

LEGISLATIVE COUNCIL BRIEF

Bankruptcy Ordinance
(Chapter 6)
Companies (Winding Up and Miscellaneous Provisions) Ordinance
(Chapter 32)
Companies (Winding Up and Miscellaneous Provisions)
(Amendment) Ordinance 2016
(14 of 2016)

Bankruptcy and Companies Legislation (Miscellaneous Amendments) Bill 2023

INTRODUCTION

At the meeting of the Executive Council on 16 May 2023, the Council ADVISED and the Chief Executive ORDERED that the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Bill 2023 (the Bill) at **Annex** should be introduced to the Legislative Council (LegCo).

JUSTIFICATIONS

The Electronic Submission System (ESS) Operation

2. The Official Receiver's Office (ORO) now manually processes an average of 180 000 documents and forms annually, which is time consuming and prone to errors. The ORO conducted a feasibility study in 2018 to assess the business case and technical feasibility of implementing an ESS. The study recommended the implementation of an ESS to enhance the overall operational efficiency of the ORO.

3. The ORO administers around half of the bankruptcy cases in-house, including creditor-petitioned cases and non-summary self-petitioned cases, and outsources self-petitioned summary bankruptcy cases and summary court winding-up cases to Private Sector Insolvency Practitioners (PIPs). To perform the statutory duties, the ORO needs to handle a large amount of documents and forms submitted by creditors and

bankrupts, and to examine and conduct audit by sampling documents and forms handled by the PIPs in order to monitor their performance. In July 2020, the Finance Committee of LegCo approved a commitment of \$38 million for meeting the capital expenditure of the ESS which sought to provide a one-stop portal to receive electronic submissions of documents and forms from various stakeholders. The ESS will enhance the ORO's services, strengthen the monitoring of the conduct of PIPs, create a more automated working environment and support electronic payments as a complementary feature.

4. The ORO will implement the ESS by phases starting from end-2023. Phase 1 will cover some documents and forms submitted by bankrupts and PIPs. Phase 2 will cover other documents and forms submitted by PIPs and creditors. Phase 1 is scheduled to be rolled out by the fourth quarter of 2023 and Phase 2 by the second quarter of 2025. We need to introduce amendments to the Bankruptcy Ordinance (Cap.6) (BO) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32) (CWUMPO) to enable the implementation of the ESS.

Streamlining the publication requirements for insolvency and related notices

5. To protect the rights of the public and stakeholders more particularly creditors, various stakeholders (including trustees, provisional trustees, undischarged bankrupts and liquidators, etc.) in a personal bankruptcy or a company winding-up case are required to publicise or publish statutory notices of the proceedings for the attention of the general public, in accordance with the requirements under the BO and the CWUMPO. Certain types of notices are still required to be published in both the Government Gazette and newspapers which increase the advertising costs. In view of the technological development (for instance, notices gazetted are available for viewing online since 2000), we consider that relevant statutory requirements should be streamlined, in line with the practices of comparable jurisdictions which recognise more convenient means of publication for insolvency notices including online publication channels.

Other amendments

6. The Bill also includes miscellaneous amendments to allow for electronic submission of proxy forms; adapt certain references in the BO, the Bankruptcy Rules (Cap.6A) (BR) and the CWUMPO; add a fee item;

and repeal redundant provisions in the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016) (CWUMP(A)O).

THE LEGISLATIVE PROPOSALS

The ESS

7. To enable the implementation of the ESS, we need to amend the BO and the CWUMPO to empower the Official Receiver (OR) to specify the requirements as to (a) the form of documents, (b) the authentication of documents and (c) the manner of submission of documents to the OR, and to specify requirements regarding the recording of relevant information. The proposed provisions would allow the OR to timely renew the requirements in response to technological advancement and changing public service needs in the future.

