

## **LEGISLATIVE COUNCIL BRIEF**

### **Bankruptcy Ordinance (Chapter 6)**

### **BANKRUPTCY (AMENDMENT) BILL 2015**

#### **INTRODUCTION**

At the meeting of the Executive Council on 21 April 2015, the Council ADVISED and the Acting Chief Executive ORDERED that the Bankruptcy (Amendment) Bill 2015 (the Bill), at **Annex**, should be introduced into the Legislative Council (LegCo).

#### **JUSTIFICATIONS**

2. We need to amend the Bankruptcy Ordinance (BO) (Cap. 6) to ensure the integrity of the bankruptcy regime having regard to a ruling made by the Court of Final Appeal (CFA) on the constitutionality of a relevant provision of the abscondee regime under the BO.

#### ***The present regime for discharge from bankruptcy***

3. Currently, the BO provides that a bankrupt will automatically be discharged from bankruptcy upon the expiry of the “relevant period”<sup>1</sup>, which runs for four years for first-time bankrupts or five years for repeat bankrupts. To protect the rights of creditors, a bankrupt’s automatic discharge from bankruptcy may be deferred pursuant to the following mechanisms —

- (a) *Objection regime* : Under section 30A(3) of the BO, a trustee-in-bankruptcy (TIB) or a creditor may apply to the

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<sup>1</sup> Under the BO, the term “relevant period” refers to the period of time after which a bankrupt is discharged from bankruptcy. The running of the “relevant period” may be suspended pursuant to the two mechanisms as discussed in paragraph 3.

court to object to the automatic discharge of the bankrupt on specified grounds set out in section 30A(4), e.g. that the bankrupt has failed to cooperate in the administration of the bankruptcy estate, in which case the court may make an order to suspend the running of the “relevant period” for up to four years for first-time bankrupts (or up to three years for repeat bankrupts); and

(b) *Abscondee regime* : Section 30A(10) of the BO provides for automatic suspension of the running of the “relevant period” for a bankrupt under three specified circumstances, viz. —

- (i) a bankrupt has left Hong Kong before the commencement of bankruptcy (section 30A(10)(a));
- (ii) a bankrupt has left Hong Kong after the commencement of bankruptcy without notifying the TIB of his or her itinerary and contact means (section 30A(10)(b)(i)); or
- (iii) a bankrupt has left Hong Kong after the commencement of bankruptcy and failed to return to Hong Kong as required by the TIB (section 30A(10)(b)(ii));

in which case the “relevant period” will only commence or resume running (as the case may be) when the bankrupt has returned to Hong Kong and notified the TIB of his or her return.

### ***CFA’s ruling***

4. The abscondee regime was introduced on the recommendation of the Law Reform Commission and the relevant provisions came into operation in 1998. The regime seeks to ensure that a bankrupt will stay on the TIB’s radar until the end of the “relevant period” so that the TIB could obtain his or her cooperation in the administration of the bankrupt’s estate when required. In an earlier court case<sup>2</sup>, the CFA ruled section 30A(10)(b)(i) (see paragraph 3(b)(ii) above) unconstitutional and as a result that section has become inoperative. The CFA considered that the restraint imposed by that provision on the bankrupt’s right to travel went beyond what was necessary for the protection of the rights of creditors

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<sup>2</sup> *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing v Chan Wing Hing* (2006) 9 HKCFAR 545.

because —

- (a) the sanction operated irrespective of the reason for the bankrupt's failure to notify the TIB of his or her departure from Hong Kong;
- (b) the sanction applied indiscriminately to all situations, irrespective of, for instance, the stage of the bankruptcy already reached and whether it had occasioned any prejudice to bankruptcy administration; and
- (c) there was no discretion vested in the court to disapply the sanction or mitigate its consequences.

