

BANKRUPTCY (AMENDMENT) BILL 2004

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

- | <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 2 | <p>By adding before paragraph (a) -</p> <p style="padding-left: 40px;">“(aa) in the definition of “trustee”, by adding “,
subject to section 58(1B),” after “means”;</p> |
| 3(b) | <p>(a) By deleting the proposed section 12(1A) and substituting -</p> <p style="padding-left: 40px;">“(1A) In the case of a debtor’s petition, the Official Receiver as the provisional trustee may at any time appoint any person to act as the provisional trustee of the property of the bankrupt in his place if he considers that -</p> <p style="padding-left: 80px;">(a) the value of the property of the bankrupt is unlikely to exceed \$200,000; and</p> <p style="padding-left: 80px;">(b) the person has the qualifications prescribed in Schedule 3.”</p> |

(b) By adding -

"(1C) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend Schedule 3."

5(b) In the proposed section 15(4) -

(a) in paragraph (a), by deleting "person other than the Official Receiver is appointed as provisional trustee" and substituting "provisional trustee is appointed under section 12(1A)";

(b) in paragraph (b), by deleting "there is a trustee in relation to the bankrupt's estate" and substituting "a trustee is appointed or constituted under section 17, 100D(1), 112(4) or 112A(1)(i) or paragraph 6 of Part II of Schedule 1".

11 In paragraph (a)(ii) -

(a) in the proposed section 37(1)(a), by deleting "remuneration of, fees, commissions, percentages and charges payable to" and substituting "fees, charges and percentages prescribed in the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) and

payable to the Official Receiver”;

(b) in the proposed section 37(1)(c), by adding
“墊付” before “支出”;

(c) in the proposed section 37(1)(f), by adding
“墊付” before “支出”.

15 In the proposed section 58(1B) -

(a) by deleting “43A, 43B, 43C,”;

(b) by deleting “60(1)” and substituting “60”.

17 (a) In paragraph (b), by adding -

“(ia) by adding before paragraph (a) -

“(aa) take into his custody or
under his control all the
property to which the
bankrupt is or appears to
be entitled;”;

(b) In paragraph (c), in the proposed section 60(2) -

(i) in paragraph (c), by deleting the full
stop and substituting a semicolon;

(ii) by adding -

“(d) exercise any power the
capacity to exercise which is
vested in the provisional

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 pending the
appointment of a trustee."

24 (a) In the proposed section 80(1), by deleting "shall
each be regarded as a provisional trustee for the
purposes of this Ordinance" and substituting "are
in this Ordinance included under the term
"provisional trustee"

(b) In the proposed section 80(1A), by deleting "shall
each be regarded as a trustee for the purposes of
this Ordinance" and substituting "are in this
Ordinance included under the term "trustee"

27 In the proposed section 85A(3), by deleting everything
after "subsection (1)" and substituting "has not
received any remuneration, the court may, on

application, order the payment out of the bankrupt's estate to him of such amount as the court considers sufficient to reimburse him for any necessary disbursements incurred by him in the course of the administration of the estate. Such application may be made by the trustee or the Official Receiver."

28 By deleting the proposed section 86A and substituting -

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

- (1) It shall be the duty of the trustee -
 - (a) to investigate the conduct of the bankrupt; and
 - (b) to report to the court on any conduct that justifies the court in refusing, suspending or qualifying an order for the bankrupt's discharge.
- (2) In the case of a trustee other than the Official Receiver, it shall also be the duty of the trustee -
 - (a) to investigate the conduct of the bankrupt and to immediately report to the Official Receiver when there is reason to believe that the bankrupt has committed an act that

constitutes an offence under this Ordinance; and

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

36 By deleting the clause and substituting -

"36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing "The appeal shall be commenced within 21 days from the time when the decision appealed against is pronounced or made" and substituting "The notice of appeal shall be served within the time for appealing against an order made in the matter of any bankruptcy as specified in Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A)".

New By adding immediately after clause 46 -

"46A. Schedule 3 added

The following is added -

"SCHEDULE 3 [s. 12(1A) & (1C)]

QUALIFICATIONS FOR APPOINTMENT
UNDER SECTION 12(1A)

To qualify for appointment under section 12(1A) of this Ordinance, a person shall -

(a) be -

(i) a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

(ii) a solicitor within the meaning of section 2(1) of the Legal Practitioners Ordinance (Cap. 159); or

(iii) a current member of The Hong Kong Institute of Company Secretaries; and

(b) satisfy any reasonable conditions that the Official Receiver may impose and has made accessible to the

public."."

Schedule By adding -

"6. Clearing and Settlement Systems Ordinance (Cap. 584) In section 2, in the definition of "relevant insolvency office-holder", in paragraph (c), repeal "receiver" and substitute "trustee"."