

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1566/12-13(05)

Ref: CB1/SS/12/12

**Subcommittee on Proposed Resolutions under  
the Bankruptcy Ordinance and the Companies Ordinance**

**Background brief**

**Purpose**

This paper provides background information on the Bankruptcy (Amendment) Rules 2013, the Bankruptcy (Fees and Percentages) (Amendment) Order 2013, as well as the Companies (Fees and Percentages) (Amendment) Order 2013 and the Companies (Winding-up) (Amendment) Rules 2013 ("the four items of Amendment Rules and Amendment Orders") which are subsidiary legislation under the Bankruptcy Ordinance (Cap. 6) ("BO") and the Companies Ordinance (Cap. 32) ("CO") respectively and subject to the positive vetting procedure of the Legislative Council ("LegCo"). It also summarizes the discussions of the Council and the Panel on Financial Affairs ("FA Panel") on related issues in 2009, 2011 and 2013.

**Background**

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

3. It has been ORO's established practice to levy fees and charges for the provision of insolvency services without reference to the actual time spent in any particular case. In general, the vast majority of insolvency cases administered by ORO are non-remunerative cases<sup>1</sup>, which means there are no or inadequate assets to cover the costs incurred by ORO in administering these cases. On the other hand, the fees and charges collected in remunerative insolvency cases are higher than the actual costs incurred by ORO to administer these cases. This fee charging approach is intended to help defray ORO's costs of administering the vast majority of non-remunerative cases. In 1987, LegCo passed legislative amendments to both BO and CO to expressly provide for ORO to levy fees for the recovery of costs generally without reference to the administrative or other costs incurred in any particular case.

4. ORO's statutory fees, charges and deposits were last revised in 1997, with a general increase of statutory fees and charges mostly in line with inflation to prevent further deterioration of the cost recovery rate<sup>2</sup>.

### **Revision of fees by the Official Receiver's Office**

5. According to the Administration, ORO has recently conducted a review of its statutory fees, charges and deposits. After taking into account their existing levels and ORO's actual operating revenue and costs, it is projected that ORO will achieve cost recovery rate at 111% in the financial year 2013-14. As such, the Administration has proposed to revise ORO's fees, charges and deposits as follows:

- (a) reducing the fixed fees and statutory "minimum fees" charged by ORO for bankruptcy and winding-up cases;
- (b) reducing the statutory deposits charged by ORO for bankruptcy and court winding-up cases; and
- (c) replacing the "realisation fee" by a fixed fee.

The Administration has explained that if the proposed fee revision comes into effect in July 2013, ORO's projected cost recovery rate for 2013-14 will be around 100%.

---

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

<sup>2</sup> Before the last fee revision exercise in 1997, ORO's cost recovery rate for 1996-97 was 56%.

## The legislative proposals

6. The Secretary for Financial Services and the Treasury has given notice to move four motions at the LegCo meeting on 10 July 2013 to seek LegCo's approval of the four items of Amendment Rules and Amendment Orders which are made by the Chief Justice under sections 113 and 114 of BO and section 296 of CO. At the House Committee meeting on 28 June 2013, Members agreed to form a Subcommittee to study these rules and orders.

7. The four Amendment Rules and Amendment Orders seek to reduce certain fees, deposits and charges in relation to bankruptcy and winding-up proceedings. Such fees, deposits and charges include –

Item	Existing amount (\$)	Revised amount (\$)
1. Deposit by the petitioner to the Official Receiver (OR) on the presentation of a bankruptcy petition - (a) debtor's petition (b) creditor's petition	(a) 8,650 (b) 12,150	(a) 8,000 (b) 11,250
2. Deposit by the petitioner to OR on the presentation of a winding-up petition	12,150	11,250
3. "realization fee" <sup>3</sup> of bankruptcy and winding-up cases levied by ORO	10% on payments made into Bankruptcy Account by OR as interim trustee or trustee or the amount of assets realized by OR as liquidator in winding-up cases	170

Other items of fees and charges for bankruptcy and winding-up cases are also reduced such as application fees for a search on a bankruptcy petition or a winding-up petition and for issue of a non-bankruptcy certificate and the costs of summoning a meeting at the request of the creditors.

<sup>3</sup> According to the Administration, when OR acts as the interim trustee or trustee in bankruptcy cases or as the liquidator in court winding-up cases, ORO's efforts in realising the assets mainly involve transferring money into the bank accounts of the estates of the bankrupts or companies being wound up.