***Proposed new arrangements to replace the abscondee regime***

5. We conducted a review of the abscondee regime against the above background. Noting that the main issue of contention is the automatic suspension of the “relevant period”, and that a bankrupt may stay out of reach of the TIB even if he or she has not left Hong Kong, we propose to introduce new arrangements for replacing the abscondee regime. The proposed new arrangements aim to address the constitutionality issues mentioned above by providing the court with discretionary power in deciding, on application by the TIB according to prescribed procedures as follows, whether the “relevant period” should be treated as not commencing to run —

- (a) a TIB may, within six months after the date of the bankruptcy order against a bankrupt<sup>3</sup>, apply to the court for an order that the “relevant period” for the bankrupt is treated as not commencing to run on the date of the bankruptcy order (non-commencement order) if the TIB has appointed a day for the bankrupt to attend the initial interview with the TIB for the purpose of administration of the bankrupt's estate and for the bankrupt to provide information concerning his or her affairs, dealings and property, and that the bankrupt has failed to complete the initial interview such that the administration of the bankrupt's estate was prejudiced. Specifically, a bankrupt has failed to complete the initial interview if he or she has —
  - (i) failed to attend the initial interview with the TIB; or

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<sup>3</sup> The court may extend the deadline on application by the TIB.

- (ii) attended the initial interview but failed to provide at that interview all the information concerning his or her affairs, dealings and property as reasonably required by the TIB;
- (b) on application by the TIB, if the court is satisfied that the bankrupt has failed to complete the initial interview and that such failure has prejudiced the administration of the bankrupt's estate, it may make a non-commencement order and, if so, must also determine the term(s) to be complied with by the bankrupt for the "relevant period" to commence to run (commencement term(s)); and
- (c) the TIB must file a notice with the Registrar of the High Court within 14 days after a bankrupt has complied with the commencement term(s), and the "relevant period" will commence to run on the date on which the commencement term(s) are complied with.

6. The initial interview is critical to the TIB's work in bankruptcy case administration, and a bankrupt's failure to complete the interview will likely cause prejudice to the administration of the bankruptcy estate as the TIB will not have sufficient information and documents at the outset to perform his or her duties properly. In addition, under the proposed new arrangements, there will no longer be an automatic suspension of the "relevant period" as in the abscondee regime. The court will be provided with discretionary power in determining whether or not to make a non-commencement order.

### *Measures to ensure fairness*

7. The Bill will provide for various measures to ensure fairness —
- (a) the bankrupt may contest the TIB's application for a non-commencement order with reference to the causes of his or her failure to complete the initial interview or any other relevant matters;
  - (b) the information to be provided by the bankrupt at the initial interview must be reasonably requested by the TIB;
  - (c) if an application for non-commencement order is made on the ground that the bankrupt has failed to attend the initial interview, the TIB must, when making the application to the court, provide an account of the steps he or she has

taken for notifying the bankrupt of the time and place for the initial interview; and

- (d) where the court has determined the TIB's application and, as a result, made a non-commencement order against a bankrupt or otherwise, the matters in respect of the bankrupt's failure to complete that initial interview as referred to in the application may not form the basis for any grounds for a subsequent objection to the discharge of the bankrupt.

### ***Transitional Arrangements***

8. While the Bill will abolish the abscondee regime, the relevant provisions under section 30A(10) will continue to apply to those cases where the bankruptcy order is made before the commencement of the Bill (pre-existing cases). Taking into account that the Official Receiver's Office (ORO) needs around nine to ten months' lead time to carry out the necessary preparation work for the implementation of the new arrangements, we propose that the new arrangements will commence operation on 1 November 2016, assuming that the Bill will be enacted around end of 2015.

9. In preparing the Bill, we have taken into account the latest developments of an ongoing court case<sup>4</sup> concerning the constitutionality of section 30A(10)(a) of the BO (see paragraph 3(b)(i) above). In December 2014, on appeal by a bankrupt, the Court of Appeal of the High Court (CA) overturned an earlier ruling of the Court of First Instance and ruled section 30A(10)(a) unconstitutional, citing similar grounds as set out in the CFA's ruling for the other earlier case mentioned in paragraph 4 above. In April 2015, the CA granted the Official Receiver (OR) leave to appeal to the CFA. Execution of the judgment of the CA has been stayed pending determination of the appeal by the CFA. We have provided for appropriate transitional arrangements in the Bill.