8. We also need to amend the provisions in the BO and the CWUMPO which are incompatible with electronic submission. The proposed amendments serve to –

- (a) amend the provision specifying sending through post;
- (b) exempt the requirement of making certification under hands to the physical cash book submitted so as to enable electronic submission of the audit certificates;
- (c) allow the ORO to certify the auditing of accounts electronically on the ESS (e.g. by issuing a certificate) and thereby exempt the requirement of physical copies of these accounts;
- (d) exempt the requirement of verification by an affidavit in a prescribed form and enable a trustee to provide the trustee's accounts electronically upon request by the ORO; and
- (e) exempt the requirement for submission of duplicate copy of accounts through the ESS.

Streamlining the publication requirements for insolvency and related notices

9. Currently there are ten types of insolvency and related notices required to be published in both the Government Gazette and newspapers. Four other types are required to be published only in newspapers¹. Given that the Government Gazette has always been the official publication channel for giving important notifications to the general public and has become easily accessible electronically when compared to newspaper advertisement, we propose that publishing in the Government Gazette should be made the only mandatory requirement for all of the above notices with advertising in the newspapers or other media being discretionary, which will streamline the process and reduce unnecessary advertising costs.

10. We also plan to take a further step to simplify the legislative process to cater for future changes of the means of publication as technology advances. We propose that a concept of “specified means” be introduced to the relevant legislation to refer to the means of publication of the insolvency notices, which will be specified in a new schedule to the relevant legislation. For the current exercise, the Government Gazette will be specified in the new schedule. If and when any more appropriate means of publication arises in the future, the new means of publication can be introduced by amending the schedule through negative vetting process. In this connection, a new provision will be introduced to the relevant legislation empowering the Secretary for Financial Services and the Treasury to make such amendment to the schedule.

Miscellaneous amendments

Electronic submission of proxy forms

11. The BR and the Companies (Winding-up) Rules (Cap.32H) (CWUR) both provide that a proxy may not be used unless it is “deposited” or “lodged” with the trustee or liquidator within a specified time set out in the relevant provisions. However, the existing provisions require that a proxy form should be submitted in person or by fax. To facilitate the meetings of creditors and contributories, we propose to add new provisions to the BR and the CWUR to allow for electronic submission of proxy forms.

¹ There are 29 types of notices that are required to be published only in the Government Gazette.

Adaptation of laws

12. We propose to adapt certain references in the following sections of the BO, the BR and the CWUMPO –

(a) “The Crown” in –

- (i) Section 38(1) of the BO – *“In the distribution of the property of a bankrupt there shall be paid in priority to all other debts - ... (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”*;
- (ii) Section 127 of the BO – *“Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a bankrupt, the priorities of debts, the effect of a voluntary arrangement, and the effect of a discharge, shall bind the Crown”*; and

(b) The references to “大法官” in the Chinese version of rule 5 of the BR and section 168E(3)(a) of the CWUMPO.

13. Having considered the advice by the Department of Justice and the context of the BO and the CWUMPO, we propose replacing the references to “the Crown” by “the Government” and the references to “大法官” by “法官”.

New fee item

14. Section 93 of the BO provides that the trustee’s accounts kept by the OR or the court must be open for inspection on the payment of a prescribed fee. However, no fee has been prescribed. In a similar provision in the CWUMPO, such a fee is prescribed. To adopt a consistent approach, a fee item is added for the purposes of that section 93.

Repealing redundant provisions in the CWUMP(A)O

15. The CWUMP(A)O included amendments to the then Insurance Companies Ordinance (Cap. 41)(ICO) to cater for the situation that the ICO might be amended by the Insurance Companies (Amendment) Ordinance 2015 (12 of 2015)(IC(A)O) before the commencement of the CWUMP(A)O. These amendments serve a transitional and technical purpose to align the short title and relevant section headings of the ICO as amended by the IC(A)O. Since the IC(A)O ultimately had not come into operation on the commencement date of the CWUMP(A)O on 13 February 2017, the amendments were excluded from the commencement notice of the CWUMP(A)O. They are no longer required to be implemented and should be repealed.

OTHER OPTIONS

16. Introducing legislative amendments to the BO, the CWUMPO and their subsidiary legislation is the only option to implement the ESS and streamline the publication requirements for insolvency and related notices.

