 - (e) **Clause 27** adds a new section 85A to provide that the remuneration of provisional trustees and trustees in such outsourced cases be fixed and approved by OR.
- (B) Respective duties of OR and trustees under the outsourcing regime**

Under the present regime, OR is the only person who may act as the receiver in bankruptcy cases. In most cases, he is also the trustee appointed to administer the bankrupt's estate. Provisions in the BO thus do not delineate clearly whether the duties imposed on OR are those related to his official position (as OR) or his trusteeship as regards a bankrupt's property. To cater for the outsourcing scenario, **clauses 20 and 21** amends sections 77 and 78 so that the two sections would only deal with OR's official duties as regards the bankrupt's conduct and estate. Duties of OR and other persons as regards the trusteeship are covered under new sections 86A and 86B as proposed in **clause 28**.

(C) Miscellaneous, transitional and other consequential amendments

- (a) **Clause 11** amends section 37 to set out a revised order³ of priority of costs and charges before the distribution of dividends but after realization of the bankrupt's property.
- (b) **Clause 36** amends section 98(2) to extend the time limit, within which a person may appeal against an order made by the court or the Registrar, from 21 to 28 days⁴.

² This arrangement follows the same approach in liquidation cases as set out in section 199(4) of the CO.

³ The proposed order of priority would bring the BO in line with Rule 179 of the Companies (Winding-up) Rules (Chapter 32H) which sets out the order in this regard under liquidation cases.

⁴ The proposed amendment will bring the BO in line with Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4A).

- (c) Arising from the above proposals, some consequential amendments, most of which concerning the references to “Official Receiver”, “trustee”, and “receiver” in the BO, are set out in the remaining clauses. These aside, **clauses 12, 19 and 32** are amendments in relation to the adaptation of laws. **Clause 47** provides for consequential amendments to other ordinances. **Clause 48** specifies the transitional and savings arrangements.

B The existing provisions being amended are at **Annex B**.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows –

Publication in the Gazette	28 November 2003
First Reading and commencement of Second Reading debate	10 December 2003
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

- C** 8. The financial, civil service and economic implications of the proposals in the Bill are set out at **Annex C**. These proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of the BO. They have no environmental and sustainability implications.

PUBLIC CONSULTATION

9. We conducted a public consultation exercise on the review of the role of the ORO in the provision of insolvency administration services in June 2002. Submissions received from responding parties (including professional bodies such as Hong Kong Association of Banks, Law Society of Hong Kong, Hong Kong Society of Accountants, and Hong Kong Institute of Company

Secretaries) indicated general support for the proposal of outsourcing bankruptcy cases.

10. We briefed the Legislative Council Panel on Financial Affairs on the outcome of the consultation in May 2003, during which Members did not have adverse comment on the outsourcing proposal and noted that we would pursue it as soon as possible. We have issued a further information paper to the Panel in October 2003, setting out more details of the legislative proposals.

PUBLICITY

11. A press release will be issued on 26 November 2003. A spokesman will be available to handle enquiries.

OTHERS

12. Enquiries on this brief should be addressed to Ms Shirley Lam, Principal Assistant Secretary for Financial Services and the Treasury (telephone number: 2527 3909).

Financial Services and the Treasury Bureau
November 2003

BANKRUPTCY (AMENDMENT) BILL 2003**CONTENTS**

Clause		Page
1.	Short title and commencement	1
2.	Interpretation	1
3.	Effect of bankruptcy order	2
4.	Power to appoint interim trustee	3
5.	Power to appoint special manager	3
6.	Summoning of meeting to appoint first trustee	4
7.	Power of creditors to requisition meeting	4
8.	Statement of affairs	4
9.	Public examination of bankrupt	4
10.	Provisions where person other than Official Receiver is appointed trustee	5
11.	Priority of costs and charges	6
12.	Priority of debts	8
13.	Restriction of rights of creditor under execution or attachment	8
14.	Duties of bailiff as to goods taken in execution	8
15.	Vesting and transfer of property	8
16.	Disclaimer of onerous property	9
17.	Powers of provisional trustee and trustee to deal with property of the bankrupt	9
18.	Right of trustee to inspect goods pawned, etc.	11
19.	Appointment of Official Receiver and other officers	11
20.	Duties of Official Receiver as regards the bankrupt's conduct	11
21.	Duties of Official Receiver as to bankrupt's estate	12
22.	Part V heading substituted	13
23.	Section substituted	

	79. Official name of trustee and provisional trustee	13
24.	Power to appoint joint or successive trustees and provisional trustees	13
25.	Section added	
	81A. Vacancy in office of provisional trustee	14
26.	Discretionary powers of trustee and control thereof	14
27.	Section added	
	85A. Remuneration of provisional trustee and the first trustee constituted under section 112A	15
28.	Sections added	
	Duties of trustee as regards the bankrupt's conduct and estate	
	86A. Duties of trustee as regards the bankrupt's conduct	16
	86B. Duties of trustee as regards the bankrupt's estate	17
29.	Trustee to provide list of creditors	18
30.	Trustee to provide statement of accounts	18
31.	Annual statement of proceedings	19
32.	Payment of moneys into bank	19
33.	Record and account to be kept by trustee	19
34.	Audit of trustee's accounts	19
35.	Removal of trustee	20
36.	Review and appeals in bankruptcy	20
37.	General rules of procedure	20
38.	Court may make regulating order	20
39.	Appointment and removal of trustee after the making of regulating order	20
40.	Creditors to give notice of intention to take part in public examination	21
41.	Proof of debts in the case of banks	22

42.	Application of Ordinance to small bankruptcies	22
43.	Disposal of Official Receiver's fees	22
44.	Formal defect not to invalidate proceedings	23
45.	Fraudulent debtors	23
46.	Criminal Bankruptcy Orders	23
47.	Consequential amendments	23
48.	Transitional and savings provisions	23
Schedule	Consequential amendments	24

A BILL

To

Amend the Bankruptcy Ordinance to empower the Official Receiver to outsource bankruptcy cases in specified circumstances, to provide for the respective roles of the Official Receiver, a provisional trustee and a trustee, to bring section 37 in line with rule 179(1) of the Companies (Winding-up) Rules, to adapt certain provisions to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China, to update certain outdated provisions, and to provide for related and consequential matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance 2003.

(2) Subject to subsections (3) and (4), this Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

(3) This section shall come into operation on the day on which this Ordinance is published in the Gazette.

(4) Sections 12, 19 and 32 shall be deemed to have come into operation on 1 July 1997.

(5) Subsection (4) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

2. Interpretation

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

- (a) in the definition of “**誓章**”, by repealing the full stop at the end and substituting a semicolon;
- (b) by adding -
 - ““provisional trustee” (**暫行受託人**), in relation to a bankrupt, means -
 - (a) where no person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the Official Receiver; or
 - (b) where any person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the person;”.

3. Effect of bankruptcy order

Section 12 is amended -

- (a) in subsection (1), by repealing “the Official Receiver shall be thereby constituted receiver” and substituting “, the Official Receiver shall thereby become the provisional trustee”;
- (b) by adding -
 - “(1A) Where the Official Receiver as the provisional trustee considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, he may at any time appoint any person as

provisional trustee of the property of the bankrupt in his place.

(1B) The power of the Official Receiver to appoint a person as provisional trustee includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

4. Power to appoint interim trustee

Section 13 is amended by repealing “receiver” and substituting “trustee”.

5. Power to appoint special manager

Section 15 is amended -

- (a) in subsection (1), by repealing “to act until a trustee is appointed, and with” and substituting “, who shall have”;
- (b) by adding -

“(4) The term of office of the special manager shall last until -

- (a) in a case where a person other than the Official Receiver is appointed as provisional trustee, the appointment; or

- (b) in any other case, there is a trustee in relation to the bankrupt's estate.”.

6. Summoning of meeting to appoint first trustee

Section 17A is amended -

- (a) in subsection (1), by adding “under section 17” after “trustee”;
- (b) in subsections (1), (3) and (4), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

7. Power of creditors to requisition meeting

Section 17B is amended -

- (a) in subsection (1), by repealing “the trustee” and substituting “a trustee under section 17”;
- (b) in subsections (1), (2) and (3), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

8. Statement of affairs

Section 18 is amended -

- (a) in subsections (1) and (3), by repealing “Official Receiver” wherever it appears and substituting “trustee”;
- (b) in subsection (5), by repealing “or Official Receiver”.

9. Public examination of bankrupt

Section 19 is amended -

- (a) in subsection (1), by adding “or the trustee” after “Receiver”;
- (b) in subsections (2) and (3), by repealing “Official Receiver” and substituting “trustee”;
- (c) by adding -

“(4A) The trustee may, before or at any time after making an application under subsection (1), in writing request the creditor at whose instance the application is made to deposit with him within the specified time such sum or further sum as he considers necessary to pay his costs and expenses in holding the public examination.

(4B) Notwithstanding anything in subsections (2) and (3), the trustee may refuse to make an application under subsection (1) or discontinue the public examination concerned if the creditor to whom a request is made under subsection (4A) fails to comply with the request.”;

- (d) in subsection (5)(b), by repealing “, if his appointment has taken effect”;
- (e) by repealing subsection (8).

10. Provisions where person other than Official Receiver is appointed trustee

Section 23(1)(b) is amended by repealing “that officer” and substituting “the Official Receiver”.

11. Priority of costs and charges

Section 37 is amended -

- (a) in subsection (1) -
 - (i) by repealing “actual expenses incurred in” and substituting “expenses properly incurred in preserving, getting in or”;
 - (ii) by repealing paragraphs (a), (b), (c) and (d) and substituting -
 - “(a) the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the Official Receiver, whether acting as trustee or otherwise, including the costs of any person properly employed by him;
 - (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
 - (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;

- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination under this Ordinance, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the Official Receiver, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the Official Receiver;
- (h) the remuneration of any trustee other than the Official Receiver; and
- (i) the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.”;

(b) by adding -

“(3) For the purposes of subsection (1)(e), if the shorthand writer is appointed or authorized by

the Official Receiver, the cost of the shorthand notes shall be regarded as an expense properly incurred in getting in or realizing the assets of the bankrupt.”.

12. Priority of debts

Section 38(10) is amended, in the definition of “statutory debt”, by repealing “or imperial enactment”.

13. Restriction of rights of creditor under execution or attachment

Section 45(1) is amended by repealing “in bankruptcy”.

14. Duties of bailiff as to goods taken in execution

Section 46 is amended -

- (a) in subsection (1) -
 - (i) by repealing “Official Receiver,” and substituting “trustee,”;
 - (ii) by repealing “Official Receiver or”;
- (b) in subsection (3), by repealing “Official Receiver or”.

15. Vesting and transfer of property

Section 58(1) is repealed and the following substituted -

“(1) On the making of a bankruptcy order, the property of the bankrupt shall vest in the Official Receiver.

(1A) On the appointment of a person other than the Official Receiver as provisional trustee, the property shall forthwith pass to and vest in the provisional trustee appointed.

(1B) Save in sections 15(4), 17, 17A, 17B, 42(3), 43A, 43B, 43C, 58(2), 60(1), 79, 80, 81, 85, 85A, 96(1) and 112A, the provisional trustee shall, unless the context otherwise requires, be regarded as the trustee for the purposes of this Ordinance.”.

16. Disclaimer of onerous property

Section 59(7) is amended by repealing “in bankruptcy”.

17. Powers of provisional trustee and trustee to deal with property of the bankrupt

Section 60 is amended -

- (a) by renumbering it as section 60(1);
- (b) in subsection (1) -
 - (i) by repealing “, the trustee” and substituting “, a trustee or the Official Receiver when acting as provisional trustee”;
 - (ii) in paragraph (a), by repealing “Official Receiver or” and substituting “trustee or the Official Receiver when acting as provisional”;
- (c) by adding -
 - “(2) Notwithstanding any other provisions of this Ordinance but subject to subsections (3) and (4), a provisional trustee other than the Official Receiver may do all or any of the following things -
 - (a) take into his custody or under his control all the property to

which the bankrupt is or appears to be entitled;

- (b) sell or dispose of perishable goods, or any property (other than derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if such property is not immediately sold or disposed of;
- (c) subject to section 61, do all such other things as may be necessary for protecting or preserving the bankrupt's property.

(3) A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised under an order of the court or with the prior approval of the Official Receiver.

(4) A provisional trustee other than the Official Receiver shall not sell or dispose of anything under subsection (2)(b) to a person who is an associate of the bankrupt, unless the sale or disposal

is under an order of the court or with the prior approval of the Official Receiver.

(5) For the purposes of subsection (4), any question whether a person is an associate of another person shall be determined in accordance with section 51B as if -

- (a) that section were applicable also for the purposes of such determination; and
- (b) references to the “debtor” in that section were references to the “bankrupt” in subsection (4).

(6) The Official Receiver shall not be personally liable for any costs and charges incurred by any person as a result of any refusal to grant approval under subsection (3) or (4).”.

18. Right of trustee to inspect goods pawned, etc.

Section 64 is amended by repealing “Official Receiver or”.

19. Appointment of Official Receiver and other officers

Section 75(1), (6) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.

20. Duties of Official Receiver as regards the bankrupt’s conduct

Section 77 is amended -

- (a) by repealing “the bankrupt,” and substituting “the conduct of a bankrupt,”;
- (b) by repealing paragraph (a) and substituting -
 - “(a) to consider any report submitted to him under section 86A and take such action on the report as he considers appropriate;”;
- (c) by repealing paragraph (b);
- (d) in paragraph (c), by repealing “fraudulent”.

21. Duties of Official Receiver as to bankrupt’s estate

Section 78 is amended -

- (a) in subsection (1) -
 - (i) by repealing paragraph (a) and substituting -
 - “(a) to act as interim trustee if so appointed by the court;”;
 - (ii) by repealing paragraphs (b), (c), (d) and (e);
 - (iii) in paragraph (f), by repealing everything after “order” and substituting a semicolon;
 - (iv) in paragraph (g), by repealing the semicolon and substituting a full stop;
 - (v) by repealing paragraph (h);
- (b) in subsection (2) -
 - (i) by repealing “receiver or manager” and substituting “trustee;”;
 - (ii) by repealing “and manager”;
- (c) by repealing subsection (3).

22. Part V heading substituted

The heading of Part V is repealed and the following substituted -
“TRUSTEES AND PROVISIONAL TRUSTEES”.

23. Section substituted

Section 79 is repealed and the following substituted -

**“79. Official name of trustee and
provisional trustee**

(1) The official name of a provisional trustee shall be “the provisional trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(2) The official name of a trustee shall be “the trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(3) By his official name, a provisional trustee or trustee may do all acts that are required or authorized to be done by him in the execution of his office.”.

**24. Power to appoint joint or successive trustees
and provisional trustees**

Section 80(1) is repealed and the following substituted -

“(1) When 2 or more persons are appointed as provisional trustees, the appointment shall state whether any act required or authorized to be done by a provisional trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a provisional trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.

(1A) When 2 or more persons are appointed as trustees, the appointment shall state whether any act required or authorized to be done by a trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.”.

25. Section added

The following is added immediately after section 81 -

“81A. Vacancy in office of provisional trustee

(1) If a vacancy occurs in the office of a provisional trustee, the Official Receiver shall -

- (a) in a case where the Official Receiver considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, either appoint another person to fill the vacancy or act as the provisional trustee; or
- (b) in any other case, act as the provisional trustee.

(2) The power of the Official Receiver to appoint another person to fill a vacancy may be exercised without a creditors’ meeting, and it includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

26. Discretionary powers of trustee and control thereof

Section 82(2) is amended -

- (a) by repealing “or Official Receiver” where it twice appears;

- (b) by repealing “or the Official Receiver, as the case may be,”.

27. Section added

The following is added -

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

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

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

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

(3) Where the provisional trustee or first trustee referred to in subsection (1) acts without remuneration, he shall be allowed out of the bankrupt’s estate such expenses properly incurred by him in or about the proceedings of the bankruptcy as the court may approve.

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

28. Sections added

The following are added immediately after section 86 -

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

86A. Duties of trustee as regards the bankrupt’s conduct

- (1) As regards the conduct of a bankrupt, it shall be the duty of the trustee -
- (a) to investigate the conduct of the bankrupt and to submit a report in accordance with subsection (2) or (3), as the case may be, stating whether there is reason to believe that the bankrupt has committed any act that constitutes an indictable offence under this Ordinance;
 - (b) to report to the court on any conduct of the bankrupt that justifies the court in refusing,

suspending or qualifying an order for the bankrupt's discharge;

- (c) to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice or the Official Receiver may direct.

(2) Where the trustee is a person other than the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the Official Receiver.

(3) Where the trustee is the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the court.

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

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

- (a) to raise money in any case where in the interests of the creditors it appears necessary so to do;
- (b) to preside at the first meeting of creditors if it is summoned;
- (c) to issue forms of proxy for use at the meetings of creditors;
- (d) to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs;
- (e) to advertise the date of the first meeting of creditors and of the bankrupt's public examination,

and such other matters as it may be necessary to advertise;

- (f) to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose to employ at the expense of the estate any person or persons to assist in its preparation.

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

29. Trustee to provide list of creditors

Section 87 is amended -

- (a) by repealing “or Official Receiver”;
- (b) by repealing “furnish and transmit to him by post” and substituting “provide the creditor with”.

30. Trustee to provide statement of accounts

Section 88 is amended -

- (a) by repealing “or Official Receiver to furnish and transmit to the creditors” and substituting “to provide the creditors with”;
- (b) by repealing “furnish and transmit such” and substituting “provide the”;
- (c) by repealing “furnished” and substituting “provided”;
- (d) by repealing “or Official Receiver, as the case may be,”;

- (e) by repealing “furnishing and transmitting” and substituting “providing”.

31. Annual statement of proceedings

Section 89 is amended -

- (a) in subsection (1), by repealing “transmit to the Official Receiver” and substituting “provide the Official Receiver with”;
- (b) in subsection (2), by repealing “transmitted” and substituting “provided”.

32. Payment of moneys into bank

Section 91(1) is amended by repealing “Governor” and substituting “Chief Executive”.

33. Record and account to be kept by trustee

Section 92(1) is amended by repealing “if in Chinese shall be supplemented by a correct English translation thereof and”.

34. Audit of trustee’s accounts

Section 93 is amended -

- (a) by repealing subsection (1) and substituting -
 - “(1) A trustee other than the Official Receiver shall keep an account of his receipts and payments as such trustee.
 - (1A) The Official Receiver may at any time require the trustee to provide him with the account,

and the trustee shall comply with the requirement within the specified time.”;

- (b) in subsection (3), by repealing “furnish” and substituting “provide”.