8. If LegCo approves the proposed resolutions, they will come into operation upon the resolutions being published in the Gazette.

### **Discussion at the Panel on Financial Affairs**

9. The Administration briefed FA Panel on 3 May 2013 on the proposals to revise the statutory fees, charges and deposits of ORO under BO and CO. Panel members had no objection to the Administration's proposal. Noting from a submission from the Caritas Family Crisis Support Centre ("CFCSC") expressing concern that low-income debtors were often unable to afford the existing cost of \$9,695 for filing bankruptcy petitions, some members opined that ORO should consider further reducing the deposit payable by an applicant in respect of a debtor's petition, and consider other measures to assist the needy debtors, e.g. considering setting up a bankruptcy fund for providing assistance to these debtors.

10. The Administration responded that the cost of \$9,695 included the statutory deposits of \$8,650 currently charged by ORO for debtor-petition bankruptcy case and a court fee of \$1,045 for scheduling of hearing. The statutory deposits were to cover the fees and expenses to be incurred by ORO (or trustee) for processing bankruptcy petitions, including conducting information searches or making enquiries in relation to the petitioner's assets, bank accounts, etc., and advertising a Bankruptcy Order in the Gazette and newspapers. It should be noted that the monthly income of 77% of the debtors filing bankruptcy petition was below \$10,000, including the incomeless. Having regard to the principle of cost recovery and the difficulty to determine individual debtor's eligibility for offering financial assistance, it would not be practicable to consider granting reduction/exemption of the statutory deposits without passing the costs on the general taxpayers. The Administration further remarked that the current level of statutory deposits could not recover the service costs concerned. If the statutory deposits were further lowered beyond the proposed level or exempted, the difference in costs would undesirably fall on taxpayers.

11. Some members suggested the Administration should make reference to overseas practices in assisting debtors who could not afford the cost for making bankruptcy applications. The Administration advised that there was no mechanism for granting fee reduction/exemption for filing bankruptcy petitions in some other jurisdictions like the United Kingdom and Australia. At members' request, the Administration provided a written response to address the concerns raised in CFCSC's submission, and considered Panel members' views for the Administration to explore possible measures to assist debtors who could not afford the cost of \$9,695 for applying for bankruptcy with reference to

similar measures in other jurisdictions. The Administration's responses which were circulated to members vide LC Paper Nos. CB(1)1136/12-13(02) and (03) on 28 May 2013 are provided in **Appendix I**.

### **Discussions at Council meetings**

12. At the Council meeting on 6 May 2009, Hon Alan LEONG raised an oral question on "Assistance for bankrupts". Mr LEONG enquired, inter alia, whether the Administration would exempt applicants for bankruptcy who were unemployed persons or recipients of Comprehensive Social Security Assistance from paying the administrative fee of ORO or allow them to pay the fee by installment. The Administration responded that the cost of applying for bankruptcy should be borne by debtors themselves given that application for bankruptcy was a debtor's personal decision, and the need for subsidy by public money should be avoided as far as possible. The Administration had no plan to change this arrangement. The Administration also pointed out that under the Bankruptcy Rules, OR was not empowered under the relevant legislation to exempt the statutory fee or accept payment by installments. In addressing Members' follow-up questions, the Administration pointed out that it was reviewing the level of fees under the circumstances where the use of public money would be avoided.

13. At the Council meeting on 16 February 2011, Hon Albert HO raised an oral question on "Fees and charges in bankruptcy". Mr HO enquired, inter alia, whether the Administration intended to make use of the fees in bankruptcy successfully collected to subsidise the majority of bankruptcies in which fees could not be collected successfully so as to recover the costs incurred by ORO in handling bankruptcies, and whether the Administration would review the fees of ORO. The Administration responded that in order to achieve full cost recovery, the Order allowed some degree of cross-subsidisation (i.e. the fees charged in some cases would be higher than the actual costs incurred to defray the costs of administering other cases where there were no or inadequate assets to cover costs), and pointed out that ORO was reviewing the level of OR's fees and charges under the Order. The Administration would revert to FA Panel when the review was completed.