THE BILL

17. The Bill is divided into five parts –

- (a) Part 1 sets out the short title and provides for the commencement;
- (b) Part 2 contains amendments to the BO, the CWUMPO and their subsidiary legislation to enable implementation of the ESS;
- (c) Part 3 contains amendments to the BO, the CWUMPO and their subsidiary legislation to streamline the publication requirements for insolvency and related notices;
- (d) Part 4 contains amendments to the BR and the CWUR to allow for the electronic submission of proxy forms; and

- (e) Part 5 contains miscellaneous amendments relating to the BO, the BR, the Bankruptcy (Fees and Percentages) Order (Cap.6C) and the CWUMPO to adapt certain references, add a fee item and repeal the redundant provisions in the CWUMP(A)O.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be –

Publication in the Gazette	25 May 2023
First Reading and commencement of Second Reading debate	7 June 2023
Resumption of Second Reading debate, to be notified committee stage and Third Reading	

IMPLICATIONS OF THE PROPOSALS

19. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the BO and the CWUMPO and their relevant subsidiary legislation. It has no economic, financial, civil service, productivity, environmental, sustainability, family or gender implications².

20. Responsible parties of the bankruptcy and winding-up process will benefit from the ESS and the streamlined publication and administrative requirements by saving the time to handle the paperwork for submissions to ORO as well as the advertising cost of the insolvency and related notices. They will also benefit from the enhanced services and efficiency of the ORO as a result of the proposals.

² While the Bill itself has no financial implications, as mentioned in paragraph 3 above, a commitment of \$38 million has been approved for the implementation of the ESS. Upon its full implementation from 2025-26 onwards, there will be an indicative annual recurrent expenditure of \$10 million, and an annual notional saving in staff effort of about \$9 million. The saving in staff effort will be redeployed to other existing ORO functions as appropriate.

PUBLIC CONSULTATION

21. We consulted and obtained funding approval from the Finance Committee of the LegCo in July 2020 for the implementation of the ESS. We then consulted the LegCo Panel on Financial Affairs in May 2022 on our proposed legislative amendments for the ESS and streamlining of the publication requirements for insolvency and related notices. The proposals were supported by the members.

PUBLICITY

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

ENQUIRIES

23. Enquiries relating to this Brief can be directed to Mr Eric LEE, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2528 9016.

Financial Services and the Treasury Bureau
24 May 2023

Bankruptcy and Companies Legislation (Miscellaneous Amendments) Bill 2023

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A BILL

To

Amend the Bankruptcy Ordinance and the Companies (Winding Up and Miscellaneous Provisions) Ordinance and their subsidiary legislation to facilitate the submission of certain documents to the Official Receiver by electronic means, to change the publication requirements for various notices, and to facilitate the sending of proxies by electronic means; and to make other miscellaneous amendments to those enactments and a related enactment.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023.
- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Parts 2 and 3 come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 5 are amended as set out in those Parts.

Part 2

Amendments relating to Submission of Documents by Electronic Means

Division 1—Amendments to Bankruptcy Ordinance (Cap. 6)

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

- (1) Section 2, definition of *prescribed*, before “means”—

Add

“, except in section 122C,”.

- (2) Section 2—

Add in alphabetical order

“*specified form* (指明格式) means a form specified under section 122A;”.

4. **Section 43A amended (after-acquired property)**

After section 43A(6)—

Add

“(6A) For the purposes of subsection (6), if the trustee is the Official Receiver, the statement must be in the specified form.”.

5. **Section 86A amended (duties of trustee as regards the bankrupt’s conduct)**

After section 86A(2)—

Add

“(3) The report mentioned in subsection (2)(a) must be in the specified form.”.

6. **Section 89 amended (annual statement of proceedings)**

(1) Section 89, heading—

Repeal

“Annual statement”

Substitute

“Statement”.

(2) Section 89(1)—

Repeal

“, containing the prescribed particulars and made out in the prescribed form”.