35. Removal of trustee

Section 96(2)(a) is amended by repealing “appointed by the creditors” and substituting “, other than the Official Receiver,”.

36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing “21” and substituting “28”.

37. General rules of procedure

Section 99(3) is amended -

- (a) in paragraph (b), by repealing “annual adjudications” and substituting “annul bankruptcy orders”;
- (b) in paragraph (d), by repealing “orders of discharge” and substituting “discharge from bankruptcy”.

38. Court may make regulating order

Section 100A(1) is amended -

- (a) by repealing “or by” and substituting “, the trustee or”;
- (b) by repealing “whether presented before or after the commencement of the Bankruptcy (Amendment) Ordinance 1965 (21 of 1965),”.

39. Appointment and removal of trustee after the making of regulating order

Section 100D(1) is repealed and the following substituted -

“(1) The court may, on application being made by the Official Receiver or the trustee appointed or acting before the making of the regulating order under section 100A, by order appoint the person who makes the application or any other person recommended by him as trustee of the property of the bankrupt under the regulating order.

(1A) The court may, on application being made by the Official Receiver, by order remove any trustee appointed under subsection (1) and fill any vacancy.

(1B) On the making of an order under subsection (1) or (1A), section 81(1), (2) and (3) or 96(1) shall cease to apply to the bankruptcy and any action taken under such provisions before the making of the regulating order in respect of the appointment or removal of a trustee or filling of any vacancy shall cease to have effect.”.

40. Creditors to give notice of intention to take part in public examination

Section 100G is amended -

- (a) in subsection (1), by repealing everything after “intention to” and substituting -

“-

- (a) in a case where the Official Receiver is the applicant for the public examination, the Official Receiver; or

(b) in a case where the trustee is the applicant for the public examination, the trustee.”;

(b) by adding -

“(1A) The court may also direct that no creditor may exercise his right to question the bankrupt on his public examination under section 19(5) unless the notice under subsection (1) is received by the Official Receiver or the trustee, as the case may be, within such time as may be specified by the court.”.

41. Proof of debts in the case of banks

Section 100H(1) is amended by adding “or trustee” after “Receiver”.

42. Application of Ordinance to small bankruptcies

Section 112A is amended -

(a) in subsection (1) -

(i) in paragraphs (b) and (i), by repealing “Official Receiver” and substituting “provisional trustee”;

(ii) in paragraph (ii), by repealing “Official Receiver” and substituting “trustee”;

(b) in subsection (2), by repealing “Official Receiver” and substituting “trustee”.

43. Disposal of Official Receiver’s fees

Section 115 is amended by repealing “receiver” and substituting “trustee”.

44. Formal defect not to invalidate proceedings

Section 124(2) is amended by repealing “receiver,”.

45. Fraudulent debtors

Section 129(6) is amended by adding “a provisional trustee and” after “includes”.

46. Criminal Bankruptcy Orders

Schedule 1 is amended -

- (a) in paragraph 11(2), by repealing “in bankruptcy”;
- (b) in paragraph 14(3) -
 - (i) in sub-sub-paragraph (c), by repealing “, (8)”;
 - (ii) in sub-sub-paragraph (g), by repealing “78(1)(e)” and substituting “86B(1)(d)”.

47. Consequential amendments

The enactments specified in column 2 of the Schedule are amended in the manner set out in column 3 of the Schedule.

48. Transitional and savings provisions

(1) Notwithstanding anything contained in this Ordinance, the amendments effected under this Ordinance (except sections 12, 19 and 32) 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 Ordinance had not been enacted.

(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 by the Secretary for Financial Services and the Treasury under section 1(2) of this Ordinance.

SCHEDULE

[s. 47]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Amendment
1.	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	<p>(a) In section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
2.	Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg. A)	<p>(a) In Schedule 2, in section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In Schedule 2, in section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
3.	Organized and Serious	<p>(a) In section 2(1), in the definition of</p>

- | | |
|---|--|
| Crimes Ordinance (Cap. 455) | “insolvency officer”, in paragraph (b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”. |
| | (b) In section 21(5), repeal “receiver” where it twice appears and substitute “trustee”. |
| 4. Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) | (a) In Schedule 2, in section 12(5), repeal “receiver” where it twice appears and substitute “trustee”. |
| | (b) In Schedule 2, in section 14(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”. |
| 5. Securities and Futures (Licensing and Registration) Rules (Cap. 571 sub. leg. S) | In Schedule 1, in Part 2, in section 1(k), repeal “receiver” and substitute “provisional trustee”. |

Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) (“BO”) for the following main purposes -

- (a) to empower the Official Receiver to outsource bankruptcy cases to private sector insolvency practitioners in specified circumstances;
- (b) to provide for the powers and duties of a provisional trustee;
- (c) following the introduction of the outsourcing regime, to adjust or further provide for the respective powers and duties of the Official Receiver and a trustee;
- (d) to amend the priority of payment of costs and charges out of a bankrupt's estate as set out in section 37 of the BO to bring the section in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H);
- (e) to adapt sections 38, 75 and 91 of the BO to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China; and
- (f) to update certain outdated provisions and make other amendments that are related to or consequent upon the matters set out in paragraphs (a), (b) and (c).

2. Clause 1 sets out the short title of the Bill and provides for the commencement of the Bill.

3. Clause 2 amends section 2 of the BO by adding a new definition of "provisional trustee".

4. Clause 3 adds 2 new subsections to section 12 of the BO, which set out the circumstances under which the Official Receiver may appoint a person as provisional trustee in his place and empower the Official Receiver to appoint joint provisional trustees.

5. Clause 5 amends section 15 of the BO to provide for the term of office of a special manager appointed under this section.

6. Clause 9 amends section 19 of the BO so that the trustee, instead of the Official Receiver, is the person who is obliged to apply for public examination of a bankrupt under subsections (2) and (3) of that section. Clause 9 also adds 2 new subsections to section 19 of the BO, so that the trustee is empowered to make a request for deposit of such sum of money as he considers necessary for holding the public examination.
7. Clause 11 amends section 37 of the BO to bring the order of priority of payment of costs and charges out of a bankrupt's estate in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).
8. Clause 15 amends section 58 of the BO. The vesting of a bankrupt's property in the Official Receiver on the making of a bankruptcy order, and subsequently in the provisional trustee if appointed under section 12(1A), are provided for in the new subsections (1) and (1A). The new subsection (1B) provides that a provisional trustee shall, subject to specified circumstances, be regarded as a trustee for the purposes of the BO.
9. Clause 17 amends section 60 of the BO. 5 new subsections are added to provide for the powers of a provisional trustee in dealing with the bankrupt's property, and to exempt the Official Receiver from personal liability for costs and charges in a case where he refuses to grant approval under the new subsection (3) or (4).
10. Clause 20 amends section 77 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's conduct.
11. Clause 21 amends section 78 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's estate.
12. Clause 23 replaces the existing section 79 of the BO. It provides for the respective official names of a provisional trustee and a trustee, and empowers them to act by their official names.
13. Clause 24 amends section 80 of the BO and makes provisions for the appointment of joint provisional trustees and joint trustees.

14. Clause 25 adds a new section 81A to the BO. It states how a vacancy in the office of a provisional trustee shall be filled.

15. Clause 27 adds a new section 85A to the BO. It deals with the remuneration of a provisional trustee and the first trustee constituted under section 112A(1)(i).

16. Clause 28 adds 2 new sections to the BO. Sections 86A and 86B provide for the duties of a trustee as regards the conduct and estate of a bankrupt. Some of these duties are transposed from the existing sections 77 and 78 of the BO.

17. Clause 35 amends section 96 of the BO so that the Court of First Instance is empowered to remove a trustee or provisional trustee other than the Official Receiver, regardless of whether he was appointed by the bankrupt's creditors or not.

18. Clause 36 amends section 98 of the BO to extend the time limit within which a person may appeal against an order mentioned in subsection (1) of that section. This will bring the section in line with Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A).

19. Clauses 37 and 38 amend sections 99 and 100A respectively of the BO mainly to update certain outdated expressions in these sections.

20. Clause 39 amends section 100D of the BO. In particular, the existing subsection (1) is amended and divided into 3 subsections to facilitate reading.

21. Clause 40 amends section 100G of the BO. Subsection (1) is amended to specify the person to whom a notice of intention to take part in the public examination of a bankrupt shall be given. The new subsection (1A) originally forms part of the existing subsection (1). It is now separated from it to facilitate reading.

22. Clauses 47 and 48 contain consequential amendments and transitional provisions.

Chapter:	6	BANKRUPTCY ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 158 of 1998	01/04/1998
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

In this Ordinance, unless the context otherwise requires-

"affidavit" (誓章) includes statutory declaration, affirmation and attestation on honour;

"bailiff" (執達主任) includes any officer charged with the execution of a writ or other process;

"bankruptcy debt" (破產債項), in relation to a bankrupt, means-

- (a) any debt or liability to which he is subject at the commencement of the bankruptcy; and
- (b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy; (Added 76 of 1996 s. 2)

"court" (法院、法庭) means the Court of First Instance sitting in its bankruptcy jurisdiction; (Amended 92 of 1975 s. 59; 25 of 1998 s. 2)

"debt provable in bankruptcy" (破產案中可證債權、破產案中可證債項) or "provable debt" (可證債權、可證債項) includes any debt or liability by this Ordinance made provable in bankruptcy;

"goods" (貨品) includes all chattels personal;

"nominee" (代名人) means the Official Receiver or some person who by reason of his experience and qualifications is, in the opinion of the court, a suitable person to perform the duties of the nominee specified in sections 20A, 20D, 20E and 20G; (Added 76 of 1996 s. 2)

"oath" (誓言) includes affirmation, declaration and attestation on honour;

"Official Receiver" (破產管理署署長) means the Official Receiver appointed under section 75; (Added 47 of 1984 s. 2)

"ordinary resolution" (普通決議) means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"prescribed" (訂明) means prescribed by general rules within the meaning of this Ordinance;

"property" (財產) includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in Hong Kong or elsewhere, also obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined; (Amended 47 of 1984 s.

16)

"proposal" (建議) means a proposal for a voluntary arrangement made to his creditors by a debtor;

(Added 76 of 1996 s. 2)

"Registrar" (司法常務官) means the Registrar of the High Court, and any Deputy or Assistant Registrar of the High Court; (Replaced 47 of 1984 s. 2. Amended 25 of 1998 s. 2)

"resolution" (決議) means ordinary resolution;

"secured creditor" (有抵押債權人) means a person holding a mortgage, charge or lien on the property of the debtor or any part thereof, as a security for a debt due to him from the debtor;

"special resolution" (特別決議) means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"trustee" (受託人) means the trustee in bankruptcy of a bankrupt's estate. (Amended 76 of 1996 s. 72)

"voluntary arrangement" (自願安排) means a composition in satisfaction of a debtor's debts or a scheme of arrangement of a debtor's affairs. (Added 76 of 1996 s. 2)

(Amended 76 of 1996 s. 2)

[cf. 1914 c. 59 s. 167 U.K.]

Section:	12	Effect of bankruptcy order	L.N. 158 of 1998	01/04/1998
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(1) On the making of a bankruptcy order the Official Receiver shall be thereby constituted receiver of the property of the bankrupt, and thereafter, except as directed by this Ordinance, no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the bankrupt in respect of the debt, nor shall proceed with or commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose. (Amended 76 of 1996 ss. 8 and 72)

(2) This section shall not affect the power of any secured creditor to realize or otherwise deal with his security.

[cf. 1914 c. 59 s. 7 U.K.]

Section:	13	Power to appoint interim receiver	L.N. 158 of 1998	01/04/1998
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The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a bankruptcy order is made, appoint the Official Receiver to be interim receiver of the property of the debtor or of any part thereof, and

direct him to take immediate possession thereof or of any part thereof.

(Amended 76 of 1996 s. 9)

[cf. 1914 c. 59 s. 8 U.K.]

Section:	15	Power to appoint special manager	L.N. 158 of 1998	01/04/1998
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(1) The court may, on the application of the Official Receiver or of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the Official Receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver.

(2) The special manager shall give security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as may be fixed by the court.
(Amended 76 of 1996 s. 10)

[cf. 1914 c. 59 s. 10 U.K.]

Section:	17A	Summoning of meeting to appoint first trustee	L.N. 158 of 1998	01/04/1998
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(1) Where a bankruptcy order has been made and no order for the summary administration of the bankrupt's estate has been made, it is the duty of the Official Receiver, as soon as practicable in the period of 12 weeks beginning with the day on which the order was made, to decide whether to summon a general meeting of the bankrupt's creditors for the purpose of appointing a trustee.

(2) This section does not apply where a criminal bankruptcy order was made and it is subject to the provision made in section 17B(3).

(3) Subject to section 17B, if the Official Receiver decides not to summon such a meeting, he shall, before the end of the period of 12 weeks referred to in subsection (1), give notice of his decision to the court and to every creditor of the bankrupt who is known to the Official Receiver or is identified in the bankrupt's statement of affairs.

(4) On the date of the giving to the court of a notice under subsection (3) the Official Receiver is the trustee.

(Added 76 of 1996 s. 11)

Section:	17B	Power of creditors to requisition meeting	L.N. 158 of 1998	01/04/1998
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(1) Where in the case of any bankruptcy, the Official Receiver has not yet summoned, or has decided not to summon, a general meeting of the bankrupt's creditors for the purpose of appointing the trustee, any creditor of the bankrupt may request the Official Receiver to summon such a meeting for that purpose.

(2) If such a request appears to the Official Receiver to be made with the concurrence of not less than 1/4 in value of the bankrupt's creditors (including the creditor making the request), it is the duty of the Official Receiver to summon the requested meeting.

(3) Where subsection (2) applies, the Official Receiver is required neither to reach a decision for the purposes of section 17A nor (if he has reached one) to serve any notice under section 17A(3).

(Added 76 of 1996 s. 11)

Section:	18	Statement of affairs	L.N. 158 of 1998	01/04/1998
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(1) Where a bankruptcy order has been made otherwise than on a debtor's petition, the bankrupt shall submit a statement of his affairs, which shall be verified by affidavit, to the Official Receiver not more than 21 days after the day the order was made.

(2) The statement of affairs shall contain-

- (a) such particulars of the bankrupt's creditors and of his debts and other liabilities and of his assets as may be prescribed; and
- (b) such other information as may be prescribed.

(3) The Official Receiver may, if he thinks fit-

- (a) release the bankrupt from his duty under subsection (1); or
- (b) extend the period specified in that subsection,

and, where the Official Receiver has refused to exercise a power conferred by this section, the court may, if it thinks fit, exercise it.

(4) A bankrupt who, without reasonable excuse-

- (a) fails to comply with the obligation imposed by this section; or
- (b) submits a statement of affairs that does not comply with the prescribed requirements,

is guilty of a contempt of court and liable to be punished accordingly (in addition to any other punishment to which he may be subject).

(5) Any person stating himself to be a creditor of the bankrupt may, on payment of the prescribed fee, personally or by agent inspect the statement at all reasonable times and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor is guilty of a contempt of court and liable to be punished accordingly on the application of the trustee or Official Receiver.

(Replaced 76 of 1996 s. 12)

Section:	19	Public examination of bankrupt	L.N. 158 of 1998	01/04/1998
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Public examination of debtor

(1) Where a bankruptcy order has been made, the Official Receiver may at any time before the discharge of the bankrupt apply to the court for the public examination of the bankrupt.

(2) Unless the court otherwise orders, the Official Receiver shall make an application under subsection (1) if notice requiring him to do so is given to him, in accordance with the rules, by one of the bankrupt's creditors with the concurrence of not less than 1/4 in value of such creditors (including the creditor giving notice).

(3) Where one of the bankrupt's creditors, without the requisite concurrence under subsection (2), so requests, the Official Receiver shall make an application under subsection (1) but, notwithstanding subsection (4), the court may decline to direct that a public examination of the bankrupt be held.

(4) On an application under subsection (1), the court shall direct that a public examination of the bankrupt shall be held on a day appointed by the court; and the bankrupt shall attend on that day and be publicly examined as to his affairs, dealings and property.

(5) The following may take part in the public examination of the bankrupt and may question him concerning his affairs, dealings and property and the causes of his failure-

- (a) the Official Receiver and, in the case of a debtor adjudged bankrupt on a petition under section 3(1)(d), the Official Petitioner;
- (b) the trustee, if his appointment has taken effect;
- (c) any person who has been appointed as special manager of the bankrupt's estate or business;
- (d) any creditor of the bankrupt who has tendered a proof in the bankruptcy.

(6) The bankrupt may, but not at the expense of the estate, employ a solicitor with or without counsel, who may put to him such questions as the court may allow for the purpose of enabling him to explain or qualify any answer given by him, and may make representations on his behalf.

(7) There shall be made in writing such record of the examination as the court thinks proper

and the record shall be read over either to or by the bankrupt, signed by him, and verified by affidavit at a venue fixed by the court.

(8) Where the Official Receiver, after a public examination is held, is of the opinion that the application for the holding of the public examination was frivolous or vexatious, he may apply to the court for an order that the creditors who required the public examination to be held pay, on a pro rata basis based on value of debts, the costs incurred by the Official Receiver in holding it and the court may, if it agrees, assess the costs incurred and make an order for the pro rata payment of such costs.

(9) It shall be the duty of a bankrupt examined under this section to answer all questions that the court may put or allow to be put to him.

(10) Evidence given on oath under this section shall not be admissible in criminal proceedings other than for perjury by the person who gave it.

(Replaced 76 of 1996 s. 13)

Section:	23	Provisions where person other than Official Receiver is appointed trustee	L.N. 158 of 1998	01/04/1998
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(1) Where in a bankruptcy a person other than the Official Receiver is appointed trustee, that person-

- (a) shall not be capable of acting as trustee until he has notified his appointment to the Official Receiver and given security as provided in subsection (2)(a) to the satisfaction of the Official Receiver;
- (b) shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the bankrupt, and generally such aid as may be requisite for enabling that officer to perform his duties under this Ordinance.