### **OTHER OPTIONS**

10. Introducing legislative amendments to the BO is the only option for reforming the abscondee regime.

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<sup>4</sup> *Chang Hyun Chi v Official Receiver* [2015] 1 HKLRD 512.

## THE BILL

11. The Bill contains 15 clauses. The main provisions are as follows —

- (a) **Clause 1** sets out the short title of the Bill and specifies 1 November 2016 as its commencement date;
- (b) **Clause 4** amends section 30A of the BO to deal with the relationship between the grounds for objection to discharge and the proposed new arrangements, as well as the transitional arrangements for pre-existing cases;
- (c) **Clause 5** amends the BO by adding two new provisions (sections 30AB and 30AC) which concern the application for, and the effect of, a non-commencement order as well as the filing of a notice relating to the commencement of the running of the “relevant period”;
- (d) **Clause 6** amends section 30B of the BO to provide that the court is not to make an order for early discharge of a bankrupt if the “relevant period” has not commenced to run pursuant to a non-commencement order;
- (e) **Clause 10** amends the Bankruptcy Rules (Cap. 6 sub. leg. A) to provide for two new rules on the relevant court procedures;
- (f) **Clause 13** amends the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) to provide for two new forms (Forms 82A and 82B), viz. the non-commencement order and the notice of commencement; and
- (g) **Clause 15** amends the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to provide for the fee payable to the court<sup>5</sup> on an application for a non-commencement order.

## LEGISLATIVE TIMETABLE

12. The legislative timetable for the Bill is as follows —

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<sup>5</sup> A TIB shall pay a fee of \$528 to the court for each application for non-commencement order for recovery of the cost incurred in the provision of court services.

Publication of the Bill in the Gazette	30 April 2015
First Reading and commencement of Second Reading in LegCo	13 May 2015
Resumption of Second Reading	To be notified

## **IMPLICATIONS OF THE PROPOSAL**

### ***Economic Implications***

13. The proposal will encourage bankrupts to fulfil their primary obligation in relation to the TIBs' work in commencing the administration of the bankruptcy estate and will better protect the interests of creditors, thereby enhancing the integrity of our bankruptcy regime.

### ***Civil Service and Financial Implications***

14. The financial implications of the proposal are negligible as the number of applications for non-commencement order is expected to be small. The ORO (in relation to the OR's function as the TIB of certain bankruptcy cases<sup>6</sup>) plans to rely on their existing resources to implement the new arrangements. Additional resources, if required, should as far as possible be absorbed internally by the ORO through re-engineering and re-prioritisation, and, where necessary, sought in accordance with the established mechanism. As regards the implications to the Judiciary, under the established funding arrangements agreed between the Government and the Judiciary, the Government should provide the Judiciary with the necessary manpower and financial resources relating to this proposal should such needs arise in future.

### ***Other Implications***

15. The proposal has no competition, environmental, family, productivity and sustainability implications. It is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the BO.

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<sup>6</sup> The ORO currently outsources around one-fourth of the summary debtor petition bankruptcy cases to private insolvency practitioners. The rest is handled by the ORO or outside trustees appointed by creditors or by the court. While an estimate on the number of applications for non-commencement orders is unavailable, the ORO's assessment is that such applications will more likely arise from some of the bankruptcy cases presented by creditors, which account for a small proportion of all bankruptcy cases.

## **PUBLIC CONSULTATION**

16. We briefed the LegCo Panel on Financial Affairs on the outcome of the review of the abscondee regime on 5 May 2014 and presented two alternative approaches. While both approaches provide for court discretion in determining a TIB's application for a non-commencement order against a bankrupt, one of the approaches retains a bankrupt's departure from Hong Kong as the triggering factor while the other instead takes into account the conduct of the bankrupt at an interview with the TIB. The Panel supported the introduction of court discretion and indicated preference for the latter approach, which formed the basis of our proposal. We also conducted further stakeholder engagement between May and July 2014 and received general support for our proposal.