(3) After section 89(1)—

Add

“(1A) The Official Receiver may at any time during the continuance of a bankruptcy require a trustee in the bankruptcy to provide the Official Receiver, within the time limit specified by the Official Receiver, with a statement showing the proceedings in the bankruptcy up to a date specified by the Official Receiver.

(1B) If a requirement is made under subsection (1A), the trustee must provide the statement within the time limit specified by the Official Receiver.

(1C) A statement required to be provided under subsection (1) or (1A) must be in the specified form.”.

7. **Section 93 amended (audit of trustee’s accounts)**

(1) Section 93—

Repeal subsection (2)

Substitute

“(2) The account must be in the specified form.”.

(2) Section 93—

Repeal subsection (4)

Substitute

“(4) When the account has been audited, the trustee must deliver a copy of the account to each of the specified entities for filing.

(4AA) If the Official Receiver decides that the account need not be audited, the trustee must, as soon as practicable after the decision, deliver a copy of the account to each of the specified entities for filing.

(4AAB) If a copy of the account is delivered by the trustee to a specified entity under subsection (4) or (4AA), the entity—

- (a) must keep the copy of the account so delivered to the entity in the manner that the entity thinks fit; and
- (b) must cause the copy of the account so kept by the entity to be open on payment of the prescribed fee to the inspection of any creditor, the bankrupt or any person interested, in the manner that the entity thinks fit.”.

(3) Section 93(4A)—

Repeal

everything after “to be audited,”

Substitute

“and in that event—

- (a) the trustee must deliver a copy of the audited account to each of the specified entities for filing;
- (b) a specified entity must keep the copy of the audited account so delivered to the entity in the manner that the entity thinks fit; and
- (c) a specified entity must cause the copy of the audited account so kept by the entity to be open on payment of the prescribed fee to the inspection of any creditor, the bankrupt or any person interested, in the manner that the entity thinks fit.”.

(4) After section 93(5)—

Add

“(6) In this section—

specified entity (指明單位) means—

- (a) the Official Receiver; or
- (b) the court.”.

8. Sections 122A, 122B and 122C added

After section 122—

Add

“122A. Official Receiver may specify forms

- (1) The Official Receiver may specify a form for use in relation to any purpose of this Ordinance.
- (2) A form specified under subsection (1) for use in relation to a purpose may contain a requirement for the provision of any particulars ancillary or incidental to that purpose.
- (3) Despite subsection (1), the Official Receiver may not specify a form for use in relation to a purpose if—
 - (a) this Ordinance provides otherwise;

- (b) this Ordinance requires, or provides for, the use of a prescribed form (whether or not a form is prescribed) for that purpose; or
 - (c) a form is prescribed for that purpose.
- (4) In exercising, as regards any purpose of this Ordinance, the power conferred under subsection (1), the Official Receiver may, if the Official Receiver thinks fit, specify more than one form to be used in relation to that purpose, whether as alternatives or to provide for different circumstances.

122B. Official Receiver may specify requirements relating to documents

- (1) The Official Receiver may, in relation to any document required or authorized to be sent to the Official Receiver under this Ordinance—
 - (a) specify requirements for the purpose of enabling the Official Receiver to make copies or image records of the document and to keep records of the information contained in it;
 - (b) specify requirements as to the authentication of the document; and
 - (c) specify requirements as to the manner of sending the document.
- (2) For the purposes of subsection (1), the Official Receiver may specify different requirements for different documents or classes of documents, or for different circumstances.
- (3) For the purposes of subsection (1)(b), the Official Receiver may—