(2) In the case of a trustee other than the Official Receiver, the following provisions as to security shall have effect, namely-

- (a) the security shall be given to the Official Receiver in such manner as he may from time to time direct;
- (b) it shall not be necessary that security shall be given in each separate bankruptcy; but security may be given either specially in a particular bankruptcy, or generally, to be available for any bankruptcy in which the person giving security may be appointed, as trustee;
- (c) the Official Receiver shall fix the amount and nature of such security, and may from time to time, as he thinks fit, either increase or diminish the amount of special or general security which any person has given;

- (d) the cost of furnishing the required security by a trustee, including any premiums which he may pay to a guarantee society, shall be borne by him personally, and shall not be charged against the assets of the estate as an expense incurred in the bankruptcy.

(Replaced 76 of 1996 s. 14)

Section:	37	Priority of costs and charges	L.N. 158 of 1998	01/04/1998
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(1) The assets remaining after payment of the actual expenses incurred in realizing any of the assets of the bankrupt shall, subject to any order of the court, first be liable to the following payments, which shall be made in the following order of priority, namely-

- (a) the actual expenses incurred by the Official Receiver in protecting or attempting to protect the property or assets of the bankrupt or any part thereof and any expenses or outlay incurred by him or by his authority in carrying on the business of the bankrupt;
- (b) the fees, percentages and charges payable to, or costs, charges and expenses incurred or authorized by, the Official Receiver, whether acting as Official Receiver or trustee;
- (c) the remuneration of the special manager, if any; and
- (d) the taxed costs of the petitioner, so far as the same may not have been disallowed by the court.

(2) Whenever the court is satisfied that property of a bankrupt in respect of whose estate a bankruptcy order has been made has been preserved for the benefit of the creditors by means of legal proceedings brought by a creditor against the bankrupt without notice of presentation of the petition, the court may in its discretion order the payment of the costs of such legal proceedings or any part of them (taxed as between party and party) out of the estate, with the same priority as to payment as is herein provided in respect of the taxed costs of the petitioner. (Amended 76 of 1996 s. 27)

(Amended 76 of 1996 ss. 72 and 73)

Section:	38	Priority of debts	L.N. 119 of 2000	01/12/2000
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(1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts-

- (a) (Repealed 47 of 1984 s. 5)

- (b) any-
- (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap 380) to any clerk or servant in respect of wages or salary or both in respect of services rendered to the bankrupt if such payment was made during a period of 4 months before the date of the filing of the petition; and (Amended 48 of 1987 s. 8)
 - (ii) wages and salary (including commission provided that the amount thereof is fixed or ascertainable at the relevant date) of any clerk or servant in respect of services rendered to the bankrupt during a period-
 - (A) beginning 4 months next before the date of the filing of the petition and ending on the making of the bankruptcy order; or (Amended 76 of 1996 s. 73)
 - (B) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap 380) of any clerk or servant who has made an application for an ex gratia payment under section 15(1) of that Ordinance, and ending on that last day of service, (Replaced 68 of 1996 s. 4)whichever is the earlier, not exceeding, together with any payment under sub-paragraph (i), \$300; (Replaced 12 of 1985 s. 29(4). Amended 48 of 1987 s. 8)
- (c) any-
- (i) payment from the Protection of Wages on Insolvency Fund under section 18 of the Protection of Wages on Insolvency Ordinance (Cap 380) to any labourer or workman in respect of wages, whether payable for time or for piece work, in respect of services rendered to the bankrupt if such payment was made during a period of 4 months before the date of the filing of the petition; and
 - (ii) wages of any labourer or workman, whether payable for time or for piece work, in respect of services rendered to the bankrupt during the period-
 - (A) beginning 4 months next before the date of the filing of the petition and ending on the making of a bankruptcy order; or (Amended 76 of 1996 s. 73)
 - (B) beginning 4 months next before the last day of service within the meaning of section 16(4) of the Protection of Wages on Insolvency Ordinance (Cap 380) of any labourer or workman who has made an application for an ex gratia payment under section 15(1) of that

Ordinance, and ending on that last day of service, (Replaced 68 of 1996 s. 4)

whichever is the earlier, not exceeding, together with any payment under sub-paragraph (i), \$100; (Replaced 12 of 1985 s. 29(4). Amended 48 of 1987 s. 8)

- (ca) any severance payment payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee \$6000; (Added 54 of 1974 s. 2)
- (caa) any long service payment payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee \$8000; (Added 78 of 1985 s. 2)
- (cb) any amount due in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap 282) accrued before the date of the bankruptcy order and, where the compensation is a periodical payment, the amount due in respect thereof shall be taken to be the amount of the lump sum for which the periodical payment could, if redeemable, be redeemed on an application being made for that purpose under the Employees' Compensation Ordinance (Cap 282), but this paragraph shall not apply to any amount due in respect of compensation or liability for compensation where the bankrupt has entered into a contract with a person carrying on accident insurance business in Hong Kong in respect of his liability under the Employees' Compensation Ordinance (Cap 282) for personal injury by accident to the employee to whom the compensation or liability for compensation is due; (Added 5 of 1977 s. 2. Amended 47 of 1984 s. 16; 76 of 1996 s. 73)
- (cc) any wages in lieu of notice payable to an employee under the Employment Ordinance (Cap 57), not exceeding in respect of each employee one month's wages or \$2000 whichever is the lesser; (Added 5 of 1977 s. 2)
- (cd) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or as a consequence of the bankruptcy order; (Added 47 of 1984 s. 5. Amended 76 of 1996 s. 73)
- (ce) any payment from the Employees Compensation Assistance Fund under Part IV of the Employees Compensation Assistance Ordinance 1991 (54 of 1991) representing an amount due by the bankrupt in respect of compensation or liability for compensation under the Employees' Compensation Ordinance (Cap 282) accrued before the date of the bankruptcy order; (Added 54 of 1991 s. 47. Amended 76 of 1996 s. 73)
- (cf) any amount of unpaid contribution or any amount deemed to be unpaid

contribution calculated in accordance with rules made under section 73(1)(n) of the Occupational Retirement Schemes Ordinance (Cap 426) which should have been paid by the bankrupt in accordance with the terms of an occupational retirement scheme within the meaning of that Ordinance before the commencement of the bankruptcy:

Provided that where such amount exceeds \$50000 in respect of an employee, 50% of such part of the amount that exceeds \$50000 shall not be paid in priority to all other debts under this subsection; (Added 88 of 1992 s. 83)

(cg) (without prejudice to any right or liability under a trust) any amount of salaries deducted by the bankrupt from his employees' salaries for the purpose of making contributions in respect of such employees to the funds of an occupational retirement scheme within the meaning of the Occupational Retirement Schemes Ordinance (Cap 426) which have not been paid into such funds; (Added 88 of 1992 s. 83)

(ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (Cap 485) which should have been paid by the bankrupt in accordance with the provisions of that Ordinance before the commencement of the bankruptcy:

Provided that where such amount exceeds \$50000 in respect of an employee, 50% of such part of the amount that exceeds \$50000 shall not be paid in priority to all other debts under this subsection; (Added 80 of 1995 s. 49)

(ci) any amount deducted by the bankrupt from the relevant income of his relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (Cap 485) which have not been paid to that approved trustee; (Added 80 of 1995 s. 49)

(cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (Cap 485); (Added 80 of 1995 s. 49)

(d) all statutory debts due from the bankrupt to the Crown at the date of the bankruptcy order and which became due and payable within 12 months next before that date. (Replaced 47 of 1984 s. 5. Amended 76 of 1996 s. 73)

(2)-(2A) (Repealed 76 of 1996 s. 28)

(2B) Where-

(a) the date of the receiving order is on or after 1 April 1977; or

(b) a bankruptcy order is made on or after the day the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) comes into operation,

the sum of \$8000 shall be deemed to be substituted in each case for the sums of \$300 and \$100

referred to in paragraphs (b) and (c) respectively, and for the sum of \$6000 referred to in paragraph (ca), of subsection (1). (Added 5 of 1977 s. 2. Amended 76 of 1996 s. 28)

(3) The debts specified in subsection (1)(b), (c), (ca), (caa), (cb), (cc), (cd), (ce), (cf), (cg), (ch), (ci) and (cj)- (Amended 47 of 1984 s. 5; 78 of 1985 s. 2; 54 of 1991 s. 47; 88 of 1992 s. 83; 80 of 1995 s. 49)

(a) shall have priority over the debts specified in subsection (1)(d);

(b) shall rank equally among themselves; and

(c) shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions among themselves. (Replaced 42 of 1970 s. 2. Amended 54 of 1974 s. 2; 5 of 1977 s. 2)

(3A)(Repealed 47 of 1984 s. 5)

(4) Subject to the provisions contained in section 37 and to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within 3 months next before the date of the bankruptcy order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof. (Amended 42 of 1970 s. 2; 76 of 1996 s. 73)

(5A) Any money paid under a charge under subsection (5) shall be a debt due from the estate of the bankrupt to the landlord or other person distraining or having distrained, and such debt shall be discharged so far as the property of the bankrupt is sufficient to meet it after payment of the debts specified in subsection (1) but before payment of the other debts proved in the bankruptcy. (Added 42 of 1970 s. 2)

(5B) Where any assets have been recovered under an indemnity for costs of litigation given by certain creditors, or have been protected or preserved by the payment of moneys or the giving of indemnity by creditors, or where expenses in relation to which a creditor has indemnified a trustee have been recovered, the court may, on the application of the Official Receiver or the trustee or any such creditor, make such order as it deems just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing. (Added 47 of 1984 s. 5)

(5C) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period. (Added 47 of 1984 s. 5)

(6) This section shall apply in the case of a deceased person who dies insolvent as if he were a bankrupt and as if the date of his death were substituted for the date of the bankruptcy order. (Amended 76 of 1996 s. 73)

(7) In the case of partners the joint estate shall be applicable in the first instance in payment

of their joint debts and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. (See Rule 195)

(8) Subject to the provisions of this Ordinance, all debts proved in the bankruptcy shall be paid *pari passu*.

(9) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the bankruptcy order at the rate specified in section 71(3) on all debts proved in the bankruptcy. (Amended 76 of 1996 ss. 28 & 73)

(10) In this section-

"accrued holiday remuneration" (累算的假日薪酬) includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any Ordinance), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday had his employment with the bankrupt continued until he became entitled to be allowed the holiday;

"Employees Compensation Assistance Fund" (僱員補償援助基金) means the fund established by section 7 of the Employees Compensation Assistance Ordinance 1991 (54 of 1991); (Added 54 of 1991 s. 47)

"Protection of Wages on Insolvency Fund" (破產欠薪保障基金) means the fund deemed to be established and continued in existence under section 6 of the Protection of Wages on Insolvency Ordinance (Cap 380); (Added 12 of 1985 s. 29(4))

"statutory debt" (法定債項) means a debt the liability for which and the amount of which are determined by or under any provision in any Ordinance or imperial enactment;

"wages" (工資) includes, in relation to any person, any sum which, by virtue of his contract of employment, is payable to him as a Lunar New Year bonus, but does not include any accrued holiday remuneration. (Replaced 47 of 1984 s. 5)

(11) The Bankruptcy (Amendment) Ordinance 1984 (47 of 1984) shall not apply in the case of a bankruptcy where the date of the receiving order occurred before the commencement* of that Ordinance, and, in such a case, the provisions relating to priority of debts which would have applied if that Ordinance had not been enacted shall be deemed to remain in full force. (Added 47 of 1984 s. 5)

(12) The Fifth Schedule to the Protection of Wages on Insolvency Ordinance 1985 (12 of 1985) shall not apply in the case of a bankruptcy where the date of the filing of a petition occurred before the commencement of that Ordinance, and, in such case, the provisions relating to priority of debts which would have applied if that Ordinance has not been enacted shall be deemed to remain in full force. (Added 12 of 1985 s. 29(4))

(13) Section 4(a) and (b) of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 (68 of 1996) ("the amending Ordinance") shall not apply in the case of a bankruptcy to which an application under section 15(1) of the Protection of Wages on Insolvency Ordinance (Cap 380) relates where such application is made before the commencement of the amending Ordinance, and, in such case, the provisions relating to priority of debts which would have applied if the amending Ordinance had not been enacted shall be deemed to remain in full force. (Added 68 of 1996 s. 4)

[cf. 1914 c. 59 s. 33 U.K.]

Note:

* **Commencement date: 31 August 1984.**

Section:	45	Restriction of rights of creditor under execution or attachment	L.N. 158 of 1998	01/04/1998
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Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Effect of bankruptcy on antecedent and other transactions

(1) Where a creditor has issued execution against the property of a bankrupt or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the bankrupt unless he had completed the execution or attachment before the date of the bankruptcy order and before notice of the presentation of any bankruptcy petition by or against the bankrupt. (Amended 76 of 1996 ss. 33 and 73)

(2) For the purposes of this Ordinance-

- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 20 of the High Court Ordinance (Cap 4); (Amended 25 of 1998 s. 2)
- (b) an attachment of a debt is completed by the receipt of the debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 20. (Replaced 52 of 1987 s. 44)

(3) (Repealed 76 of 1996 s. 33)

(4) The rights conferred by this section (4) on the trustee in relation to executions against the property of the bankrupt and attachment of debts due to the bankrupt may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit. (Added 47 of 1984 s. 6. Amended 76 of 1996 s. 33)

[cf. 1914 c. 59 s. 40 U.K.]

Section:	46	Duties of bailiff as to goods taken in execution	L.N. 158 of 1998	01/04/1998
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(1) Where any movable property or negotiable instruments or money of a debtor are taken in execution, and before the receipt or recovery by the judgment creditor of the full amount of the levy, notice is served on the bailiff that a bankruptcy order has been made against the debtor, the bailiff shall on request deliver the movable property, negotiable instruments or money, or any money received in satisfaction or part satisfaction of the execution, to the Official Receiver, but the costs of the execution shall be a first charge on the property so delivered and the Official Receiver or trustee may sell the movable property or negotiable instruments, or an adequate part thereof, or apply the money, for the purpose of satisfying the charge. (Amended 76 of 1996 s. 73)

(2) Where, under an execution in respect of a judgment for a sum exceeding \$100, the property of a debtor is sold or money is paid in order to avoid sale, the bailiff shall deduct his costs of the execution from the proceeds of sale or the money paid and pay the balance into court, and if within 14 clear days of such sale or payment as aforesaid a bankruptcy petition is presented by or against the debtor, the said balance shall remain in court and if the debtor is adjudged bankrupt the balance shall be paid out to the trustee in the bankruptcy, who shall be entitled to retain the same as against the execution creditor, but otherwise it shall be dealt with as if no bankruptcy petition had been presented.

(3) The rights conferred by this section on the Official Receiver or trustee in relation to executions against any movable property or negotiable instruments or money of the debtor may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit. (Added 47 of 1984 s. 7)

[cf. 1914 c. 59 s. 41(1) U.K.]

Section:	58	Vesting and transfer of property		30/06/1997
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(1) Until a trustee is appointed the Official Receiver shall be the trustee for the purposes of this Ordinance, and immediately on a debtor being adjudged bankrupt the property of the bankrupt shall vest in the trustee.

(2) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

[cf. 1914 c. 59 s. 53 U.K.]

Section:	59	Disclaimer of onerous property	30/06/1997
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(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within 12 months after the first appointment of a trustee or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within 1 month after such appointment, he may disclaim such property at any time within 12 months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by general rules, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not and the trustee has for a period of 28 days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the trustee after such application as aforesaid does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The court may, on application by any person claiming either to have any interest in any disclaimed property or to be under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that where the property disclaimed is of a leasehold nature the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as a person entitled to a mortgage except upon the terms of making that person-

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) subject only to the same liabilities and obligations as if the lease had comprised only the property comprised in the vesting order; and any under-lessee or person entitled to a mortgage who declines to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt. (Amended 47 of 1984 s.10)

(7) Where on the release, removal, resignation or death of a trustee in bankruptcy the Official Receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within 12 months after the Official Receiver has become trustee in the circumstances aforesaid or has become aware of the existence of such property, whichever period may last expire.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury and may accordingly prove the same as a

debt under the bankruptcy.

[cf. 1914 c. 59 s. 54 U.K.]

Section:	60	Powers of trustee to deal with property	L.N. 158 of 1998	01/04/1998
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Subject to the provisions of this Ordinance and to any order of the court, the trustee may do all or any of the following things-

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels, and any transfer of a business of a bankrupt by the Official Receiver or trustee shall be deemed to be exempted from the provisions of the Transfer of Businesses (Protection of Creditors) Ordinance (Cap 49);
- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers the capacity to exercise which is vested in the trustee under this Ordinance and execute any powers of attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Ordinance.
- (e) subject to section 61, do all such other things as may be necessary for administering the estate and distributing its assets. (Added 76 of 1996 s. 40)

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4)

[cf. 1914 c. 59 s. 55 U.K.]

Section:	64	Right of trustee to inspect goods pawned, etc.	L.N. 158 of 1998	01/04/1998
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Where any goods of a debtor against whom a bankruptcy order has been made are held by any person by way of pledge, pawn or other security, it shall be lawful for the Official Receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

(Amended 76 of 1996 s. 73)

Section:	75	Appointment of Official Receiver and other officers	L.N. 87 of 2003	28/03/2003
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PART IV

OFFICIAL RECEIVER

(1) The Governor may appoint an Official Receiver and such other officers to hold any of the offices specified in Schedule 2 as may be required to assist the Official Receiver in the performance of his duties.

(2) No person shall be appointed Official Receiver or to any of the offices specified in Part I of Schedule 2 unless on the date of such appointment he is qualified to practise as a legal practitioner in Hong Kong, the United Kingdom or in a jurisdiction listed in Schedule 2 to the Legal Officers Ordinance (Cap 87). (Amended 42 of 2000 s. 21)

(3) The Official Receiver and the holder of an office specified in Part I of Schedule 2 shall be deemed to be legal officers for the purpose of the Legal Officers Ordinance (Cap 87) and shall have all rights conferred upon legal officers by that Ordinance.

(4) The holder of an office specified in Schedule 2 may, subject to subsection (5) and any instructions of the Official Receiver, exercise the powers or perform the duties of the office of the Official Receiver.

(5) The holder of an office specified in Part II of Schedule 2 shall not exercise any right conferred by subsection (3) on the holder of an office specified in Part I of Schedule 2.

(6) The Official Receiver shall act under the general authority and direction of the Governor and shall also be an officer of the court.

(7) The Governor may, by order published in the Gazette, amend Schedule 2.