## **PUBLICITY**

17. A press release will be issued on the gazettal of the Bill. A spokesperson will be made available for answering media enquiries.

## **ENQUIRIES**

18. Enquiries in relation to the LegCo Brief should be directed to Mr Paul WONG, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 6 at 2528 6384.

**Financial Services and the Treasury Bureau**  
**Financial Services Branch**  
**28 April 2015**



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# A BILL

## To

Amend the Bankruptcy Ordinance to abolish the regime under section 30A(10) of the Ordinance for the suspension of the relevant period under section 30A(1); to set up a new regime under which the relevant period may be treated as not commencing to run on the date of the bankruptcy order; and to provide for consequential and related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

#### 1. Short title and commencement

- (1) This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance 2015.
- (2) This Ordinance comes into operation on 1 November 2016.

### Part 2

#### Amendments to Bankruptcy Ordinance

#### 2. Bankruptcy Ordinance amended

The Bankruptcy Ordinance (Cap. 6) is amended as set out in sections 3 to 6.

#### 3. Section 2 amended (interpretation)

Section 2—

##### Add in alphabetical order

*“non-commencement order (不開始令)”* means an order made by the court under section 30AC(1);

*relevant period (有關期間)*, in relation to a bankrupt, means the relevant period mentioned in section 30A(1);”.

#### 4. Section 30A amended (discharge from bankruptcy)

- (1) Section 30A(1), after “Subject to this section”—

##### Add

“and section 30AC”.

- (2) Section 30A(1) and (3)—

##### Repeal

“under this section”.

- (3) Section 30A(4)—

##### Repeal

“The grounds”

##### Substitute

“Subject to subsection (4A), the grounds”.

(4) After section 30A(4)—

**Add**

“(4A) A matter referred to in section 30AB(1)(b)(i) or (ii) does not form the basis for the grounds set out in subsection (4) if—

- (a) the trustee has applied under section 30AB to the court for a non-commencement order against the bankrupt; and
- (b) the court has approved or dismissed the application.”.

(5) Section 30A(5) and (6)—

**Repeal**

“under this section”.

(6) Section 30A—

**Repeal subsection (10).**

(7) Before section 30A(11)—

**Add**

“(10A) Despite the repeal of subsection (10) by the Bankruptcy (Amendment) Ordinance 2015 ( of 2015), subsection (10)(a) and (b)(ii) as in force immediately before 1 November 2016 continues to apply to a bankrupt against whom a bankruptcy order has been made before that date.”.

**5. Sections 30AB and 30AC added**

After section 30A—

**Add**

**“30AB. Non-commencement of relevant period: trustee’s application**

(1) The trustee may apply to the court for a non-commencement order against a bankrupt if—

- (a) the trustee has required the bankrupt to—
  - (i) attend an initial interview on a day appointed by the trustee for the administration of the bankrupt’s estate; and
  - (ii) provide the trustee at the initial interview with information concerning the bankrupt’s affairs, dealings and property;

(b) the bankrupt—

- (i) has failed to attend the initial interview; or
- (ii) has attended the initial interview, but failed to provide the trustee at the initial interview with all of the information concerning the bankrupt’s affairs, dealings and property as reasonably required by the trustee; and

(c) the administration of the bankrupt’s estate was prejudiced by the matter referred to in paragraph (b)(i) or (ii).

(2) The trustee may apply for a non-commencement order within—

- (a) a period of 6 months after the date of the bankruptcy order against the bankrupt; or
- (b) a longer period specified by the court under subsection (3).

(3) The court may, on the trustee’s application (*extension application*), specify a longer period for the trustee to apply for a non-commencement order.