- (a) require the document to be authenticated by a particular person or a person of a particular description; and
- (b) specify the means of authentication.
- (4) For the purposes of subsection (1)(c), the Official Receiver may—
 - (a) require the document to be in hard copy form, in electronic form or in any other form;
 - (b) require the document to be sent by post or by any other means;
 - (c) specify requirements as to the address to which the document is to be sent; and
 - (d) in the case of a document to be sent by electronic means—specify requirements as to the hardware and software to be used and the technical specifications.
- (5) This section does not empower the Official Receiver—
 - (a) to require a document to be sent to the Official Receiver only by electronic means; or
 - (b) to specify any requirement that is inconsistent with any requirement prescribed by an Ordinance as to—
 - (i) the authentication of the document; and
 - (ii) the manner of sending the document to the Official Receiver.
- (6) Requirements specified under this section are not subsidiary legislation.
- (7) For the purposes of this section—
 - (a) a document is sent by electronic means if it is sent in the form of an electronic record to an information system; and

- (b) a reference to sending a document includes any other expression that signifies conveying a document.
- (8) In this section—
 - electronic record** (電子紀錄) means a record generated in digital form by an information system, which can be—
 - (a) transmitted within an information system or from one information system to another; and
 - (b) stored in an information system or other medium;
 - in electronic form** (電子形式) means in the form of an electronic record;
 - information** (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;
 - information system** (資訊系統) means a system that—
 - (a) processes information;
 - (b) records information;
 - (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
 - (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);
 - in hard copy form** (印本形式) means in a paper form or similar form capable of being read.

122C. Circumstances in which documents are to be regarded as not having been sent

- (1) This section applies if the Official Receiver is of the opinion that, in relation to a document sent to the Official Receiver—
 - (a) the requirements of this Ordinance regarding the form of the document (including a requirement contained in the form for the provision of any particulars) are not complied with;
 - (b) the requirements specified in relation to the document under section 122B are not complied with; or
 - (c) the requirements otherwise prescribed in relation to the document are not complied with.
- (2) The document is to be regarded as not having been sent to the Official Receiver in satisfaction of the provision of this Ordinance that requires or authorizes the document to be sent to the Official Receiver.
- (3) For the purposes of this section, a reference to sending a document includes any other expression that signifies conveying a document.
- (4) In subsection (1)—

prescribed (訂明) means prescribed by this Ordinance or general rules within the meaning of this Ordinance.”.

Division 2—Amendments to Bankruptcy Rules (Cap. 6 sub. leg. A)

9. Rule 109 amended (proving debts)

Rule 109(1)—

Repeal

“through the post”.

10. Rule 188 amended (cash book)

(1) Rule 188—

Renumber the rule as rule 188(1).

(2) After rule 188(1)—

Add

“(2) Such a book must be in the specified form.”.

11. Rule 190 substituted

Rule 190—

Repeal the rule

Substitute

“190. Audit of cash book

- (1) The creditors’ committee must audit the cash book not less than once every 6 months.
- (2) When the cash book has been audited, the creditors’ committee must issue a certificate in the prescribed form certifying that the cash book has been audited by the committee.”.

12. Rule 191 amended (Official Receiver’s audit of trustee’s accounts)

Rule 191—

Repeal subrule (3)

Substitute

- “(3) The account provided by a trustee for the purposes of section 93 of the Ordinance must be certified as correct by the trustee.”.

**Division 3—Amendments to Bankruptcy (Forms) Rules
(Cap. 6 sub. leg. B)**

13. Schedule amended (forms)

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

Repeal

“Affidavit verifying trustee’s account 146”.

- (2) The Schedule, Form 145—

Repeal

“TRUSTEE’S ACCOUNT”

Substitute

“CASH BOOK”.

- (3) The Schedule, Form 145—

Repeal

“foregoing account with the vouchers, and that to the best of our knowledge and belief the said account”

Substitute

“cash book kept by the trustee for the period from the day of to the day of (both dates inclusive) with the vouchers, and that to the best of our knowledge and belief the cash book”.

- (4) The Schedule—

Repeal Form 146.

Division 4—Amendment to Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C)

14. Schedule amended

The Schedule, Table A, item 7A—

Repeal

“or (4A)”

Substitute

“, (4AA) or (4A)”.

Division 5—Amendment to Proof of Debts Rules (Cap. 6 sub. leg. E)

15. Rule 2 amended

Rule 2—

Repeal

“through the post”.