(Replaced 39 of 1992 s. 3)

Section:	77	Duties of Official Receiver as regards the bankrupt's conduct	L.N. 158 of 1998	01/04/1998
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As regards the bankrupt, it shall be the duty of the Official Receiver-

- (a) to investigate the conduct of the bankrupt and to report to the court, stating whether there is reason to believe that the bankrupt has committed any act which constitutes an indictable offence under this Ordinance or which would justify the

court in refusing, suspending or qualifying an order for his discharge; (Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

(b) to conduct the public examination of the bankrupt;

(c) to take such part and give such assistance in relation to the prosecution of any fraudulent bankrupt as the Secretary for Justice may direct. (Amended L.N. 362 of 1997)

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 20 of 1948 s. 4; 76 of 1996 s. 72)

[cf. 1914 c. 59 s. 73 U.K.]

Section:	78	Duties of Official Receiver as to bankrupt's estate	L.N. 158 of 1998	01/04/1998
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(1) As regards the estate of a bankrupt, it shall be the duty of the Official Receiver- (Amended 76 of 1996 s. 72)

(a) pending the appointment of a trustee, to act as interim receiver of the bankrupt's estate, and where a special manager is not appointed, as manager thereof; (Amended 76 of 1996 s. 72)

(b) to raise money in any case where in the interests of the creditors it appears necessary so to do;

(c) to preside at the first meeting of creditors if it is summoned; (Replaced 76 of 1996 s. 45)

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs; (Amended 76 of 1996 s. 72)

(f) to advertise the bankruptcy order, the date of the creditors' first meeting and of the bankrupt's public examination, and such other matters as it may be necessary to advertise; (Amended 76 of 1996 ss. 72 and 73)

(g) to act as trustee during any vacancy in the office of trustee;

(h) to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose he may employ at the expense of the estate any person or persons to assist in its preparation. (Amended 76 of 1996 s. 72)

(2) For the purpose of his duties as interim receiver or manager the Official Receiver shall have the same powers as if he were a receiver and manager appointed by the court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the bankrupt's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense

beyond such as is requisite for the protection of the bankrupt's property or the disposing of perishable goods. (Amended 76 of 1996 s. 72)

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

[cf. 1914 c. 59 s. 74 U.K.]

Section:	79	Official name of trustee	30/06/1997
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PART V

TRUSTEES IN BANKRUPTCY

Official name

The official name of a trustee in bankruptcy shall be " the trustee of the property of a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

[cf. 1914 c. 59 s. 76 U.K.]

Section:	80	Power to appoint joint or successive trustees	30/06/1997
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(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee and, when more persons than one are appointed, shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Ordinance included under the "trustee" and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee or failing to give security, or of the appointment of any such person not being approved by the court.

[cf. 1914 c. 59 s. 77 U.K.]

Section:	82	Discretionary powers of trustee and control thereof	L.N. 158 of 1998	01/04/1998
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Control over trustee

(1) Subject to the provisions of this Ordinance, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting or by the creditors' committee, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the creditors' committee. (Amended 76 of 1996 s. 74)

(2) The trustee may from time to time summon general meeting of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, and it shall be lawful for any creditor, with the concurrence of one-fourth in value of the creditors (including himself), at any time to request the trustee or Official Receiver to call a meeting of the creditors, and the trustee or Official Receiver shall call such meeting accordingly within 14 days:

Provided that the person at whose instance the meeting is summoned shall, if so required, deposit with the trustee or the Official Receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the court so directs.

(3) The trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Ordinance the trustee shall use his discretion in the management of the estate and its distribution among the creditors.

[cf. 1914 c. 59 s. 79 U.K.]

Section:	87	Trustee to furnish list of creditors	L.N. 158 of 1998	01/04/1998
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Receipts, payments, accounts, audit

The trustee or Official Receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and the creditor requiring such list shall pay a fee at the prescribed rate.

(Amended 76 of 1996 s. 47)

[cf. 1914 c. 59 s. 84 U.K.]

Section:	88	Trustee to furnish statement of accounts		30/06/1997
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It shall be lawful for any creditor, with the concurrence of one-fourth of the creditors (including himself), at any time to call upon the trustee or Official Receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall upon receipt of such notice furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall, if so required, deposit with the trustee or Official Receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the court so directs.

[cf. 1914 c. 59 s. 85 U.K.]

Section:	89	Annual statement of proceedings		30/06/1997
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(1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Official Receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars and made out in the prescribed form.

(2) The Official Receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on the said statements or in his accounts or otherwise, and may apply to the court for an order that the trustee do make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

[cf. 1914 c. 59 s. 87 U.K.]

Section:	91	Payment of moneys into bank	L.N. 158 of 1998	01/04/1998
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(1) The Official Receiver shall open in his name as Official Receiver an account at a bank approved by the Governor and shall pay to the credit thereof all sums received by him as such Official Receiver or as trustee, and every trustee in a bankruptcy, other than the Official Receiver, receiving money as such trustee shall open an account at such bank in the name of the bankrupt's estate and shall pay to the credit of such account all sums which may from time to time be

received by him as such trustee: (Amended 47 of 1984 s. 12; 76 of 1996 s. 72)

Provided that the Official Receiver may, on the application of the creditors' committee, authorize any other trustee to make his payments into and out of any other bank specified by the committee in such application, and those payments shall be made in the prescribed manner. (Added 47 of 1984 s. 12. Amended 76 of 1996 s. 74)

(2) If a trustee at any time retains for more than 10 days a sum exceeding \$2000, or such other amount as the Official Receiver in any particular case may authorize him to retain, then unless he explains the retention to the satisfaction of the Official Receiver, he shall pay interest on the amount so retained in excess at the rate of 20 per cent per annum, and shall have no claim to remuneration, and may be removed from his office by the Official Receiver and shall be liable to pay any expenses occasioned by reason of his default. (Amended 47 of 1984 s. 12) [cf. 1914 c. 59 s. 89(5) U.K.]

(3) Any trustee paying money into his private banking account or using it otherwise than in the administration of the estate may without prejudice to any other liability be dismissed from office without remuneration and may be ordered by the court to make good all losses and expenses which the creditors may suffer in consequence of his conduct.

Section:	92	Record and account to be kept by trustee	L.N. 158 of 1998	01/04/1998
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(1) The trustee shall keep a record in writing in which he shall enter a minute of all proceedings had and resolutions passed at any meeting of creditors or of the creditors' committee and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property. Such record if in Chinese shall be supplemented by a correct English translation thereof and shall be produced for inspection to the Official Receiver at any time on demand.

(2) The trustee shall also keep an account, to be called the estate account, in the form of an ordinary debtor and creditor account, in which he shall enter from day to day all his receipts and payments as trustee.

(3) The trustee shall produce at every meeting of creditors and at every meeting of the creditors' committee the record and account above-mentioned and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

(Amended 76 of 1996 s. 74)

Section:	93	Audit of trustee's accounts		30/06/1997
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(1) Every trustee other than the Official Receiver shall, at such times as may be prescribed but not less than once in each year during his tenure of office, send to the Official Receiver an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate and shall be verified by an affidavit in the prescribed form. (Amended 13 of 1966 Schedule)

(3) The trustee shall furnish the Official Receiver with such vouchers and information relating to the account as he requires, and the Official Receiver may at any time require the production of, and inspect, any books or accounts kept by the trustee. (Replaced 39 of 1987 s. 3)

(3A)The Official Receiver may at any time cause the account to be audited. (Added 39 of 1987 s. 3)

(4) When any such account has been audited (or, as the case may be, forthwith if the Official Receiver decides that the account need not be audited) one copy thereof shall be filed and kept by the Official Receiver, and the other copy shall be delivered to the court for filing, and each copy shall be open on payment of the prescribed fee to the inspection of any creditor or of the bankrupt or of any person interested. (Amended 39 of 1987 s. 3)

(4A)Notwithstanding the fact that unaudited copies of an account have already been filed, the Official Receiver may subsequently cause that account to be audited, and in that event a copy of the audited account shall be filed and kept by the Official Receiver, and a further copy shall be delivered to the court for filing, and each copy shall be open, upon payment of the prescribed fee, to the inspection of any creditor or of the bankrupt or of any person interested. (Added 39 of 1987 s. 3)

(5) The court may if it so desires examine the trustee and, after hearing the explanation, if any, of the trustee, make such order as it may think just for compelling the trustee to make good any loss to the estate which may appear to the court to have been occasioned by any misfeasance, neglect or improper conduct or omission of the trustee. (Amended 39 of 1987 s. 3)

[cf. 1914 c. 59 s. 92 U.K.]

Section:	96	Removal of trustee	30/06/1997
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(1) The creditors may by ordinary resolution, at a meeting specially called for that purpose of which 7 days' notice has been given, remove a trustee, other than the Official Receiver, appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as provided in case of a vacancy in the office of trustee.

(2) If the court is of opinion-

(a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Ordinance; or

- (b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or
- (c) that he is by reason of lunacy or continued sickness or absence incapable of performing his duties; or
- (d) that his connection with or relation to the bankrupt or his estate or any particular creditor might make it difficult for him to act with impartiality in the interest of the creditors generally; or
- (e) that the interests of the creditors require it,

the court may remove him from his office and appoint another person in his place.

[cf. 1914 c. 59 s. 95 U.K.]

Section:	98	Review and appeals in bankruptcy		30/06/1997
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Review and appeals

(1) The court or the Registrar may review, rescind or vary any order made by it or him, as the case may be, under its or his bankruptcy jurisdiction. (Replaced 78 of 1991 s. 2)

(2) Every order of the court or the Registrar shall be subject to appeal to the Court of Appeal. The appeal shall be commenced within 21 days from the time when the decision appealed against is pronounced or made. (Amended 92 of 1975 s. 59; 78 of 1991 s. 2)

[cf. 1914 c. 59 s. 108 U.K.]

Section:	99	General rules of procedure	37 of 1998	20/11/1998
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Procedure

(1) The rules and practice of the High Court for the time being for regulating the ordinary civil procedure of the court shall, so far as the same may be applicable and not inconsistent with the provisions of this Ordinance, be applied to bankruptcy proceedings, and every order of the court made in connection with bankruptcy proceedings may be enforced in the same way as a judgment of the court made in respect of any other civil proceedings may be enforced. (Amended 25 of 1998 s. 2)

(2) The Registrar shall in cases of urgency have power to make interim orders and to hear and determine unopposed or ex parte applications and any order so made shall, subject to an

appeal to the court, be deemed to be an order of the court.

(3) Subject to rules made under section 113 limiting the power conferred by this subsection, the Registrar sitting in open court shall have power to hear and determine-

- (a) unopposed bankruptcy petitions and to make bankruptcy orders thereon; (Amended 37 of 1998 s. 2)
- (b) applications to annul adjudications; (Amended 37 of 1998 s. 2)
- (c) applications for an interim order in respect of a voluntary arrangement; and (Replaced 37 of 1998 s. 2)
- (d) applications for orders of discharge. (Replaced 78 of 1991 s. 3)

Section:	100A	Court may make a regulating order	L.N. 158 of 1998	01/04/1998
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Expanded Cross Reference:

100B, 100C, 100D, 100E, 100F, 100G, 100H

(1) Where it appears to the court on application being made by the Official Receiver or by any creditor at any time after the presentation of a bankruptcy petition, whether presented before or after the commencement of the Bankruptcy (Amendment) Ordinance 1965 (21 of 1965), that by reason of the large number of creditors or for any other reason the interest of the creditors so requires, it may, on or after the making of a bankruptcy order, order that the bankruptcy proceedings shall be regulated specially by the court, and such order shall be known as a regulating order. (Amended 76 of 1996 s. 73)

(2) A regulating order shall be published in such manner as the court may direct, and sections 100B to 100H inclusive shall apply to the bankruptcy proceedings where a regulating order has been made but not otherwise. < * Note - Exp. X-Ref.: Sections 100B, 100C, 100D, 100E, 100F, 100G, 100H * >

(3) Where a regulating order is made the Bankruptcy Rules (Cap 6 sub. leg.) shall apply mutatis mutandis to the Official Receiver, trustee and creditors' committee appointed or acting after the making of a regulating order, and to the conduct of any ballot or other proceedings ordered by the court under section 100B or 100F. (Amended 76 of 1996 s. 74)

(4) Where any order made under sections 100B to 100G inclusive prescribes any procedure it shall be deemed to be in substitution for the procedure which would be required by this Ordinance but for the making of such order, and in particular where any such order prescribes a procedure for doing something which would otherwise be done at a meeting of creditors no such meeting shall be required to be held. < * Note - Exp. X-Ref.: Sections 100B, 100C, 100D, 100E, 100F, 100G * >

(Added 21 of 1965 s. 2)

Section:	100D	Trustee	L.N. 158 of 1998	01/04/1998
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(1) The court may on application being made by the Official Receiver by order appoint the Official Receiver or such other person recommended by him trustee of the property of the bankrupt, remove any trustee and fill any vacancy. Upon making any order for the appointment or removal of a trustee or for filling any vacancy the provisions of section 81(1), (2) and (3) or 96(1), as the case may be, shall cease to apply to the bankruptcy and any action taken under such provisions in respect of any appointment or removal of a trustee or filling of any vacancy shall cease to have effect. (Amended 76 of 1996 s. 54)

(2) The court may by order give such directions to a trustee as it shall think fit. Such directions shall be deemed to be the directions of creditors for the purposes of section 82. Neither a trustee nor the Official Receiver shall be required to summon any meetings of creditors save where the court so orders.

(Added 21 of 1965 s. 2)

Section:	100G	Creditors to give notice of intention to take part in public examination	L.N. 158 of 1998	01/04/1998
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(1) The court may order that any creditor wishing to exercise his right to question the bankrupt on his public examination under section 19(5) shall give notice in writing of such intention to the Official Receiver, and may direct that no creditor may exercise such right unless notice is received by the Official Receiver within such time as may be specified. (Amended 76 of 1996 s. 56)

(2) For the purpose of this section the court may direct that notice of the public examination of a bankrupt shall be published in such manner as it may specify, and notice of such examination or of adjourned hearings thereof shall not be required to be sent to creditors individually.

(Added 21 of 1965 s. 2. Amended 76 of 1996 s. 72)

Section:	100H	Proof of debts in the case of banks	L.N. 158 of 1998	01/04/1998
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Expanded Cross Reference:

20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K

(1) Where the bankrupt was carrying on the business of a bank, any creditor who is a depositor, whether on current, savings, deposit, fixed deposit or other account, shall, unless and until the Official Receiver by notice in writing requires him to make a formal proof of debt, be deemed to have proved his debt-

- (a) for voting purposes, for the net balance to his credit in the books of the bank on all his accounts taken together, at the date of the bankruptcy order: (Amended 76 of 1996 s. 73)

Provided that if the said balance does not exceed \$100 he shall not be deemed to have proved his debt for the purposes of sections 20 to 20K and 100B(4); and <* Note - Exp. X-Ref.: Sections 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K *> (Amended 76 of 1996 s. 57)

- (b) for dividend purposes, for the said balance plus or minus, as the case may be, the net amount of interest accrued due by or to the bank on the said accounts at the date of the bankruptcy order. (Amended 76 of 1996 s. 73)

(2) Any debt which is deemed to have been proved by virtue of subsection (1) shall be treated as if a proof thereof had been duly lodged in due time with the Official Receiver or trustee and had been admitted for voting and dividend purposes respectively for the said amounts stated in subsection (1).

(Added 21 of 1965 s. 2)

Section:	112A	Application of Ordinance to small bankruptcies	L.N. 158 of 1998	01/04/1998
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(1) Subject to subsection (2), where a bankruptcy order is made against a debtor and- (Amended 76 of 1996 s. 60)

- (a) the court receives proof to its satisfaction; or
- (b) the Official Receiver reports to the court,

that the property of the debtor is not likely to exceed in value \$200000, the court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Ordinance shall apply subject to the following modifications- (Amended 26 of 1985 s. 3)

- (ia) the first meeting of creditors shall be dispensed with; (Replaced 76 of 1996 s. 60)
- (i) the Official Receiver shall be the trustee in the bankruptcy; (Amended 76 of 1996 s. 60)
- (ii) there shall be no creditors' committee, and the Official Receiver may do all things which may be done by a trustee with the permission of a creditors' committee; (Amended 76 of 1996 s. 74)

(iii) such other modifications as may be prescribed with a view to saving expense and simplifying procedure, but nothing in this section shall permit the modification of the provisions of this Ordinance relating to the examination or discharge of the bankrupt. (Amended 76 of 1996 s. 72)

(2) The court may, upon the application of the Official Receiver, at any time before the discharge of the bankrupt rescind an order made under subsection (1) and thereupon the administration shall proceed as if the order had not been made. (Amended 76 of 1996 s. 72)

(Added 1 of 1976 s. 6)

[cf. 1914 c. 47 s. 129 U.K.]

Section:	115	Disposal of Official Receiver's fees		30/06/1997
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All fees and commissions received by or payable to the Official Receiver on the appointment of a trustee other than himself or for acting as trustee, and any remuneration received by the Official Receiver as an interim receiver or otherwise, shall be paid by such officer forthwith into the general revenue.

(Amended 47 of 1984 s. 13)

Section:	124	Formal defect not to invalidate proceedings	L.N. 158 of 1998	01/04/1998
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(1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity unless the court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of the court.

(2) No defect or irregularity in the appointment or election of a receiver, trustee or member of a creditors' committee shall vitiate any act done by him in good faith. (Amended 76 of 1996 s. 74)

[cf. 1914 c. 59 s. 147 U.K.]