- (4) An extension application must be made within—
  - (a) the period referred to in subsection (2)(a); or
  - (b) (if the court has specified a longer period under subsection (3)) that longer period.
- (5) This section only applies to a bankrupt against whom a bankruptcy order is made on or after 1 November 2016.

**30AC. Non-commencement of relevant period: court order and trustee's notice**

- (1) On an application made by the trustee under section 30AB(1), the court may approve the application and make a non-commencement order against the bankrupt if it—
  - (a) is satisfied by the trustee as to the matters mentioned in section 30AB(1)(a), (b) and (c); and
  - (b) is not satisfied by the bankrupt that there is sufficient cause for the order not to be made.
- (2) A non-commencement order—
  - (a) must—
    - (i) specify that the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order; and
    - (ii) specify one or more terms that the bankrupt must comply with before the relevant period is to commence to run; and
  - (b) may specify any other terms the court thinks fit.
- (3) If the terms specified under subsection (2)(a)(ii) are complied with by the bankrupt, the trustee must, within 14 days after the date on which all such terms are complied with—

- (a) file with the Registrar a notice stating that fact and the date on which all such terms are complied with; and
- (b) send a copy of the notice to—
  - (i) the bankrupt; and
  - (ii) (where the trustee is not the Official Receiver) the Official Receiver.
- (4) On the trustee's filing of the notice mentioned in subsection (3)(a), the relevant period is treated as commencing to run on the date stated in the notice under that subsection.
- (5) This section is without prejudice to any power of the court to annul a bankruptcy order.”.

**6. Section 30B amended (early discharge of bankrupt)**

- (1) Section 30B(1)—  
**Repeal**  
“under section 30A”.
- (2) Section 30B(2)—  
**Repeal**  
“if the bankrupt”  
**Substitute**  
“if”.
- (3) Section 30B(2)(a), (b), (c), (d), (e), (f), (g) and (h)—  
**Repeal**  
“has”  
**Substitute**  
“the bankrupt has”.

- (4) Section 30B(2)(i)—

**Repeal**

“has”

**Substitute**

“the bankrupt has”.

- (5) Section 30B(2)(i)—

**Repeal the full stop**

**Substitute**

“; or”.

- (6) After section 30B(2)(i)—

**Add**

“(j) the relevant period for the bankrupt has not commenced to run pursuant to a non-commencement order.”.

\_\_\_\_\_

**Part 3**

**Amendments to Bankruptcy Rules**

**7. Bankruptcy Rules amended**

The Bankruptcy Rules (Cap. 6 sub. leg. A) are amended as set out in sections 8 to 11.

**8. Rule 5 amended (matters to be heard in court)**

After rule 5(e)—

**Add**

“(ea) applications under section 30AB of the Ordinance for a non-commencement order;”.

**9. Rule 89 amended (lifting of suspension of discharge)**

Rule 89(1)—

**Repeal**

“(that is to say, the period after which the bankrupt may under that section have his discharge)”.

**10. Rules 89A and 89B added**

After rule 89—

**Add**

**“89A. Application for non-commencement order**

(1) On an application for a non-commencement order against a bankrupt—

(a) (if the application is made by the Official Receiver as trustee) the Official Receiver must, with the

- application, file in court a report setting out the matters mentioned in subrule (2); or
- (b) (if the application is made by a trustee other than the Official Receiver) the trustee must, with the application, file in court an affidavit setting out the matters mentioned in subrule (2).
- (2) The matters are that—
- (a) the reasons why it appears to the trustee that the order should be made;
- (b) (if the application is based on the matter referred to in section 30AB(1)(b)(i) of the Ordinance) the particulars of the steps taken for notifying the bankrupt of the time and place for the initial interview; and
- (c) the terms proposed to be complied with by the bankrupt for the relevant period to commence to run pursuant to section 30AC(4) of the Ordinance.
- (3) The court must—
- (a) fix the date, time and place for hearing the application; and
- (b) give notice of the hearing to the trustee and the bankrupt.
- (4) The trustee must send a copy of the report or affidavit to the bankrupt so as to reach the bankrupt at least 21 days before the date fixed for the hearing.
- (5) The bankrupt may, not less than 7 days before the date of the hearing, file in court a notice specifying any statements in the trustee's report or affidavit that the bankrupt intends to deny or dispute.