### **Relevant papers**

14. A list of relevant papers is in **Appendix II**.

**Legislative Council Panel on Financial Affairs  
Follow-up to Meeting on 3 May 2013**

**Supplementary Information on  
Review of Statutory Fees and Charges  
of the Official Receiver's Office**

**Purpose**

On 3 May 2013, the Administration briefed Members on the proposal to revise the fees, charges and deposits payable to the Official Receiver ("OR") under the Bankruptcy Ordinance (Cap. 6) and the Companies Ordinance (Cap. 32) in relation to the provision of insolvency-related services. Members requested the Administration to explore possible measures to assist debtors who could not afford the cost of \$9,695 for applying for bankruptcy with reference to similar measures in other jurisdictions. This note sets out the Administration's response.

**Background**

2. At present, the Bankruptcy Rules (Cap. 6A) stipulate that the deposit payable to the OR in the case of a debtor's petition for bankruptcy is \$8,650. This is to cover the costs and expenses of the OR such as the costs of publishing the bankruptcy notices in the Gazette and in the newspaper, as well as the costs for conducting bankruptcy investigation. As part of the current plan to revise the statutory fees, charges and deposits payable to OR, the deposit is proposed to be reduced from \$8,650 to \$8,000. This will revert the level of deposit back to the level prior to the last fee revision exercise in 1997. If the fee proposals on deposits together with other statutory fees and charges come into effect in June 2013, the projected cost recovery rate of the OR for 2013-14 will be around 100%.

3. Besides the deposit of \$8,650 payable to OR, the petitioner will also need to pay \$1,045 for setting down for hearing for a bankruptcy petition. This fee is payable to the Judiciary and is not included in the current fee revision exercise.

### **Overseas Practices**

4. According to the insolvency offices of the United Kingdom (UK) and Singapore, a debtor who wishes to petition for bankruptcy in these two jurisdictions would also need to make a deposit with the Insolvency Service of the UK or the Insolvency and Public Trustee's Office of Singapore upon presentation of the petition. Neither of the two jurisdictions provide for a separate statutory mechanism to charge certain categories of persons (e.g. the elderly or low-income persons) a lower deposit or to waive the deposit for such persons.

### **The Administration's response**

5. In Hong Kong, it is government policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing the services. To achieve this, the level of statutory fees, charges and deposits for administering bankruptcy and winding-up cases is determined with reference to the full costs incurred by OR in the provision of insolvency-related services. This ensures that the costs for providing the insolvency services do not fall on the general tax-payers. If the fees are insufficient to cover cost, the Government will have to use taxpayers' money to subsidize individual users of government services. This may not be fair to the general taxpayers.

6. Besides, it is very difficult to design a fair reduction/waiver mechanism, noting that most if not all persons who petition for bankruptcy may claim affordability problem. Therefore, taking into

account the overseas practices mentioned in paragraph 4 above, we do not intend to consider a separate statutory mechanism to charge certain categories of persons (e.g. the elderly or low-income persons) a lower deposit or to waive the deposit in self-petitioned bankruptcy cases. The cost of applying for bankruptcy should be borne by debtors themselves and the need for subsidy by public money should be avoided as far as possible.

7. In this regard, the Hong Kong Institute of Certified Public Accounts and the Hong Kong Association of Banks have expressed concerns to us that reducing the deposit amount may encourage people to pursue the bankruptcy route. Our proposal seeks to strike a reasonable balance in addressing these different concerns in order to provide an effective recourse to bankruptcy proceedings.

**Financial Services and the Treasury Bureau**  
**Official Receiver's Office**  
**24 May 2013**





**OFFICIAL RECEIVER'S OFFICE**

**破 產 管 理 署**

10TH-12TH FLOORS, HIGH BLOCK,  
QUEENSWAY GOVERNMENT OFFICES,  
66 QUEENSWAY, HONG KONG.

香港金鐘道六十六號金鐘道政府合署高座十樓至十二樓

來函請註明本署檔號

IN REPLY PLEASE QUOTE THIS REF:

來函檔號 YOUR REF:

電 話 TEL. NO.:

圖文傳真 FAX NO.:

**CB(1)1136/12-13(03)**

FAX (852) 2536 9963 (Case Management)  
(852) 2501 0698 (Case Management)  
(852) 2104 7151 (Case Management)  
(852) 2104 7150 (Finance)  
(852) 3105 1814 (Admin.)  
(852) 3105 0435 (Legal Services)  
(852) 3106 0347 (Personnel)

圖文傳真 (852) 2536 9963 (個案處理)  
(852) 2501 0698 (個案處理)  
(852) 2104 7151 (個案處理)  
(852) 2104 7150 (財務)  
(852) 3105 1814 (行政)  
(852) 3105 0435 (法律事務)  
(852) 3106 0347 (人事)