Section:	129	Fraudulent debtors	L.N. 158 of 1998	01/04/1998
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PART VIII

BANKRUPTCY OFFENCES

(1) Any person who has been adjudged bankrupt shall in each of the cases following be guilty of an offence- (Amended 76 of 1996 s. 63)

- (a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless he proves that he had no intent to defraud;
- (b) if he does not deliver up to the trustee, or as he directs, all such part of his movable or immovable property as is in his custody or under his control and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
- (c) if he does not deliver up to the trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he conceals any part of his property to the value of \$50 or upwards or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
- (e) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently removes any part of his property to the value of \$50 or upwards;
- (f) if he makes any material omission or misstatement in any statement relating to his affairs, unless he proves that he had no intent to defraud;
- (g) if, knowing or having any reason to believe that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him, he prevents or is party or privy to preventing the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he removes, conceals, destroys, mutilates or falsifies or is privy to the removal, concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (j) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he makes or is privy to the making of any

false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

- (k) if, after the presentation of a bankruptcy petition by or against him or within 12 months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;
- (l) if, after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within 12 months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
- (m)-(n) (Repealed 21 of 1970 s. 35)
- (o) if, within 12 months next before the presentation of a bankruptcy petition by or against him or after the presentation of a bankruptcy petition and before the making of a bankruptcy order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; (Amended 76 of 1996 s. 73)
- (p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

(Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

(2) A person who has sent out of Hong Kong any property which he has obtained on credit and has not paid for shall until the contrary is proved be deemed to have disposed of the same otherwise than in the ordinary way of his trade if, such property not having been paid or accounted for at the date of the bankruptcy order by the person to whom the same was sent, such last-mentioned person does not pay or account for the same within a reasonable time after being called upon to do so by the trustee or cannot be found within a reasonable time. (Amended 47 of 1984 s. 16; 76 of 1996 s. 73)

(3) In any prosecution under subsection (1)(i) the absence of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was removed by the bankrupt contrary to the provisions of the said paragraph or that he was privy to its removal contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so remove such book or document and that he was not privy to such removal. (Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72)

(4) In any prosecution under subsection (1)(i) the mutilation or falsification of any such book or document as is referred to in the said paragraph shall be prima facie evidence that such book or document was mutilated or falsified by the bankrupt in contravention of the provisions of

the said paragraph or that he was privy to its mutilation or falsification contrary to those provisions, and thereupon the onus shall be upon the bankrupt to prove that he did not so mutilate or falsify the said book or document and that he was not privy to such mutilation or falsification. (Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 76 of 1996 s. 72)

(5) Any person guilty of an offence in the cases mentioned in subsection (1)(o) shall be liable on summary conviction to imprisonment for 1 year or upon conviction on indictment to imprisonment for 5 years. (Amended 33 of 1939; G.N. 840 of 1940 Supp. Schedule; 50 of 1991 s. 4)

(6) For the purposes of this section, "trustee" (受託人) includes the Official Receiver, whether acting as Official Receiver or as a trustee.

[cf. 1914 c. 59 s. 154 U.K. 1926 c. 7 s. 5 U.K.]

Schedule:	1	CRIMINAL BANKRUPTCY ORDERS	37 of 1998	20/11/1998
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Expanded Cross Reference:

20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K

[sections 74A, 74B & 74C]

PART I

GENERAL

1. Interpretation

In this Schedule-

"criminal bankruptcy debt" (刑事破產債項) means a debt deemed to be due to any person by virtue of paragraph 3.

2. Entitlement to present bankruptcy petition

Subject to the provisions of this Schedule, where a criminal bankruptcy order is made against any person he shall be treated as a debtor against whom grounds exist for a creditor to present a bankruptcy petition. (Added 37 of 1998 s. 2)

3. Creditors and criminal bankruptcy debts

A person specified in a criminal bankruptcy order as having suffered loss or damage of any amount shall be treated for the purpose of any ensuing proceedings pursuant to-

- (a) a bankruptcy petition presented by virtue of paragraph 2; or
- (b) a petition under section 112 (administration in bankruptcy of estate of person dying insolvent) presented by virtue of this Schedule,

as a creditor for a debt of that amount provable in the bankruptcy of the person against whom the order was made.

PART II

APPLICATION OF THE ORDINANCE IN PROCEEDINGS BASED ON A CRIMINAL BANKRUPTCY ORDER

4. **Criminal bankruptcy petition**

No criminal bankruptcy petition shall be presented by the person who under paragraph 2 is the bankrupt; and, in relation to such a petition presented by a creditor, sections 4, 6 and 6B shall have effect with the following modifications- (Amended 76 of 1996 ss. 70 and 72)

- (a) sections 6(2)(a) and (b) and 6B shall not apply to a criminal bankruptcy debt; (Replaced 76 of 1996 s. 70)
- (b) section 4(1)(a) shall be omitted. (Replaced 76 of 1996 s. 70)

5. **Bankruptcy order**

For the purposes of section 9(2) and (3) (matters to be proved before bankruptcy order is made) any criminal bankruptcy debt shall be treated as conclusively proved by the production of a copy of the criminal bankruptcy order in question and the following provisions of that section shall not apply in relation to any debt- (Amended 76 of 1996 ss. 70 and 73)

- (a) (Repealed 76 of 1996 s. 70)
- (b) subsection (5);
- (c) subsection (6).

6. **Trustee of criminal bankrupt's property**

Where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition the Official Receiver shall in the bankruptcy be the trustee of the property of the bankrupt. (Amended 76 of 1996 s. 70)

7. **Proof of criminal bankruptcy debt in bankruptcy proceedings**

(1) For the purpose of proving a criminal bankruptcy debt in proceedings pursuant to a criminal bankruptcy petition, a copy of the criminal bankruptcy order specifying the amount deemed by virtue of paragraph 3 to be due as a debt shall, subject to paragraph 5, be treated as

sufficient evidence of the debt unless it is shown by any party to the proceedings that the amount of the relevant loss or damage is greater or less than the amount specified in the order or that the loss or damage did not in fact result from any offence specified in the order, and if it is shown by any party to the proceedings that the amount of the relevant loss or damage is other than that specified in the order, paragraph 3 shall have effect as if that other amount had been specified in the order, but without prejudice to the validity of the order if the amount of the relevant loss is shown not to exceed \$150000 or such other amount as may be specified in an order made under section 84A(5) of the Criminal Procedure Ordinance (Cap 221).

(2) Nothing in this paragraph or paragraph 3 shall be taken as prejudicing the proof in proceedings pursuant to a criminal bankruptcy petition of debts other than criminal bankruptcy debts.

(3) Nothing in sub-paragraph (1) shall be construed as entitling any person to contend that the offence or offences specified in a criminal bankruptcy order were not committed by the person against whom the order was made.

8. Recovery of assets for benefit of criminal bankrupt's creditors

(1) Without prejudice to any other provision of this Ordinance, sub-paragraph (2) to (5) shall apply, where a person is adjudged bankrupt in proceedings pursuant to a criminal bankruptcy petition, with respect to dispositions of property or any interest in property made by the bankrupt on or after the relevant date, either by way of gift or for an under-value.

In this sub-paragraph, "relevant date" (有關日期) means the date specified in the criminal bankruptcy order (in accordance with section 84A(3)(d) of the Criminal Procedure Ordinance (Cap 221)) as the earliest date on which the offence or, as the case may be, the earliest of the offences, was committed.

(2) On the application of the Official Receiver (in his capacity as trustee) the court may make orders requiring-

- (a) the person taking under any such disposition; or
- (b) subject to sub-paragraph (3), any other person who by virtue of any subsequent disposition acquired (whether or not from the person taking under the bankrupt's disposition) the whole or any part of the property or any interest therein,

to transfer the whole or any part of the property, or such interest as the order may specify, to the trustee, or to make such payments to the trustee as the court thinks just with a view to making available to the creditors the full value of the property or interest disposed of by the bankrupt (including any increase in its value since the disposition was made).

(3) No order shall be made by virtue of sub-paragraph (2)(b) against a person appearing to the court to have given full value for anything taken by him under a relevant disposition or to claim (directly or indirectly) through a person who gave full value.

(4) An order of the court under this paragraph requiring a person to transfer any property or

interest may include such consequential directions for giving effect to the order, and be made on such terms (including in particular terms allowing the person to retain or recover consideration given by him for any relevant disposition) as the court thinks just in all the circumstances.

(5) In this paragraph, "disposition" (產權處置) includes any conveyance or assurance of property of any description.

9. Administration in bankruptcy of deceased offender's estate

(1) Where an order for administration is made under section 112 on a criminal bankruptcy administration petition, so much of subsection (4) of that section as enables the creditors to appoint a trustee of the property of the bankrupt in place of the Official Receiver shall not apply. (Amended 76 of 1996 s. 72)

(2) Paragraph 7 shall apply in relation to proof of criminal bankruptcy debts in proceedings pursuant to a criminal bankruptcy administration petition as it applies in relation to proof of such debts in proceedings pursuant to a criminal bankruptcy petition.

10. Bankruptcy proceedings otherwise than by virtue of this Schedule

Where a criminal bankruptcy order has been made against any person and a bankruptcy petition has been presented in respect of him before the order was made, or is presented in respect of him thereafter otherwise than by virtue of paragraph 2, the court may, on the application of the Official Petitioner, dismiss the petition, rescind any receiving order made in pursuance thereof or, if that person has been adjudged bankrupt, annul the adjudication on such terms, if any, as the court thinks fit.

11. Effect of appeal against conviction

(1) Subject to the provisions of this paragraph, the fact that an appeal is pending against any conviction by virtue of which a criminal bankruptcy order was made shall not preclude the taking of any proceedings by virtue of this Schedule in consequence of the making of the order.

(2) Where a person is adjudged bankrupt in proceedings pursuant to criminal bankruptcy petition, no property shall be distributed by his trustee in bankruptcy and no order shall be made by the court under paragraph 8 so long as an appeal is pending against his conviction of any offence by virtue of which the criminal bankruptcy order was made. (Amended L.N. 65 of 1986)

(3) For the purposes of this paragraph an appeal against a conviction is pending-

- (a) in any case until the expiration of the time for giving notice of appeal or applying for leave to appeal under section 83Q of the Criminal Procedure Ordinance (Cap 221) (disregarding any extension of time which may be granted under subsection (3) of that section);
- (b) if notice of appeal or of application for leave is given during that period and during that period the appellant notifies the Official Receiver thereof, until the

determination of the appeal and thereafter for so long as an appeal to the Court of Final Appeal is pending within the meaning of section 84B(5) of that Ordinance. (Amended 79 of 1995 s. 50)

- (4) Where in consequence of an appeal a criminal bankruptcy order is rescinded-
- (a) any bankruptcy petition based on the order shall lapse and any adjudication of bankruptcy made in consequence thereof shall cease to have effect, but without prejudice to anything previously done thereunder; (Amended 76 of 1996 s. 70)
 - (b) where any such adjudication ceases to have effect, the property of the person who was adjudicated bankrupt shall revert to him for all his estate or interest therein; and
 - (c) the court may, on his application or on the application of the Official Receiver, by order give such directions, if any, as appear to the said court to be necessary or desirable in consequence of the provisions of sub-paragraphs (a) and (b).

(5) Where in consequence of an appeal a criminal bankruptcy order is amended by the deletion of any amount specified therein as the loss or damage suffered by any person, paragraph 3 shall not thereafter apply to that loss or damage but without prejudice to anything done before the amendment takes effect.

PART III

FUNCTIONS OF OFFICIAL PETITIONER

12. Presentation of criminal bankruptcy petition by Official Petitioner

(1) The Official Petitioner may present a criminal bankruptcy petition, and a bankruptcy order may be made on that petition. (Amended 76 of 1996 s. 73)

(2) Sections 4, 6 and 6B, as modified by paragraph 4 of this Schedule, shall apply to a criminal bankruptcy petition presented by the Official Petitioner as it applies to a petition presented by a creditor. (Amended 76 of 1996 s. 70)

(3) The following provisions-

- (a) section 9(2) (making of bankruptcy order on creditor's petition); (Amended 76 of 1996 s. 73)
- (b) section 9(3) (dismissal of petition); and
- (c) (Repealed 76 of 1996 s. 70)

shall apply in relation to a criminal bankruptcy petition presented by the Official Petitioner as if any reference to the debt of the petitioning creditor were a reference to any criminal bankruptcy debt within the meaning of this Schedule; and paragraph 5 shall have effect in relation to section 9(2) and (3) as they apply by virtue of this paragraph.

13. Presentation of criminal bankruptcy administration petition by Official Petitioner

(1) The Official Petitioner may present a petition under section 112 in any case in which a creditor could do so by virtue of this Schedule, and an order may be made under that section on that petition.

(2) Section 112(2) shall have effect in relation to a petition presented by the Official Petitioner as if the reference to the petitioner's debt were a reference to any criminal bankruptcy debt within the meaning of this Schedule.

14. Participation of Official Petitioner in proceedings brought by virtue of this Schedule (whether by the Official Petitioner or by a creditor)

(1) In the case of proceedings pursuant to a criminal bankruptcy petition or a criminal bankruptcy administration petition, the Official Petitioner shall be entitled-

- (a) to attend any meeting of creditors and, before the meeting, to receive any notice or other document required to be sent before such a meeting to any creditor;
- (b) to be a member of any creditors' committee appointed under section 24; (Amended 76 of 1996 ss. 70 and 74)
- (c) to be a party to any such proceedings before the court.

(2) In the case of proceedings pursuant to-

- (a) a criminal bankruptcy petition or a criminal bankruptcy administration petition, the provisions of the Ordinance mentioned in sub-paragraph (3) shall have effect as if any reference to a creditor, or to a creditor who has proved or tendered a proof, included a reference to the Official Petitioner; and
- (b) a criminal bankruptcy administration petition, the expression "a petition under this section" (本條所指的呈請書) in section 112(8) shall include a reference to a petition by the Official Petitioner.

(3) The provisions referred to in sub-paragraph (2) are-

- (a) section 15 (power to appoint special manager);
- (b) section 18(1) and (5) (statement of affairs); (Amended 76 of 1996 s. 70)
- (c) section 19(5), (8) and (10) (public examination of bankrupt); (Amended 76 of 1996 ss. 70 and 72)
- (d) sections 20 to 20K (interim orders and voluntary arrangements); < * Note - Exp. X-Ref.: Sections 20, 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K * > (Replaced 76 of 1996 s. 70)
- (e)-(f) (Repealed 76 of 1996 s. 70)
- (g) section 78(1)(e) (report to creditors of bankrupt's proposal); (Amended 76 of 1996 s. 72)

(h) section 83 (appeal to court against act or decision of trustee). (Amended 76 of 1996 s. 70; 80 of 1997 s. 102)

(Schedule added 21 of 1979 s. 3. Amended 39 of 1992 s. 6)

[cf. 1973 c. 62 Schedule 2 U.K.]

Chapter:	405	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE	Gazette Number	Version Date
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Section:	16	Bankruptcy of defendants, etc.	L.N. 158 of 1998	01/04/1998
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Remarks:

Amendments retroactively made-see 25 of 1998 s. 2

- (1) Where a person who holds realisable property is adjudged bankrupt-
 - (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
 - (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12,
 are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).
- (2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to- (Amended 25 of 1998 s. 2)
 - (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
 - (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (Amended 76 of 1996 s. 87)
- (3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13. (Amended 25 of 1998 s. 2)
- (4) Subsection (2) does not affect the enforcement of a charging order-
 - (a) made before the order adjudging the person bankrupt; or
 - (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.
- (5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.
- (6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-
 - (a) a court shall not make an order under-
 - (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (Amended 76 of

1996 s. 87)

- (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219), in respect of the making of a gift at any time when-
 - (A) proceedings for a drug trafficking offence have been instituted against him but have not been concluded;
 - (B) an application-
 - (I) for a confiscation order has been made in respect of the person where section 3(1)(a)(ii) or (7) is applicable; or
 - (II) has been made under section 15(1A) in respect of a confiscation order made against the person, and the application has not been concluded; or
 - (C) property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of the sections referred to in paragraph (a)(i) or (ii) after the conclusion of the proceedings or application shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made. (Replaced 89 of 1995 s. 16)

[cf. 1986 c. 32 s. 15 U.K.]

Section:	18	Insolvency officers dealing with property subject to restraint order		30/06/1997
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(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any other person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses-

- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).

(3) In this section "insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

(Enacted 1989)

[cf. 1986 c. 32 s. 17A U.K.]

Chapter:	405A	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number	Version Date
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Schedule:	2	(Repealed 26 of 2002 s. 4)	L.N. 145 of 2002	01/01/2003
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Remarks:

This Schedule was repealed but Schedule 3 was renumbered as Schedule 2 - see 26 of 2002 s. 4 & Sch. 3 (ss. 2 & 3(a)).

Chapter:	405A	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) (DESIGNATED COUNTRIES AND TERRITORIES) ORDER	Gazette Number	Version Date
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Schedule:	3	DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE AS MODIFIED	L.N. 145 of 2002	01/01/2003
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Remarks:

This Schedule was originally Schedule 3 but was renumbered as Schedule 2 - see 26 of 2002 s. 4 & Sch. 3 (ss. 2 & 3(a)).

[paragraph 3(2)]
(26 of 2002 s. 4)

1.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires-
"authorized officer" (獲授權人) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
- (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (L.N. 362 of 1997)

"corresponding law" (相應的法律) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);

"dangerous drug" (毒品) has the same meaning as in section 2(1) of the Dangerous Drugs Ordinance (Cap 134);

"dealing" (處理), in relation to property referred to in the definition of "drug trafficking" or section 10(1), includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (89 of 1995 s. 33)

"drug trafficking" (販毒) means doing or being concerned in, whether in Hong Kong or elsewhere, any act constituting-

- (a) an offence specified in Schedule 1; or
- (b) an offence punishable under a corresponding law,

and includes dealing, whether in Hong Kong or elsewhere, with any property which in whole or in part directly or indirectly represents any person's proceeds of drug trafficking; (89 of 1995 s. 33)

"interest" (權益) in relation to property, includes right;

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court. (89 of 1995 s. 33; 25 of 1998 s. 2)

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Charging order (抵押令)	Section 11(2)
Defendant (被告)	Section 3(3)
External confiscation order (外地沒收令)	Section 3(1)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 7(9)
Making a gift (作出饋贈)	Section 7(10)
Realisable property (可變現財產)	Section 7(1)
Restraint order (限制令)	Section 10(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 7
Value of property (財產的價值)	Section 7(4)

(3) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.

(4)

(5) References in this Ordinance to property received in connection with drug trafficking include a reference to property received both in that connection and in some other connection, and whether received before or after the commencement of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg. A) and whether received in connection with drug trafficking carried on by the recipient or some other person.

(6) Subsections (7) to (13) shall have effect for the interpretation of this Ordinance.

(7) Property is held by any person if he holds any interest in it.

(8) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(9) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.

(10) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(11) Proceedings are instituted in a designated country when-

(a) under the law of the designated country concerned one of the steps specified in relation to that country in column 2 of Schedule 1A has been taken there in respect of alleged drug trafficking by the defendant; or

(b) an application has been made to a court in a designated country for an external confiscation order,

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(12) Proceedings are concluded-

(a) when, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an external confiscation order being made in the proceedings;

(b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(13) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is not further possibility of an appeal on which the order could be varied or set aside.