- (6) The bankrupt must, not less than 4 days before the date of the hearing, send a copy of the notice under subrule (5) to the trustee.
- (7) If the court makes a non-commencement order against the bankrupt, the trustee must, within 14 days after the date of the order, send a copy of the order to—
- (a) the bankrupt; and
- (b) (where the trustee is not the Official Receiver) the Official Receiver.

**89B. Trustee's notice of commencement of relevant period**

The trustee's notice filed with the Registrar under section 30AC(3)(a) of the Ordinance must be in a prescribed form.”.

**11. Rule 91 amended (report or affidavit of trustee)**

- (1) Rule 91(1)(iii)—

**Repeal**

“; and”

**Substitute a semicolon.**

- (2) Rule 91(1)(iv)—

**Repeal**

“distribution,”

**Substitute**

“distribution; and”.

- (3) After rule 91(1)(iv)—

**Add**

“(v) particulars of any non-commencement order against the bankrupt,”.

## Part 4

### Amendments to Bankruptcy (Forms) Rules

#### 12. Bankruptcy (Forms) Rules amended

The Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) are amended as set out in section 13.

#### 13. Schedule amended (forms)

- (1) The Schedule, Index of Forms, before heading “**Petition:**”—

**Add**

**“Non-commencement Order:**

Notice of commencement of relevant  
period for bankrupt under section 30AC  
of Bankruptcy Ordinance ..... 82B

Order for non-commencement of relevant  
period for bankrupt under section 30AC  
of Bankruptcy Ordinance ..... 82A”.

- (2) The Schedule, after Form 82—

**Add**

“FORM 82A [s. 30AC]

ORDER FOR NON-COMMENCEMENT OF RELEVANT  
PERIOD FOR BANKRUPT UNDER SECTION 30AC OF  
BANKRUPTCY ORDINANCE (CHAPTER 6)

*(Title.)*

On the application of the trustee for a non-  
commencement order against the above-named  
(a) \_\_\_\_\_ (*bankrupt*), and after taking into  
consideration the trustee’s (b) [report][affidavit]  
filed on (c) \_\_\_\_\_.

- (a) Insert full  
name of bankrupt.

- (b) Delete as  
appropriate.

- (c) Insert filing  
date.

And on hearing

And on reading the evidence

And on a bankruptcy order made against the  
bankrupt on (d) \_\_\_\_\_

- (d) Insert date of  
bankruptcy order.

And on an initial interview on a day appointed  
by the trustee for the administration of the  
bankrupt’s estate

- (e) Delete as  
appropriate.

And it appearing to the court that (e) [the  
bankrupt has failed to attend the initial  
interview][the bankrupt has attended the initial  
interview, but failed to provide the trustee at the

initial interview with all of the information concerning the bankrupt's affairs, dealings and property as reasonably required by the trustee]

And it appearing to the court that the administration of the bankrupt's estate was prejudiced by the failure

And it appearing to the court that there is no sufficient cause for a non-commencement order not to be made under section 30AC(1) of the Bankruptcy Ordinance (Chapter 6) (*Ordinance*).

It is ordered that—

(1) pursuant to section 30AC of the Ordinance, the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order, i.e. (d) \_\_\_\_\_;

(2) the relevant period for the bankrupt does not commence to run until the date as stated in the trustee's notice under section 30AC(3)(a) of the Ordinance and on which all of the following term(s) has (have) been complied with—

(f) List the term(s) imposed by

(i) (f)

the court for commencement of running of relevant period.

(ii) (f)

(3) (g)

(g) List any other term(s) the court thinks fit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

*Registrar.*

FORM 82B

[rule 89B]

NOTICE OF COMMENCEMENT OF RELEVANT PERIOD FOR BANKRUPT UNDER SECTION 30AC OF BANKRUPTCY ORDINANCE (CHAPTER 6)

(Title.)

