

# **立法會**

## ***Legislative Council***

LC Paper No. CB(3) 61/13-14

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 17 October 2013

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

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### **Council meeting of 30 October 2013**

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

The Secretary for Financial Services and the Treasury will move the following four proposed resolutions at the Council meeting of 30 October 2013:

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

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

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

(Odelia LEUNG)  
for Clerk to the Legislative Council

Encl.

## **Bankruptcy Ordinance**

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### **Resolution**

(Under section 113 of the Bankruptcy Ordinance (Cap. 6))

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**Resolved** that the Bankruptcy (Amendment) Rules 2013, made by the Chief Justice on 18 June 2013, be approved.

## Bankruptcy (Amendment) Rules 2013

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

### 1. Bankruptcy Rules amended

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

### 2. Rule 52 amended (deposit by petitioner)

(1) Rule 52(1)(a)—

**Repeal**

“\$8,650”

**Substitute**

“\$8,000”.

(2) Rule 52(1)(b)—

**Repeal**

“\$12,150”

**Substitute**

“\$11,250”.



Chief Justice

18 June 2013

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**Explanatory Note**

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

## **Bankruptcy Ordinance**

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### **Resolution**

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

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

## **Bankruptcy (Fees and Percentages) (Amendment) Order 2013**

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

**1. Bankruptcy (Fees and Percentages) Order amended**

The Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended as set out in section 2.

**2. Schedule amended**

(1) The Schedule, Table A, item 4—

**Repeal**

“40.00”

**Substitute**

“35.00”.

(2) The Schedule, Table A, item 6(b)—

**Repeal**

“35.00”

**Substitute**

“28.00”.

(3) The Schedule, Table A, item 10—

**Repeal**

“85.00”

**Substitute**

“80.00”.

(4) The Schedule, Table A, item 11(b)—

**Repeal**

“\$45,000”

**Substitute**

“\$37,500”.

(5) The Schedule, Table A, item 16—

**Repeal**

“85.00”

**Substitute**

“80.00”.

(6) The Schedule, Table A, item 17—

**Repeal**

“205.00”

**Substitute**

“190.00”.

(7) The Schedule, Table A, item 18—

**Repeal**

“355.00”

**Substitute**

“330.00”.

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

(a) **Repeal**

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

(b) **Repeal**

“or bankrupt”.

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

**Add**

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

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

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

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

**Repeal**

“\$1,100” (wherever appearing)

**Substitute**

“\$1,000”.

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

**Repeal**

“\$670”

**Substitute**

“\$620”.

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

**Repeal**

“\$670”

**Substitute**

“\$620”.

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

**Repeal**

“\$1,560”

**Substitute**

“\$1,440”.

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

**Repeal**

“\$12,150”

**Substitute**

“\$11,250”.



Chief Justice

18 June 2013



### **Explanatory Note**

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

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## Companies Ordinance

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### Resolution

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

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

## **Companies (Fees and Percentages) (Amendment) Order 2013**

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

### **1. Companies (Fees and Percentages) Order amended**

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

### **2. Schedule 3 amended**

#### **(1) Schedule 3, Table A, item 1A—**

##### **Repeal**

“12.00”

##### **Substitute**

“11.00”.

#### **(2) Schedule 3, Table A, item 3—**

##### **Repeal**

“390.00”

##### **Substitute**

“360.00”.

#### **(3) Schedule 3, Table A, item 4—**

##### **Repeal**

“390.00”

##### **Substitute**

“360.00”.

#### **(4) Schedule 3, Table A, item 4A—**

##### **Repeal**

“390.00”

##### **Substitute**

“360.00”.

#### **(5) Schedule 3, Table A, item 5—**

##### **Repeal**

“60.00”

##### **Substitute**

“55.00”.

#### **(6) Schedule 3, Table A, item 6(b)—**

##### **Repeal**

“\$45,000”

##### **Substitute**

“\$37,500”.

#### **(7) Schedule 3, Table A, item 7—**

##### **Repeal**

“355.00”

##### **Substitute**

“330.00”.

#### **(8) Schedule 3, Table A, item 8—**

##### **Repeal**

“85.00”

##### **Substitute**

“80.00”.

#### **(9) Schedule 3, Table A, item 10—**

##### **Repeal**

“40.00”

**Substitute**

“35.00”.

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

**Repeal**

“\$670”

**Substitute**

“\$620”.

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

**Repeal paragraph (2)**

**Substitute**

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

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

- (a) where the Official Receiver collects, calls or realizes property for debenture holders—the total assets, including the produce of calls on contributories, realized or brought to credit by the Official Receiver;

- (b) money received in carrying on the business of the company.”.

- (12) Schedule 3, Table B, number V—

**Repeal**

everything after “debenture holders”

**Substitute**

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

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

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

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

**Repeal**

everything after “debenture holders”

**Substitute**

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

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

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

**Repeal**

“\$12,150”

**Substitute**

“\$11,250”.

A handwritten signature in black ink, appearing to read 'Geoffrey Ma', is written over a horizontal line.

Chief Justice

18 June 2013

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**Explanatory Note**

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

## **Companies Ordinance**

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### **Resolution**

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

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

## **Companies (Winding-up) (Amendment) Rules 2013**

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

**1. Companies (Winding-up) Rules amended**

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

**2. Rule 22A amended (deposit by petitioner)**

Rule 22A(1)—

**Repeal**

“\$12,150”

**Substitute**

“\$11,250”.

**3. Rule 117 amended (costs of calling meeting)**

Rule 117—

**Repeal**

“\$1,560”

**Substitute**

“\$1,440”.



Chief Justice

18 June 2013

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**Explanatory Note**

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

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



(Translation)

**Speech by the Secretary for Financial Services and the Treasury  
at the meeting of the Legislative Council on 30 October 2013**

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

**President,**

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

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

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

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

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

5. As regards the fee payable when the Official Receiver (“OR”) acts as the interim trustee or trustee in bankruptcy cases or as the liquidator in court winding-up cases (i.e. the “realisation fees”), we propose to charge a fixed fee of \$170 on a full-cost recovery basis to replace the present mechanism of charging a fee of 10% of the assets realised.

6. If the proposed fee revisions are implemented, it is estimated that the annual revenue of ORO will be reduced by about \$17.3 million. Assuming that the revised fees come into effect before 2014, ORO’s projected cost recovery rate for 2013-14 will be around 100%.

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

8. President, I would like to thank the Chairman of the relevant LegCo Sub-committee, Hon WONG Ting-kwong, and its members for their efforts in vetting and offering views on the various amendments at meetings of the Sub-committee. I hope this Council will support this motion so that ORO can implement the proposed reduction in the deposits for bankruptcy cases as soon as possible. I move that the motion be passed. Thank you.

**Financial Services and the Treasury Bureau**  
**30 October 2013**

(Translation)

**Speech by the Secretary for Financial Services and the Treasury  
at the meeting of the Legislative Council on 30 October 2013**

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

**President,**

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

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

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

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

**Financial Services and the Treasury Bureau  
30 October 2013**

**DRAFT****(Translation)****Speech by the Secretary for Financial Services and the Treasury  
at the meeting of the Legislative Council on 30 October 2013****Companies Ordinance (Cap 32)  
Companies (Fees and Percentages) (Amendment) Order 2013****President,**

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

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

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

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

**Financial Services and the Treasury Bureau  
30 October 2013**

(Translation)

**Speech by the Secretary for Financial Services and the Treasury  
at the meeting of the Legislative Council on 30 October 2013**

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

**President,**

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

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

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

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