3. External confiscation orders

- (1) An order made by a court in a designated country for the purpose of-
 - (a) recovering (including forfeiting and confiscating)-
 - (i) payments or other rewards received in connection with drug trafficking or their value;
 - (ii) property derived or realised, directly or indirectly, from payments or other rewards received in connection with drug trafficking or the value of such property; or
 - (iii) property used or intended to be used in connection with drug trafficking or the value of such property; or
 - (b) depriving a person of a pecuniary advantage obtained in connection with drug trafficking,

and whether the proceedings which gave rise to the order are criminal or civil in nature, and whether those proceedings are in the form of proceedings against a person or property, is referred to in this Ordinance as an "external confiscation order" (外地沒收令). (87 of 1997 ss. 1(2) & 36)

(2) In subsection (1) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person (however described in the proceedings in the designated country) against whom, or in relation to whose property, an external confiscation order has been, or may be, made is referred to in this Ordinance as "the defendant" (被告). (L.N. 247 of 1993)

4-6.

6A. Interest on amounts to be recovered
under external confiscation orders

(1) Where a fixed amount is payable under an external confiscation order, that amount shall be treated as a judgment debt for the purposes of section 49 of the High Court Ordinance (Cap 4) and, for those purposes, the date on which the external confiscation order was registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) shall be treated as the date of the judgment debt. (25 of 1998 s. 2)

(2) Where by virtue of subsection (1) any interest accrues on the amount payable under an external confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount payable under the external confiscation order.

(89 of 1995 s. 33)

7. Definition of principal terms used

(1) In this Ordinance, "realisable property" (可變現財產) means, subject to subsection (2)-

- (a) in relation to an external confiscation order -
 - (i) made in respect of specified property, the property which is specified in the order;
 - (ii) which may be made as the result of proceedings which have been, or are to be, instituted in a designated country, the property which may be specified in the order; and (L.N. 247 of 1993)
- (b) in any other case-
 - (i) any property held by the defendant;
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance; and
 - (iii) any property that is subject to the effective control of the defendant. (89 of 1995 s. 33)

(2) Property is not realisable property if-

- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221); or
- (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134),

is in force in respect of the property.

(3)

(4) Subject to the following subsections, for the purposes of this Ordinance the value of property (other than cash) in relation to any person holding the property-

- (a) where any other person holds an interest in the property, is-
 - (i) the market value of the first mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(5) Subject to subsection (10), references in this Ordinance to the value at any time (referred to in subsection (6) as "the material time" (關鍵時間)) of a gift caught by this Ordinance or of any payment or reward are references to-

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (6) applies, the value there mentioned,

whichever is the greater.

(6) Subject to subsection (10), if at the material time the recipient holds-

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (5)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(7)-(8)

(9) A gift (including a gift made before the commencement of the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg. A)) is caught by this Ordinance if-

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property-
 - (i) received by the defendant in connection with drug trafficking carried on by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(10) For the purposes of this Ordinance-

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

(11) For the purposes of subsection (1)-

- (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
 - (i) a legal or equitable estate or interest in the property; or
 - (ii) a right, power or privilege in connection with the property;
- (b) without limiting the generality of any other provision of this Ordinance, in determining-
 - (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
 - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant,

regard may be had to-

- (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
- (B) a trust that has a relationship to the property; and
- (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons. (89 of 1995 section 33)

(12) Where a person obtains a pecuniary advantage referred to in section 3(1)(b), he is to be treated for the purposes of this Ordinance as if he had obtained in connection with the drug trafficking to which the advantage relates a sum of money equal to the value of the advantage, and the other provisions of this Ordinance shall be construed accordingly. (87 of 1997 ss. 1(2) & 36)

8.

9. Cases in which restraint orders and charging orders may be made

(1) The powers conferred on the Court of First Instance by sections 10(1) and 11(1) are exercisable where-

- (a) proceedings have been instituted in a designated country;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Court of First Instance that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) Those powers are also exercisable where the Court of First Instance is satisfied that proceedings are to be instituted in a designated country or territory and it appears to the court that an external confiscation order may be made in them.

(3)

(4) Where the Court of First Instance has made an order under section 10(1) or 11(1) by virtue of subsection (2), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court of First Instance considers reasonable.

(25 of 1998 s. 2)

10. Restraint orders

(1) The Court of First Instance may by order (in this Ordinance referred to as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such

conditions and exceptions as may be specified in the order. (25 of 1998 s. 2)

(2) A restraint order may apply to any realisable property, including property transferred to a person after the making of the order. (L.N. 247 of 1993)

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 11.

(4) A restraint order-

(a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice; (L.N. 247 of 1993; L.N. 362 of 1997)

(b) may be made on an ex parte application to a judge in chambers; and

(c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg. A), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct. (25 of 1998 s. 2)

(5) A restraint order-

(a) may be discharged or varied in relation to any property; and

(b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver. (25 of 1998 s. 2)

(8) (Repealed 89 of 1995 s. 33)

(9) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property. (25 of 1998 s. 2)

(10) Property seized under subsection (9) shall be dealt with in accordance with the directions of the Court of First Instance. (25 of 1998 s. 2)

(11) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-

- (a) be deemed to be an instrument affecting land; and
- (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit. (8 of 1993 s. 30)

(12) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (26 of 2002 s. 4)

(13) A person who receives a notice under subsection (12) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned. (26 of 2002 s. 4)

(14) A disclosure made in order to comply with a requirement under subsection (12)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (26 of 2002 s. 4)

(15) Any person who contravenes subsection (13) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (26 of 2002 s. 4)

(16) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. (26 of 2002 s. 4)

(17) A person who commits an offence under subsection (16) is liable-

- (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (26 of 2002 s. 4)

11. Charging orders in respect of land, securities, etc.

(1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government- (25 of 1998 s. 2)

- (a) where a fixed amount is payable under an external confiscation order, of an

amount not exceeding the amount so payable; and

- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Ordinance, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order-

- (a) may be made only on an application by or on behalf of the government of a designated country or, in a case where an external confiscation order has been registered under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), by a receiver appointed under section 12 or the Secretary for Justice; (L.N. 247 of 1993; L.N. 362 of 1997)
- (b) may be made on an ex parte application to a judge in chambers;
- (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg. A), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct; and
- (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective. (25 of 1998 s. 2)

(4) Subject to subsection (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance-
 - (i) in any asset of a kind specified in Schedule 2; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in an asset of a kind specified in Schedule 2, the Court of First Instance may provide for the charge to extend to any interest, divided or other distribution payable and any bonus issue in respect of the asset. (25 of 1998 s. 2)

(6) The Court of First Instance may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings in the designated country or territory are concluded or the amount payment of which is secured by the charge is paid into the Court of First Instance. (25 of 1998 s. 2)

(7) An application for the discharge or variation of a charging order may be made by any

person affected by it.

(8) Subject to the provisions of this Ordinance, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.

(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (26 of 2002 s. 4)

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned. (26 of 2002 s. 4)

(11) A disclosure made in order to comply with a requirement under subsection (9)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (26 of 2002 s. 4)

(12) Any person who contravenes subsection (10) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (26 of 2002 s. 4)

(13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. (26 of 2002 s. 4)

(14) A person who commits an offence under subsection (13) is liable-

- (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
- (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years. (26 of 2002 s. 4)

11A. Applications for restraint and charging orders

- (1) Order 115 of the Rules of the High Court (Cap 4 sub. leg. A) shall apply to applications

made under this Ordinance subject to the modifications set out in subsections (1A) to (7). (89 of 1995 s. 33; 25 of 1998 s. 2)

(1A) Rule 2A shall be omitted. (89 of 1995 s. 33)

(2) For rule 3(2) there shall be substituted-

"(2) An application under section 10(4) or 11(3) shall be supported by an affidavit which shall-

(a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(b) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;

(c) in a case to which section 9(2) applies, indicate when it is intended that proceedings should be instituted in the designated country concerned."

(3) (Repealed 89 of 1995 s. 33)

(4) For the rule 5(3) there shall be substituted-

"(3) Upon the Court being notified that proceedings have been concluded any restraint or charging order shall be discharged."

(5) In rule 7(3) for everything after "such property" there shall be substituted a full stop.

(6) In rule 8(3) before the words "confiscation order" there shall be added "external".

(7) Rules 9 to 23 shall be omitted.

(L.N. 247 of 1993)

12. Realisation of property

(1) Where an external confiscation order has been registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), the Court of First Instance may, on an application by the Secretary for Justice, exercise the powers conferred by subsections (2) to (6). (L.N. 247 of 1993; L.N. 362 of 1997)

(2) The Court of First Instance may appoint a receiver in respect of realisable property.

(3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 10 or in pursuance of a charging order-

(a) to enforce any charge imposed under section 11 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 11, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.

(4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.

(6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Ordinance as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 11.

(8) The Court of First Instance shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(25 of 1998 s. 2)

13. Application of proceeds of realisation and other sums

(1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 10 or 12 or in pursuance of a charging order, that is-

- (a) the proceeds of the enforcement of any charge imposed under section 11;
- (b) the proceeds of the realisation, other than by enforcement of such a charge, of any property under section 10 or 2; and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 18(2) and then shall, after such payments (if any) as the Court of First Instance may direct have been made out of those sums be paid to the Registrar and applied for the purposes specified in subsections (4) to (6) and in the order so specified. (25 of 1998 s. 2)

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-

- (a) among such of those who held property which has been realised under this Ordinance; and
- (b) in such proportions,

as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (25 of 1998 s. 2)

(3)

(4) Any sums paid to the Registrar under subsection (1) or otherwise in satisfaction of an

external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency officer and payable under section 18(2) but not already paid under subsection (1).

(5) If the sum was paid to the Registrar by a receiver appointed under section 10 or 12 or in pursuance of a charging order the Registrar shall next pay the receiver's remuneration and expenses.

(6) After making-

(a) any payment required by subsection (4); and

(b) in a case to which subsection (5) applies, any payment required by that subsection, the Registrar shall reimburse any amount paid under section 19(2).

(7) Subject to subsections (8) and (9)-

(a) any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be deposited in an interest-bearing account;

(b) upon the expiration of 5 years beginning with the day on which such balance was so deposited, the Registrar shall arrange for such balance, together with any interest earned thereon, to be paid into the general revenue. (89 of 1995 s. 33)

(8) On an application made by or on behalf of the government of a designated country before the expiration of the period referred to in subsection (7)(b) in respect of any balance referred to in that subsection, the Secretary for Justice may direct the Registrar to pay to that government such proportion of that balance as is specified in the direction and the Registrar shall, as soon as is reasonably practicable after the receipt of that direction- (L.N. 362 of 1997)

(a) comply with the direction; and

(b) pay any remainder of that balance, together with any interest earned on that balance, into the general revenue. (89 of 1995 s. 33)

(9) The Registrar shall not comply with subsection (7)(b) in respect of any balance referred to in that subsection (including any interest earned thereon) until any application referred to in subsection (8) made in respect of that balance has been determined, whether by a direction under subsection (8) or otherwise. (89 of 1995 s. 33)

14. Exercise of powers by Court of First Instance or receiver

(1) The following subsections apply to the powers conferred on the Court of First Instance by sections 10 to 13, or on a receiver appointed under section 10 or 12 or in pursuance of a charging order. (25 of 1998 s. 2)

(2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered in the Court of First Instance under section 29 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under any external confiscation order which may be

made. (L.N. 247 of 1993; 25 of 1998 s. 2)

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Ordinance, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In the case of realisable property other than realisable property referred to in section 7(1)(a), the powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

15.

16. Bankruptcy of defendant, etc.

(1) Where a person who holds realisable property is adjudged bankrupt-

- (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
- (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12,

are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to- (25 of 1998 s. 2)

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (87 of 1997 ss. 1(2) & 36)

(3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13. (25 of 1998 s. 2)

(4) Subsection (2) does not affect the enforcement of a charging order-

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-

- (a) a court shall not make an order under-
 - (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (87 of 1997 ss. 1(2) & 36)
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219), in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of those sections after the discharge of the restraint order or charging order shall take into account any realisation under this Ordinance of property held by the person to whom the gift was made.

17. Winding up of company holding realisable property

(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 10(7) or 12(5) or (6) for the time being in the hands of a receiver appointed under section 10 or 12.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 10 to 13 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable-

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Ordinance (Cap 32) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 10 to 13.

(3A) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance. (89 of 1995 s. 33)

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(5) In this section-
"company" (公司) means any company which may be wound up under the Companies Ordinance (Cap 32); and

"the relevant time" (有關時間) means-

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(25 of 1998 s. 2)

18. Insolvency officers dealing with property subject to restraint order

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses-

- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing

does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or

- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property, shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 13(1) or (3).

(3) In this section "insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

19. Receivers: supplementary provisions

(1) Where a receiver appointed under section 10 or 12 or in pursuance of a charging order takes any action-

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 13(5), be paid by the person on whose application the receiver was appointed. (L.N. 247 of 1993)

20-28.

29. (Repealed L.N. 247 of 1993)

30. Evidence of corresponding law

Section 43 of the Dangerous Drugs Ordinance (Cap 134) shall apply in relation to proceedings under this Ordinance as it applies in relation to proceedings for an offence under that Ordinance.

31. Amendment of Schedules

The Chief Executive in Council may, by order, amend Schedule 1, 1A or 2.

(89 of 1995 s. 33; 15 of 1999 s. 3)

SCHEDULE 1

[section 2]

DRUG TRAFFICKING OFFENCES

Item	Offence	Description*
1.	section 4(1), Dangerous Drugs Ordinance (Cap 134)	trafficking in a dangerous drug
2.	section 4A, Dangerous Drugs Ordinance (Cap 134)	trafficking in purported dangerous drug
3.	section 5(1), Dangerous Drugs Ordinance (Cap 134)	supplying or procuring a dangerous drug to or for unauthorized persons
4.	section 6(1), Dangerous Drugs Ordinance (Cap 134)	manufacturing a dangerous drug
5.	section 9(1), (2) and (3), Dangerous Drugs Ordinance (Cap 134)	cultivating, supplying, procuring, dealing in, importing, exporting, or possessing cannabis plant or opium poppy
6.	section 35, Dangerous Drugs Ordinance (Cap 134)	keeping or managing a divan for the taking of dangerous drugs
7.	section 37, Dangerous Drugs Ordinance (Cap 134)	permitting premises to be used for unlawful trafficking, manufacturing or storage of dangerous drugs
7A.	section 40(1)(c), Dangerous Drugs Ordinance (Cap 134)	aiding, etc. offence under a corresponding law
8.	-
9.	conspiracy to commit any of the offences specified in items 1 to 7	-
10.	inciting another to commit any of the offences specified in items 1 to 7	-
11.	attempting to commit any of the offences specified in items 1 to 7	-
12.	aiding, abetting, counselling or procuring the commission of any of the offences specified in items 1 to 7	-

* Note: The short description of offences in this Schedule is for ease of reference only.

(89 of 1995 s. 33)

INSTITUTION OF PROCEEDINGS

Designated country	Point at which proceedings are instituted
Australia	<ul style="list-style-type: none"> (a) where an information has been laid before a justice of the peace; (b) when a person is charged with the offence after having been taken into custody without a warrant; or (c) when a bill of indictment is preferred.
Canada	When an information has been laid or an indictment is preferred.
England and Wales	<ul style="list-style-type: none"> (a) when an information has been laid before a justice of the peace; (b) when a person is charged with an offence; or (c) when a bill of indictment is preferred.
Gibraltar	When a person is charged with an offence, whether by the laying of an information or otherwise.
Guernsey	When a person is charged with an offence.
Isle of Man	<ul style="list-style-type: none"> (a) where a justice of the peace issues a summons under section 13 of the Petty Sessions and Summary Jurisdiction Act 1927, when the complaint in relation to the offence is made to him; (b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him; (c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody; or (d) where an information is preferred by the Secretary for Justice in a case where there have been no committal when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917. (L.N. 362 of 1997)
Jersey	<ul style="list-style-type: none"> (a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island; (b) when a person is arrested and charged with an offence; (c) when a summons in respect of an offence is served on a person at the instance of the Secretary for Justice; or (L.N. 362 of 1997) (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law 1949.
Kingdom of Thailand	When a complaint or a denunciation is lodged with the inquiry official or other competent official, whether or not the suspect has been identified. (L.N. 282 of 1996)
Malaysia	<ul style="list-style-type: none"> (a) when an action that may lead to the making of an order for the purpose of confiscating the proceeds or instrumentalities of drug trafficking is commenced in a court; or (b) when a person is charged with an offence after having been taken into custody without a warrant. (L.N. 12 of 1993)
Northern Ireland	(a) when a summons or warrant is issued under Article 20 of

	the Magistrates' Courts (Northern Ireland) Order 1981;
	(b) when a person is charged with an offence after being taken into custody without a warrant; or
	(c) when an indictment is presented under section 2(2)(c), (e) or (f) of the Grand Jury (Abolition) Act (Northern Ireland) 1969.
Scotland	(a) when a petition warrant is granted; or
	(b) when a person has been charged with an offence after having been arrested without a warrant.
United States of America	When an indictment, information or complaint has been filed against a person in respect of an offence.

SCHEDULE 2

[section 11]

ASSETS ON WHICH A CHARGING ORDER MAY BE IMPOSED

1. Land in Hong Kong.
2. Securities of any of the following kinds-
 - (a) Government stock;
 - (b) stock of any body incorporated in Hong Kong;
 - (c) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;
 - (d) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.
3. In this Schedule-
 - (a) the terms "Government stock" (政府證券) and "land" (土地) have the same meaning as in section 2 of the High Court Ordinance (Cap 4); (25 of 1998 s. 2)
 - (b) the terms "stock" (股份) and "unit trust" (單位信託基金) have the same meaning as in section 20A of that Ordinance.