Take notice that—

(a) Insert full name of bankrupt.

(b) Insert date of bankruptcy order.

(c) Insert date of non-commencement order.

(1) a bankruptcy order was made against the above-named (a) \_\_\_\_\_ (*bankrupt*) on (b) \_\_\_\_\_, and an order that the relevant period for the bankrupt is treated as not commencing to run on the date of the bankruptcy order (*non-commencement order*) was made on (c) \_\_\_\_\_; and

(2) pursuant to section 30AC of the Bankruptcy



Ordinance (Chapter 6), I confirm that all the term(s) imposed by the court for the commencement of the running of the relevant period for the bankrupt as specified in the non-commencement order was (were) complied with on (d) \_\_\_\_\_ such that the relevant period is treated as commencing to run on that date.

(d) Insert date on which all terms were complied with.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

Signed \_\_\_\_\_

(e) Insert name of trustee.

(e)".

\_\_\_\_\_

## Part 5

### Amendment to Bankruptcy (Fees and Percentages) Order

#### 14. Bankruptcy (Fees and Percentages) Order amended

The Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) is amended as set out in section 15.

#### 15. Schedule amended

The Schedule, Table A, after item 6—

##### Add

"6A. Application under section 30AB for a non-commencement order ..... 528.00".

\_\_\_\_\_

### Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) (*Ordinance*) and its subsidiary legislation.

2. The object of the Bill is mainly to—
  - (a) abolish the regime (*old regime*) under section 30A(10) of the Ordinance for the suspension of the relevant period for a bankrupt under section 30A(1) of the Ordinance (*relevant period*); and
  - (b) set up a new regime (*new regime*) under which the relevant period may be treated, pursuant to a court order (*non-commencement order*), as not commencing to run on the date of the bankruptcy order.
3. Clause 1 sets out the short title and provides for commencement.
4. Clause 3 adds the new definitions of *non-commencement order* and *relevant period* to section 2 of the Ordinance.
5. Clause 4 amends section 30A of the Ordinance by—
  - (a) adding a new section 30A(4A) to make section 30A(3) (regarding the application for objection to the discharge of a bankrupt) and section 30B(4) (regarding the application for objection to the early discharge of a bankrupt) subject to the new regime;
  - (b) repealing section 30A(10) to abolish the old regime; and
  - (c) adding a new section 30A(10A) to make the old regime continue to apply to a bankrupt against whom a bankruptcy order is made before 1 November 2016.
6. Clause 5 adds new sections 30AB and 30AC to the Ordinance to—
  - (a) provide for the new regime under which the trustee may apply for a non-commencement order;

- (b) empower the court to make a non-commencement order; and
  - (c) make the new regime applicable only to a bankrupt against whom a bankruptcy order is made on or after 1 November 2016.
7. Clause 6 amends section 30B(2) of the Ordinance by adding a new paragraph (j) providing that the court is not to make an order for early discharge of a bankrupt if the relevant period for the bankrupt has not commenced to run pursuant to a non-commencement order.
8. Clauses 8, 10 and 11 amend the Bankruptcy Rules (Cap. 6 sub. leg. A) by—
  - (a) amending rule 5 to require an application for a non-commencement order to be heard and determined in open court;
  - (b) adding new rules 89A and 89B to provide for the court procedures relating to a non-commencement order; and
  - (c) amending rule 91 to require the particulars of any non-commencement order against a bankrupt to be included in—
    - (i) the report of the Official Receiver; or
    - (ii) the affidavit of the trustee (not being the Official Receiver),  
filed in respect of the bankrupt's application for early discharge under section 30B of the Ordinance.
9. Clause 13 amends the Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) by adding two new forms (Forms 82A and 82B) relating to the making of a non-commencement order and the notice of commencement of the relevant period.

10. Clause 15 amends the Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) to provide for the fee payable to the court on an application for a non-commencement order.