Internet Homepage Address

互聯網網址

<http://www.oro.gov.hk>

**傳真**

敬啟者：

明愛向晴軒「香港個人信貸問題」關注小組（簡稱“向晴軒”）於2013年5月2日向立法會財經事務委員會就《破產管理署的法定收費檢討》討論文件提交了書面建議。我們就該書面建議作出以下回覆。

根據《破產規則》第52條，債務人如欲申請破產，須向破產管理署署長（“署長”）支付一筆8,650元的繳存款項，以支付因處理破產個案而招致的費用及開支，包括在憲報及報章刊登關於破產的公告、進行調查所需的費用，例如：向土地註冊處和公司註冊處查冊，及向銀行索取有關破產人的財務資料、印刷和郵遞等。此法定繳存款項過去曾因應各種因素而有所調整，對上一次調整於1997年，繳存款項因通貨膨脹而令到成本上升，由8,000元增至8,650元並沿用至今。

向晴軒指出，個別人士需要透過私人市場的律師行或顧問公司作破產呈請而另外牽涉約數千元的費用。事實上，如市民擬提交破產呈請，可參閱上載於破產管理署網頁的「債務人破產呈請程序簡介」，自行填寫申請表並辦理破產呈請，省卻委聘服務提供者協助他辦理破產呈請手續的行政費用。

在香港，政府的政策是，政府徵收的費用，大致訂於足以收回所提供服務全部成本的水平。為此，在釐定管理破產案及清盤案所須徵收的法定費用和繳存款項時，會以署長提供破產相關服務所招致的全部成本為參考依據。這樣可確保提供破產相關服務的成本無須由一般納稅人承擔。如收費低於成本，政府便須使用一般納稅人的稅款去資助政府服務的個別使用者，這可能對一般納稅人不公平。

CORRESPONDENCE SHOULD BE ADDRESSED TO THE OFFICIAL RECEIVER AND NOT TO INDIVIDUAL OFFICERS.

來函請書明「破產管理署署長」收


此外，鑑於絕大多數破產申請人都可能聲稱無力負擔有關費用，要設計一個公平的減收／寬免費用機制，殊不容易。因此，我們不擬考慮另設法定機制，減收或寬免自行提出破產呈請案中某些類別人士(例如長者或低收入人士)所須支付的繳存款項。

此致

明愛向晴軒債務及理財輔導服務

督導主任 郭志英姑娘

破產管理署署長

(方劍峯  代行)

二零一三年五月二十三日

副本送：立法會財經事務委員會

## Appendix II

### List of relevant papers

Date	Event	Papers/Minutes of meeting
6 May 2009	Hon Alan LEONG raised an oral question on "Assistance for bankrupts"	<a href="#"><u>Hansard</u></a>
16 February 2011	Hon Albert HO raised an oral question on "Fees and charges in bankruptcy"	<a href="#"><u>Hansard</u></a>
3 May 2013	The Panel on Financial Affairs was consulted on proposed changes to the statutory fees, charges and deposits of the Official Receiver's Office	<a href="#"><u>Discussion paper</u></a> (LC Paper No. CB(1)781/12-13(06))  Administration's follow-up papers <a href="#"><u>1</u></a> and <a href="#"><u>2</u></a> (Chinese version only) (LC Paper Nos. CB(1)1136/12-13(02) and (03))
19 June 2013	The Secretary for Financial Services and the Treasury gave notice to the Legislative Council with a view to moving Bankruptcy (Amendment) Rules 2013, Bankruptcy (Fees and Percentages) (Amendment) Order 2013, Companies (Fees and Percentages) (Amendment) Order 2013, Companies (Winding-up) (Amendment) Order 2013 and Companies (Winding-up) (Amendment) Rules 2013	<a href="#"><u>Terms of Resolutions</u></a> <a href="#"><u>Bankruptcy (Amendment) Rules 2013</u></a> <a href="#"><u>Bankruptcy (Fees and Percentages) (Amendment) Order 2013</u></a> <a href="#"><u>Companies (Fees and Percentages) (Amendment) Order 2013</u></a> <a href="#"><u>Companies (Winding-up) (Amendment) Rules 2013</u></a>  <a href="#"><u>Legislative Council Brief</u></a>  <a href="#"><u>Legal Service Division report</u></a> (LC Paper No. LS 64/12-13)