(Enacted 1991)

Chapter:	455	ORGANIZED AND SERIOUS CRIMES ORDINANCE	Gazette Number	Version Date
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Section:	2	Interpretation	L.N. 145 of 2002	01/01/2003
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(1) In this Ordinance, unless the context otherwise requires-
"absconded" (潛逃), in relation to a person, includes absconded for any reason whatsoever, and whether or not, before absconding, the person had been-

- (a) taken into custody; or
- (b) released on bail; (Added 90 of 1995 s. 2)

"authorized officer" (獲授權人) means-

- (a) any police officer;
- (b) any member of the Customs and Excise Service established by section 3 of the Customs and Excise Service Ordinance (Cap 342); and
- (c) any other person authorized in writing by the Secretary for Justice for the purposes of this Ordinance; (Amended L.N. 362 of 1997)

"confiscation order" (沒收令) means an order made under section 8(7);

"dealing" (處理), in relation to property referred to in section 15(1) or 25, includes-

- (a) receiving or acquiring the property;
- (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it or otherwise);
- (c) disposing of or converting the property;
- (d) bringing into or removing from Hong Kong the property;
- (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise); (Added 90 of 1995 s. 2)

"defendant" (被告人) means a person against whom proceedings have been instituted for a specified offence (whether or not he has been convicted of that offence);

"insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32);

"interest" (權益), in relation to property, includes right;

"items subject to legal privilege" (享有法律特權的品目) means-

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made-
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them, but excludes any such communications or items held with the intention of furthering a criminal purpose;

"material" (物料) includes any book, document or other record in any form whatsoever, and any article or substance;

"organized crime" (有組織罪行) means a Schedule 1 offence that-

- (a) is connected with the activities of a particular triad society;
- (b) is related to the activities of 2 or more persons associated together solely or partly for the purpose of committing 2 or more acts, each of which is a Schedule 1 offence and involves substantial planning and organization; or
- (c) is committed by 2 or more persons, involves substantial planning and organization and involves-
 - (i) loss of the life of any person, or a substantial risk of such a loss;
 - (ii) serious bodily or psychological harm to any person, or a substantial risk of such harm; or
 - (iii) serious loss of liberty of any person;

"premises" (處所) includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft, hovercraft or offshore structure; and
- (b) any tent or movable structure;

"property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);

"Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)

"reward" (酬賞) includes a pecuniary advantage;

"Schedule 1 offence" (附表1所列罪行) means-

- (a) any of the offences specified in Schedule 1;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;

- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences;

"society" (社團) has the same meaning as in section 2(1) of the Societies Ordinance (Cap 151);

"specified offence" (指明的罪行) means-

- (a) any of the offences specified in Schedule 1 or Schedule 2;
- (b) conspiracy to commit any of those offences;
- (c) inciting another to commit any of those offences;
- (d) attempting to commit any of those offences;
- (e) aiding, abetting, counselling or procuring the commission of any of those offences.

"triad society" (三合會) includes any society which-

- (a) uses any ritual commonly used by triad societies, any ritual closely resembling any such ritual or any part of any such ritual; or
 - (b) adopts or makes use of any triad title or nomenclature;
- (2) For the purpose of the definition of "organized crime" (有組織罪行) in subsection (1)-
- (a) a conspiracy to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if the pursuit of the agreed course of conduct would at some stage involve that matter;
 - (b) an attempt or incitement to commit a Schedule 1 offence involves a matter referred to in paragraph (c)(i) to (iii) of that definition if what the person attempting or inciting the commission had in view would involve that matter.

(3) The expressions listed in the left-hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Ordinance listed in the right-hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令)	Section 16(2)
Gift caught by this Ordinance (受本條例圍制的饋贈)	Section 12(9)
Making a gift (作出饋贈)	Section 12(10)
Realisable property (可變現財產)	Section 12(1)
Restraint order (限制令)	Section 15(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 12
Value of property (財產的價值)	Section 12(4)

(Amended 90 of 1995 s. 2)

(4) This Ordinance applies to property whether it is situated in Hong Kong or elsewhere.

(5) References in this Ordinance (except in sections 25 and 25A) to offences or organized crimes include a reference to offences or organized crimes committed before the commencement of this Ordinance; but nothing in this Ordinance imposes any duty or confers any power on any

court in or in connection with proceedings against a person for an offence instituted before the commencement of this Ordinance. (Amended 90 of 1995 s. 2)

(6) For the purposes of this Ordinance-

(a) a person's proceeds of an offence are-

- (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of that offence;
- (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
- (iii) any pecuniary advantage obtained in connection with the commission of that offence;

(b) the value of the person's proceeds of that offence is the aggregate of the values of-

- (i) the payments or other rewards;
- (ii) that property; and
- (iii) that pecuniary advantage. (Replaced 87 of 1997 s. 36)

(7) For the purposes of this Ordinance-

(a) a person's proceeds of organized crime are-

- (i) any payments or other rewards received by him at any time (whether before or after 2 December 1994) in connection with the commission of one or more organized crimes;
- (ii) any property derived or realised, directly or indirectly, by him from any of the payments or other rewards; and
- (iii) any pecuniary advantage obtained in connection with the commission of one or more organized crimes;

(b) the value of the person's proceeds of organized crime is the aggregate of the values of-

- (i) the payments or other rewards;
- (ii) that property; and
- (iii) that pecuniary advantage. (Replaced 87 of 1997 s. 36)

(8) For the purposes of this Ordinance, a person who has at any time (whether before or after the commencement of this Ordinance) received any payment or other reward in connection with the commission of an offence or an organized crime has benefited from that offence or organized crime, as the case may be.

(9) References in this Ordinance to property received in connection with the commission of an offence or organized crime include a reference to property received both in that connection and in some other connection.

(10) Subsections (11) to (17) shall have effect for the interpretation of this Ordinance.

(11) Property is held by any person if he holds any interest in it.

(12) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(13) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.

(14) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(15) Proceedings for an offence are instituted-

- (a) when a magistrate issues a warrant or summons under section 72 of the Magistrates Ordinance (Cap 227) in respect of the offence;
- (aa) when a person has been arrested for the offence and released on bail or has refused bail; (Added 26 of 2002 s. 3)
- (b) when a person is charged with the offence after being taken into custody without a warrant; or
- (c) when an indictment is preferred by the direction or with the consent of a judge under section 24A(1)(b) of the Criminal Procedure Ordinance (Cap 221),

and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(16) Proceedings for an offence are concluded on the occurrence of one of the following events-

- (a) the discontinuance of the proceedings whether by entry of a nolle prosequi or otherwise;
- (b) an order or verdict acquitting the defendant, not being an order or verdict which is subject to appeal or review within the meaning of subsection (17);
- (c) the quashing of his conviction for the offence except where, under section 83E of the Criminal Procedure Ordinance (Cap 221), an order is made that he be retried;
- (d) the grant of the Chief Executive's pardon in respect of the conviction for the offence; (Amended 13 of 1999 s. 3)
- (e) the court or magistrate sentencing or otherwise dealing with him in respect of his conviction for the offence where the Secretary for Justice either does not apply for a confiscation order, or applies for a confiscation order and the order is not made; or (Amended L.N. 362 of 1997)
- (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(16A) An application for a confiscation order made in respect of a defendant where section 8(1)(a)(ii) or (7A) is applicable is concluded-

- (a) if the Court of First Instance or the District Court decides not to make such an

order, when it makes that decision; or (Amended 25 of 1998 s. 2)

- (b) if such an order is made as a result of that application, when the order is satisfied.
(Added 90 of 1995 s. 2)

(16B) An application under section 20(1A) in respect of a confiscation order made against a defendant is concluded-

- (a) if the Court of First Instance decides not to vary that order, when it makes that decision; or
- (b) if the Court of First Instance varies that order as a result of that application, when the order is satisfied. (Added 90 of 1995 s. 2. Amended 25 of 1998 s. 2)

(17) An order or verdict (including an order or verdict of acquittal) is subject to appeal or review so long as an appeal, further appeal or review is pending against the order or verdict; and for this purpose an appeal, further appeal or review shall be treated as pending (where one is competent but has not been instituted) until-

- (a) (Repealed 79 of 1995 s. 50)
- (b) the expiration of the time prescribed for instituting the appeal, further appeal or review. (Amended 79 of 1995 s. 50)

(18) Subject to subsection (19), nothing in this Ordinance shall require the disclosure of any items subject to legal privilege. (Added 26 of 2002 s. 3)

(19) Subsection (18) shall not prejudice the operation of sections 3, 4 and 5. (Added 26 of 2002 s. 3)

(Enacted 1994)

[cf. 1986 c. 32 s. 38 U.K.]

Section:	21	Bankruptcy of defendant, etc.	L.N. 158 of 1998	01/04/1998
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Expanded Cross Reference:

15, 16, 17, 18

Remarks:

Amendments retroactively made - see 25 of 1998 s. 2

- (1) Where a person who holds realisable property is adjudged bankrupt-
 - (a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and
 - (b) any proceeds of property realised by virtue of section 15(7) or 17(5) or (6) for the time being in the hands of a receiver appointed under section 15 or 17,are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 15 to 18 shall not be exercised in relation to- < * Note - Exp. X-Ref.: Sections 15, 16, 17, 18 * > (Amended 25 of 1998 s. 2)

- (a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and
- (b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30A(9) of the Bankruptcy Ordinance (Cap 6). (Amended 76 of 1996 s. 97)

(3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 15 to 18. < * Note - Exp. X-Ref.: Sections 15, 16, 17, 18 * > (Amended 25 of 1998 s. 2)

(4) Subsection (2) does not affect the enforcement of a charging order-

- (a) made before the order adjudging the person bankrupt; or
- (b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and has directly or indirectly made a gift caught by this Ordinance-

(a) a court shall not make an order under-

- (i) section 49 or 50 of the Bankruptcy Ordinance (Cap 6); or (Amended 76 of 1996 s. 97)
- (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219), in respect of the making of a gift at any time when-
 - (A) proceedings for a specified offence have been instituted against him but have not been concluded;
 - (B) an application-
 - (I) for a confiscation order has been made in respect of the person where section 8(1)(a)(ii) or (7A) is applicable; or
 - (II) has been made under section 20(1A) in respect of a confiscation order made against the person, and the application has not been concluded; or
 - (C) property of the person to whom the gift was made is subject to a restraint order or charging order; and (Replaced 90 of 1995 s. 20)

(b) any order made under any of the sections referred to in paragraph (a)(i) or (ii) after the conclusion of the proceedings or application shall take into account any

realisation under this Ordinance of property held by the person to whom the gift was made. (Replaced 90 of 1995 s. 20)

(Enacted 1994)

[cf. 1986 c. 32 s. 15 U.K.]

Chapter:	525	MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ORDINANCE	Gazette Number	Version Date
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Schedule:	2	ENFORCEMENT, ETC. OF EXTERNAL CONFISCATION ORDERS	L.N. 145 of 2002	01/01/2003
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Expanded Cross Reference:

7, 8, 9, 10

[sections 27, 28, 29,
30 & 35]

1. Interpretation

- (1) In this Schedule, unless the context otherwise requires-
- "interest" (權益), in relation to property, includes right;
- "property" (財產) includes both movable and immovable property within the meaning of section 3 of the Interpretation and General Clauses Ordinance (Cap 1);
- "Registrar" (司法常務官) means the Registrar of the High Court; (Amended 25 of 1998 s. 2)
- "relevant asset" (有關資產) means-
- (a) any land, within the meaning of section 2 of the High Court Ordinance (Cap 4), in Hong Kong; (Amended 25 of 1998 s. 2)
 - (b) any Government stock within the meaning of section 2 of that Ordinance;
 - (c) any stock, within the meaning of section 20A of that Ordinance, of any body incorporated in Hong Kong;
 - (d) any stock, within the meaning of section 20A of that Ordinance, of any body incorporated outside Hong Kong or of any place outside Hong Kong, being stock registered in a register kept at any place within Hong Kong; or
 - (e) any units of any unit trust, within the meaning of section 20A of that Ordinance, in respect of which a register of the unit holders is kept at any place within Hong Kong

Kong.

(2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Schedule listed in the right hand column in relation to those expressions.

Expression	Relevant provision
Charging order (押記令)	Section 8(2)
Defendant (被告人)	Section 3
Gift caught by this Schedule (受本附表圍制的饋贈)	Section 5(6)
Making a gift (作出饋贈)	Section 5(7)
Realisable property (可變現財產)	Section 5(1)
Restraint order (限制令)	Section 7(1)
Value of gift, payment or reward (饋贈、付款或酬賞的價值)	Section 5(4)
Value of property (財產的價值)	Section 5(3)

(3) This Schedule applies to property whether it is situated in Hong Kong or elsewhere.

(4) References in this Schedule to property received in connection with an external serious offence include a reference to property received both in that connection and in some other connection, and whether received before or after the commencement of this Schedule and whether received in connection with an external serious offence committed by the recipient or some other person.

(5) Subsections (6) to (11) shall have effect for the interpretation of this Schedule.

(6) Property is held by any person if he holds any interest in it.

(7) References to property held by a person include a reference to property vested in his trustee in bankruptcy or in a liquidator.

(8) References to an interest held by a person beneficially in property include, where the property is vested in his trustee in bankruptcy or in a liquidator, a reference to an interest which would be held by him beneficially if the property were not so vested.

(9) Property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

(10) Proceedings are concluded in a place outside Hong Kong-

(a) when, disregarding any power of a court to grant leave to appeal out of time, there is no further possibility of an external confiscation order being made in the proceedings;

(b) on the satisfaction of an external confiscation order made in the proceedings (whether by the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise).

(11) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied

or set aside.

2. Application

This Schedule shall not apply to an external confiscation order except an external confiscation order-

- (a) the subject of a request under section 27 of this Ordinance; and
- (b) in relation to which the Secretary for Justice has decided to act, for the place which made the request, under the provisions of this Schedule. (Amended L.N. 362 of 1997)

3. Defendants under external confiscation orders

A person (however described in the proceedings in the place outside Hong Kong concerned) against whom, or in relation to whose property, an external confiscation order has been, or may be, made is referred to in this Schedule as "the defendant" (被告人).

4. Interest on amounts to be recovered under external confiscation orders

(1) Where a fixed amount is payable under an external confiscation order, that amount shall be treated as a judgment debt for the purposes of section 49 of the High Court Ordinance (Cap 4) and, for those purposes, the date on which the external confiscation order was registered under section 28 of this Ordinance shall be treated as the date of the judgment debt. (Amended 25 of 1998 s. 2)

(2) Where by virtue of subsection (1) any interest accrues on the amount payable under an external confiscation order, the defendant shall be liable to pay that interest and the amount of the interest shall for the purposes of enforcement be treated as part of the amount payable under the external confiscation order.

5. Definition of principal terms used

- (1) In this Schedule, "realisable property" (可變現財產) means, subject to subsection (2)-
 - (a) in relation to an external confiscation order-
 - (i) made in respect of specified property, the property which is specified in the order;
 - (ii) which may be made as the result of proceedings which have been, or are to be, instituted in a place outside Hong Kong, the property which may be

specified in the order; and

- (b) in any other case-
 - (i) any property held by the defendant;
 - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule; and
 - (iii) any property that is subject to the effective control of the defendant.

(2) Property is not realisable property if-

- (a) an order under section 102 or 103 of the Criminal Procedure Ordinance (Cap 221);
or
- (b) an order under section 38F or 56 of the Dangerous Drugs Ordinance (Cap 134),

is in force in respect of the property.

(3) Subject to the following subsections, for the purposes of this Schedule the value of property (other than cash) in relation to any person holding the property-

- (a) where any other person holds an interest in the property, is-
 - (i) the market value of the first-mentioned person's beneficial interest in the property, less
 - (ii) the amount required to discharge any incumbrance (other than a charging order) on that interest; and
- (b) in any other case, is its market value.

(4) Subject to subsection (7), references in this Schedule to the value at any time (referred to in subsection (5) as "the material time" (關鍵時間)) of a gift caught by this Schedule or of any payment or reward are references to-

- (a) the value of the gift, payment or reward to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (5) applies, the value there mentioned,

whichever is the greater.

(5) Subject to subsection (7), if at the material time the recipient holds-

- (a) the property which he received (not being cash); or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

the value referred to in subsection (4)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding in either case any charging order.

(6) A gift (including a gift made before the commencement of this Schedule) is caught by this Schedule if-

- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against him; or

- (b) it was made by the defendant at any time and was a gift of property-
 - (i) received by the defendant in connection with an external serious offence committed by him or another; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (7) For the purposes of this Schedule-
 - (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.
- (8) For the purposes of subsection (1)-
 - (a) property, or an interest in property, may be subject to the effective control of the defendant whether or not the defendant has-
 - (i) a legal or equitable estate or interest in the property; or
 - (ii) a right, power or privilege in connection with the property;
 - (b) without limiting the generality of any other provision of this Schedule, in determining-
 - (i) whether or not property, or an interest in property, is subject to the effective control of the defendant; or
 - (ii) whether or not there are reasonable grounds to believe that property, or an interest in property, is subject to the effective control of the defendant, regard may be had to-
 - (A) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property;
 - (B) a trust that has a relationship to the property; and
 - (C) family, domestic and business relationships between persons having an interest in the property, or in companies of the kind referred to in subparagraph (A) or trusts of the kind referred to in subparagraph (B), and other persons.

6. Cases in which restraint orders and charging orders may be made

- (1) The powers conferred on the Court of First Instance by sections 7(1) and 8(1) are

exercisable where-

- (a) proceedings have been instituted in a place outside Hong Kong;
- (b) the proceedings have not been concluded; and
- (c) either an external confiscation order has been made in the proceedings or it appears to the Court of First Instance that there are reasonable grounds for believing that an external confiscation order may be made in them.

(2) Those powers are also exercisable where the Court of First Instance is satisfied that proceedings are to be instituted in a place outside Hong Kong and it appears to the court that an external confiscation order may be made in them.

(3) Where the Court of First Instance has made an order under section 7(1) or 8(2) by virtue of subsection (2), it shall discharge the order if the proposed proceedings are not instituted within such time as the Court of First Instance considers reasonable.

(Amended 25 of 1998 s. 2)

7. Restraint orders

(1) The Court of First Instance may by order (in this Schedule referred to as a "restraint order" (限制令)) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply to any realisable property, including property transferred to a person after the making of the order.

(3) This section shall not have effect in relation to any property for the time being subject to a charge under section 8.

(4) A restraint order-

- (a) may be made only on an application by the Secretary for Justice or, in a case where an external confiscation order has been registered under section 28 of this Ordinance, by a receiver appointed under section 9 or the Secretary for Justice; (Amended L.N. 362 of 1997)
- (b) may be made on an ex parte application to a judge in chambers; and
- (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct.

(5) A restraint order-

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged when the proceedings in relation to which the order was made are concluded.

(6) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(7) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver-

- (a) to take possession of any realisable property; and
- (b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such conditions and exceptions as may be specified by the Court of First Instance; and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(8) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the Court of First Instance. (Amended 71 of 1999 s. 3)

(10) Where any property specified in a restraint order is immovable property the order shall, for the purposes of the Land Registration Ordinance (Cap 128)-

- (a) be deemed to be an instrument affecting land; and
- (b) be registrable as such in the Land Registry under that Ordinance in such manner as the Land Registrar thinks fit.

(11) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 5)

(12) A person who receives a notice under subsection (11) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the restraint order concerned. (Added 26 of 2002 s. 5)

(13) A disclosure made in order to comply with a requirement under subsection (11)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 5)

(14) Any person who contravenes subsection (12) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 5)

(15) A person who knowingly deals in any realisable property in contravention of a restraint order commits an offence. (Added 26 of 2002 s. 5)

(16) A person who commits an offence under subsection (15) is liable-

- (a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the restraint order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or
 - (b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years.
- (Added 26 of 2002 s. 5)

(Amended 25 of 1998 s. 2)

8. Charging orders in respect of land, securities, etc.

(1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government-

- (a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable; and
- (b) in any other case, of an amount equal to the value from time to time of the property charged.

(2) For the purposes of this Schedule, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the Government.

(3) A charging order-

- (a) may be made only on an application by the Secretary for Justice or, in a case where an external confiscation order has been registered under section 28 of this Ordinance, by a receiver appointed under section 9 or the Secretary for Justice; (Amended L.N. 362 of 1997)
- (b) may be made on an ex parte application to a judge in chambers;
- (c) may, notwithstanding anything in Order 11 of the Rules of the High Court (Cap 4 sub. leg.), provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court of First Instance may direct; and
- (d) may be made subject to such conditions as the Court of First Instance thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) Subject to subsection (6), a charge may be imposed by a charging order only on-

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule-

- (i) in any relevant asset; or
 - (ii) under any trust; or
- (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(5) In any case where a charge is imposed by a charging order on any interest in a relevant asset, the Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset.

(6) The Court of First Instance may make an order discharging or varying the charging order and shall make an order discharging the charging order if the proceedings in the place outside Hong Kong are concluded or the amount payment of which is secured by the charge is paid into the Court of First Instance.

(7) An application for the discharge or variation of a charging order may be made by any person affected by it.

(8) Subject to the provisions of this Schedule, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same manner as an equitable charge created by the person holding the beneficial interest or, as the case may be, the trustee, by writing under his hand.

(9) An authorized officer may, by notice in writing served on a person who holds any realisable property the subject of a charging order, require the person to deliver to the authorized officer, to the extent that it is practicable to do so, documents, or copies of documents, or any other information (in whatever form), in his possession or control which may assist the authorized officer to determine the value of the property. (Added 26 of 2002 s. 5)

(10) A person who receives a notice under subsection (9) shall, as soon as is practicable after receipt of the notice, comply with the notice to the extent that it is practicable to do so taking into account the nature of the realisable property the subject of the charging order concerned. (Added 26 of 2002 s. 5)

(11) A disclosure made in order to comply with a requirement under subsection (9)-

- (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;
- (b) shall not render the person who made it liable in damages for any loss arising out of-
 - (i) the disclosure;
 - (ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure. (Added 26 of 2002 s. 5)

(12) Any person who contravenes subsection (10) commits an offence and is liable on

conviction to a fine at level 5 and to imprisonment for 1 year. (Added 26 of 2002 s. 5)

(13) A person who knowingly deals in any realisable property in contravention of a charging order commits an offence. (Added 26 of 2002 s. 5)

(14) A person who commits an offence under subsection (13) is liable-

(a) on conviction upon indictment to a fine of \$500000 or to the value of the realisable property the subject of the charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years; or

(b) on summary conviction to a fine of \$250000 and to imprisonment for 2 years.
(Added 26 of 2002 s. 5)

(Amended 25 of 1998 s. 2)

9. Realisation of property

(1) Where an external confiscation order has been registered under section 28 of this Ordinance, the Court of First Instance may, on an application by the Secretary for Justice, exercise the powers conferred by subsections (2) to (6). (Amended L.N. 362 of 1997)

(2) The Court of First Instance may appoint a receiver in respect of realisable property.

(3) The Court of First Instance may empower a receiver appointed under subsection (2), under section 7 or in pursuance of a charging order-

(a) to enforce any charge imposed under section 8 on realisable property or on any interest, dividend or other distribution payable and any bonus issue in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 8, to take possession of the property subject to such conditions or exceptions as may be specified by the Court of First Instance.

(4) The Court of First Instance may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court of First Instance may empower any such receiver to realise any realisable property in such manner as the Court of First Instance may direct.

(6) The Court of First Instance may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Schedule as the Court of First Instance may direct and the Court of First Instance may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 8.

(8) The Court of First Instance shall not in respect of any property exercise the powers

conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court of First Instance.

(Amended 25 of 1998 s. 2)

10. Application of proceeds of realisation and other sums

(1) Subject to subsection (2), the following sums in the hands of a receiver appointed under section 7 or 9 or pursuant to a charging order, that is-

- (a) the proceeds of the enforcement of any charge imposed under section 8;
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 7 or 9; and
- (c) any other sums, being property held by the defendant,

shall first be applied in payment of such expenses incurred by a person acting as an insolvency officer as are payable under section 14(2) and then shall, after such payments, if any, as the Court of First Instance may direct have been made out of those sums be paid to the Registrar and applied for the purposes specified in subsections (3) to (5) and in the order so specified. (Amended 25 of 1998 s. 2)

(2) Where a fixed amount is payable under the external confiscation order and, after that amount has been fully paid, any such sums remain in the hands of such a receiver, the receiver shall distribute those sums-

- (a) among such of those who held property which has been realised under this Schedule; and
- (b) in such proportions,

as the Court of First Instance may direct after giving a reasonable opportunity for such persons to make representations to the Court of First Instance. (Amended 25 of 1998 s. 2)

(3) Any sums paid to the Registrar under subsection (1) or otherwise in satisfaction of an external confiscation order shall be first applied to pay any expenses incurred by a person acting as an insolvency officer and payable under section 14(2) but not already paid under subsection (1).

(4) If the sum was paid to the Registrar by a receiver appointed under section 7 or 9 or pursuant to a charging order the Registrar shall next pay the receiver's remuneration and expenses.

(5) After making-

- (a) any payment required by subsection (3); and
- (b) in a case to which subsection (4) applies, any payment required by that subsection,

the Registrar shall reimburse any amount paid under section 15(2).

(6) Subject to subsections (7) and (8)-

- (a) any balance in the hands of the Registrar after he has made all payments required by the foregoing subsections shall be deposited in an interest-bearing account;
- (b) upon the expiration of 5 years beginning with the day on which such balance was

so deposited, the Registrar shall arrange for such balance, together with any interest earned thereon, to be paid into the general revenue.

(7) On an application made by or on behalf of the government of a prescribed place before the expiration of the period referred to in subsection (6)(b) in respect of any balance referred to in that subsection, the Secretary for Justice may direct the Registrar to pay to that government such proportion of that balance as is specified in the direction and the Registrar shall, as soon as is reasonably practicable after the receipt of that direction- (Amended L.N. 362 of 1997)

(a) comply with the direction; and

(b) pay any remainder of that balance, together with any interest earned on that balance, into the general revenue.

(8) The Registrar shall not comply with subsection (6)(b) in respect of any balance referred to in that subsection (including any interest earned thereon) until any application referred to in subsection (7) made in respect of that balance has been determined, whether by a direction under subsection (7) or otherwise.

(9) Where an application under subsection (8) of the relevant section has not been determined before the relevant day, then this section shall, with all necessary modifications, apply to and in relation to the application as if the application were an application under subsection (7), and the other provisions of this Ordinance shall be construed accordingly.

(10) In this section-

"relevant day" (有關日期) means the day on which section 14 of Schedule 3 comes into operation;

"relevant Order" (有關命令) means the Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap 405 sub. leg.) as in force immediately before the relevant day;

"relevant section" (有關條文) means section 13 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405) as applied under paragraph 3(2) of the relevant Order.

11. Exercise of powers by Court of First Instance or receiver

(1) The following subsections apply to the powers conferred on the Court of First Instance by sections 7 to 10, or on a receiver appointed under section 7 or 9 or pursuant to a charging order. <* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 *> (Amended 25 of 1998 s. 2)

(2) Subject to subsections (3), (4), (5) and (6), the powers shall be exercised with a view to recovering property which is liable to be recovered under an external confiscation order registered under section 28 of this Ordinance or, as the case may be, with a view to making available for recovery property which may become liable to be recovered under an external confiscation order which may be made.

(3) In the case of realisable property held by a person to whom the defendant has directly or

indirectly made a gift caught by this Schedule, the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) In the case of realisable property other than realisable property referred to in section 5(1)(a), the powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the Government.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the external confiscation order.

12. Bankruptcy of defendant, etc.

(1) Where a person who holds realisable property is adjudged bankrupt-

(a) property for the time being subject to a restraint order made before the order adjudging him bankrupt; and

(b) any proceeds of property realised by virtue of section 7(7) or 9(5) or (6) for the time being in the hands of a receiver appointed under section 7 or 9,

are excluded from the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6).

(2) Where a person has been adjudged bankrupt, the powers conferred on the Court of First Instance by sections 7 to 10 shall not be exercised in relation to- < * Note - Exp. X-Ref.: Sections 7, 8, 9, 10 * > (Amended 25 of 1998 s. 2)

(a) property for the time being comprised in the property of the bankrupt for the purposes of the Bankruptcy Ordinance (Cap 6); and

(b) property which is to be applied for the benefit of creditors of the bankrupt by virtue of a condition imposed under section 30(3) of the Bankruptcy Ordinance (Cap 6).

(3) Nothing in the Bankruptcy Ordinance (Cap 6) shall be taken as restricting, or enabling the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 7 to 10. < * Note - Exp. X-Ref.: Sections 7, 8, 9, 10 * > (Amended 25 of 1998 s. 2)

(4) Subsection (2) does not affect the enforcement of a charging order-

(a) made before the order adjudging the person bankrupt; or

(b) on property which was subject to a restraint order when the order adjudging him bankrupt was made.

(5) Where, in the case of a debtor, an interim receiver stands appointed under section 13 of the Bankruptcy Ordinance (Cap 6) and any property of the debtor is subject to a restraint order, the powers conferred on the interim receiver by virtue of that Ordinance do not apply to property for the time being subject to the restraint order.

(6) Where a person is adjudged bankrupt and had directly or indirectly made a gift caught by this Schedule-

- (a) a court shall not make an order under-
 - (i) section 31, 47 or 49 of the Bankruptcy Ordinance (Cap 6); or
 - (ii) section 60 of the Conveyancing and Property Ordinance (Cap 219),in respect of the making of the gift at any time when property of the person to whom the gift was made is subject to a restraint order or charging order; and
- (b) any order made under any of those sections after the discharge of the restraint order or charging order shall take into account any realisation under this Schedule of property held by the person to whom the gift was made.

(7) After the relevant day-

- (a) subsection (2)(b) shall be read as if "30(3)" were omitted and "30A(9)" were substituted therefor;
- (b) subsection (6)(a)(i) shall be read as if "31, 47 or 49" were omitted and "49 or 50" were substituted therefor.

(8) In this section, "relevant day" (有關日期) means the day on which section 87 of the Bankruptcy (Amendment) Ordinance 1996 (76 of 1996) comes into operation.

13. Winding up of company holding realisable property

(1) Where realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for the voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; and
- (b) any proceeds of property realised by virtue of section 7(7) or 9(5) or (6) for the time being in the hands of a receiver appointed under section 7 or 9.

(2) Where, in the case of a company, such an order has been made or such a resolution has been passed, the powers conferred on the Court of First Instance by sections 7 to 10 shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable- <* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 *>

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies Ordinance (Cap 32) shall be taken as restricting, or enabling

the restriction of, the exercise of the powers conferred on the Court of First Instance by sections 7 to 10. <* Note - Exp. X-Ref.: Sections 7, 8, 9, 10 *>

(4) Subsection (3) shall apply to any proceedings relating to an appeal, further appeal or review against any exercise of the powers referred to in that subsection as if the court hearing the appeal, further appeal or review, as the case may be, were the Court of First Instance.

(5) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on property which was subject to a restraint order at the relevant time.

(6) In this section-
"company" (公司) means any company which may be wound up under the Companies Ordinance (Cap 32);

"the relevant time" (有關時間) means-

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court of First Instance, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

(Amended 25 of 1998 s. 2)

14. Insolvency officers dealing with property subject to restraint order

(1) Without prejudice to the generality of any provision contained in the Bankruptcy Ordinance (Cap 6), the Companies Ordinance (Cap 32) or any other Ordinance, where-

- (a) any insolvency officer seizes or disposes of any property in relation to which his functions are not exercisable because it is for the time being subject to a restraint order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence; and the insolvency officer shall have a lien on the property, or the proceeds of its sale, for such of his expenses as were incurred in connection with the liquidation, bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Any insolvency officer who incurs expenses-

- (a) in respect of such property as is mentioned in subsection (1)(a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to a restraint order; or
- (b) other than in respect of such property as is so mentioned, being expenses which, but for the effect of a restraint order, might have been met by taking possession of and realising the property,

shall be entitled (whether or not he has seized or disposed of that property so as to have a lien under that subsection) to payment of those expenses under section 10(1).

(3) In this section "insolvency officer" (債務處理人) means-

- (a) the Official Receiver; or
- (b) any person acting as-
 - (i) a receiver, interim receiver, special manager or trustee appointed under the Bankruptcy Ordinance (Cap 6); or
 - (ii) a liquidator, provisional liquidator or special manager appointed under the Companies Ordinance (Cap 32).

15. Receivers: supplementary provisions

(1) Where a receiver appointed under section 7 or 9 or pursuant to a charging order takes any action-

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall, if no sum is available to be applied in payment of it under section 10(4), be paid by the person on whose application the receiver was appointed.

Chapter:	571S	SECURITIES AND FUTURES (LICENSING AND REGISTRATION) (INFORMATION) RULES	Gazette Number	Version Date
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Schedule:	1	MEANING OF TERMS "BASIC INFORMATION" AND "RELEVANT INFORMATION"	L.N. 214 of 2002; L.N. 12 of 2003	01/04/2003
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[section 2]

PART 1

BASIC INFORMATION

1. Basic information, in relation to an individual, means, in so far as applicable, the following particulars of the individual-

- (a) the title and the full personal name and surname in Chinese and English;
- (b) the date and place of birth;
- (c) gender;
- (d) the Chinese commercial code and the number on his identity card issued under the Registration of Persons Ordinance (Cap 177), and, if he is not the holder of a permanent identity card, the number, the name of the issuing agency and the date of expiry, of his passport, travel or other document issued by a competent government agency providing proof of identity;
- (e) nationality;
- (f) the business, residential and correspondence addresses; and
- (g) the contact telephone and facsimile numbers and electronic mail address.

2. Basic information, in relation to a corporation, means, in so far as applicable, the following particulars of the corporation-

- (a) the corporate name and business name in Chinese and English;
- (b) former names and periods during which those names were used;
- (c) the date and place of incorporation;
- (d) the number of its valid business registration certificate;
- (e) in the case of a corporation incorporated outside Hong Kong, the date of compliance with the provisions of Part XI of the Companies Ordinance (Cap 32) relating to the registration of documents;
- (f) the address of its registered office;
- (g) the addresses of its places of business;
- (h) the correspondence address; and
- (i) the telephone and facsimile numbers, electronic mail address and web site address.

PART 2

RELEVANT INFORMATION

1. Relevant information, in relation to an individual, means information on whether or not the individual is or has been, in Hong Kong or elsewhere-

- (a) convicted of or charged with any criminal offence (other than a minor offence) whether or not evidence of such conviction is admissible in proceedings in Hong Kong or elsewhere;
- (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be);
- (c) subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance;
- (d) a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be), or involved in the management of such corporation or business;
- (e) a substantial shareholder or director of a corporation or business that is or has been subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance, or involved in the management of such corporation or business;
- (f) engaged in any judicial or other proceedings;
- (g) a party to a scheme of arrangement, or any form of compromise, with his creditors;
- (h) in default of compliance with any judgement or court order;
- (i) a substantial shareholder or director of a corporation or business that was wound up otherwise than by way of a members' voluntary winding up, or involved in the management of such corporation or business;
- (j) a partner of a firm which was dissolved other than with the consent of all the partners;
- (k) bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a receiver of his property under the Bankruptcy Ordinance (Cap 6);
- (l) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law;
- (m) a substantial shareholder or director of a corporation that has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law, or involved in the management of such corporation; and

(n) disqualified from holding the office of director.

2. Relevant information, in relation to a corporation, means information on whether or not the person is or has been, in Hong Kong or elsewhere-

- (a) convicted of or charged with any criminal offence (other than a minor offence) whether or not evidence of such conviction is admissible in proceedings in Hong Kong or elsewhere;
- (b) subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be);
- (c) subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance;
- (d) a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation by a regulatory body or criminal investigatory body (as the case may be), or involved in the management of such corporation or business;
- (e) a substantial shareholder or director of a corporation or business that is or has been subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance, or involved in the management of such corporation or business;
- (f) engaged in any judicial or other proceedings;
- (g) a party to a scheme of arrangement, or any form of compromise, with its creditors;
- (h) in default of compliance with any judgement or court order;
- (i) a substantial shareholder or director of a corporation or business that was wound up otherwise than by way of a members' voluntary winding up, or involved in the management of such corporation or business;
- (j) a partner of a firm which was dissolved other than with the consent of all the partners;
- (k) (in the case of a corporation other than a registered institution) insolvent or aware of the existence of any matters that might render it insolvent or lead to the appointment of a liquidator;
- (l) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law; and
- (m) a substantial shareholder or director of a corporation that has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law, or involved in the management of such corporation.

Financial and Civil Service Implications

PIPs appointed by the ORO to deal with the outsourced cases will be paid from the assets of the bankrupts' estates. The ORO will, after deducting the costs and disbursements incurred by the Department, transfer the balance of the deposits given by the bankruptcy petitioners to the accounts of provisional trustees and trustees. This balance will form the assets of the bankrupts' estates, and the PIPs in question can receive the remuneration according to the order of priority in section 37(1) (which would be consequentially amended under clause 11). No additional resources are required to meet the remuneration for the PIPs.

2. With bankruptcy cases being outsourced to PIPs, the ORO can redeploy more resources to enhance its role as a regulator in the insolvency regime. The private-public partnership henceforth eases otherwise the ever-mounting administrative burden of the Department and reduces the demand for additional staff to cope with the increasing caseload. The staffing level of the Department will remain broadly at the current level after the outsourcing exercise.

Economic Implications

3. The Bill when enacted will enable PIPs to provide trusteeship service in summary bankruptcy cases. This represents new business opportunities to the professions. It will also raise efficiency and reduce protraction in dealing with such cases. The Bill when enacted will make our bankruptcy law more business-friendly, and ensure that Hong Kong continues to be provided with the commercial legal infrastructure commensurate with its status as a major international commercial centre.