Division 6—Amendments to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

16. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *prescribed*, before “means”—

Add

“, except in sections 2AB and 2AD,”.

- (2) Section 2(1), definition of *specified form*, after “2A”—

Add

“or 2AB”.

17. Section 2A amended (Registrar to specify forms)

Section 2A(1)(b), Chinese text—

Repeal

“格式或已為該目的訂明格式”

Substitute

“格式或表格，或已為該目的訂明格式或表格”。

18. Sections 2AB, 2AC and 2AD added

After section 2A—

Add

“2AB. Official Receiver may specify forms

- (1) The Official Receiver may specify a form for use in relation to any purpose of this Ordinance.
- (2) A form specified under subsection (1) for use in relation to a purpose may contain a requirement for the provision of any particulars ancillary or incidental to that purpose.
- (3) Despite subsection (1), the Official Receiver may not specify a form for use in relation to a purpose if—
 - (a) this Ordinance provides otherwise;
 - (b) this Ordinance requires, or provides for, the use of a prescribed form (whether or not a form is prescribed) for that purpose; or
 - (c) a form is prescribed for that purpose.
- (4) In exercising, as regards any purpose of this Ordinance, the power conferred under subsection (1), the Official Receiver may, if the Official Receiver thinks fit, specify more than one form to be used in relation to that purpose, whether as alternatives or to provide for different circumstances.
- (5) In subsection (3)—

prescribed (訂明) means prescribed by—

- (a) general rules;
- (b) regulations made under section 168S(2); or
- (c) regulations made under section 359A.

2AC. Official Receiver may specify requirements relating to documents

- (1) The Official Receiver may, in relation to any document required or authorized to be sent to the Official Receiver under this Ordinance—
 - (a) specify requirements for the purpose of enabling the Official Receiver to make copies or image records of the document and to keep records of the information contained in it;
 - (b) specify requirements as to the authentication of the document; and
 - (c) specify requirements as to the manner of sending the document.
- (2) For the purposes of subsection (1), the Official Receiver may specify different requirements for different documents or classes of documents, or for different circumstances.
- (3) For the purposes of subsection (1)(b), the Official Receiver may—
 - (a) require the document to be authenticated by a particular person or a person of a particular description;
 - (b) specify the means of authentication; and
 - (c) require the document to contain, or to be accompanied by, the name or registration number, or both, of the company to which it relates.
- (4) For the purposes of subsection (1)(c), the Official Receiver may—
 - (a) require the document to be in hard copy form, in electronic form or in any other form;

- (b) require the document to be sent by post or by any other means;
 - (c) specify requirements as to the address to which the document is to be sent; and
 - (d) in the case of a document to be sent by electronic means—specify requirements as to the hardware and software to be used and the technical specifications.
- (5) This section does not empower the Official Receiver—
- (a) to require a document to be sent to the Official Receiver only by electronic means; or
 - (b) to specify any requirement that is inconsistent with any requirement prescribed by an Ordinance as to—
 - (i) the authentication of the document; and
 - (ii) the manner of sending the document to the Official Receiver.
- (6) Requirements specified under this section are not subsidiary legislation.
- (7) For the purposes of this section—
- (a) a document is sent by electronic means if it is sent in the form of an electronic record to an information system; and
 - (b) a reference to sending a document includes any other expression that signifies conveying a document.
- (8) In this section—
- electronic record** (電子紀錄) means a record generated in digital form by an information system, which can be—
- (a) transmitted within an information system or from one information system to another; and

- (b) stored in an information system or other medium;
- in electronic form** (電子形式) means in the form of an electronic record;
- information** (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;
- information system** (資訊系統) means a system that—
- (a) processes information;
 - (b) records information;
 - (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
 - (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated);
- in hard copy form** (印本形式) means in a paper form or similar form capable of being read.

2AD. Circumstances in which documents are to be regarded as not having been sent

- (1) This section applies if the Official Receiver is of the opinion that, in relation to a document sent to the Official Receiver—
- (a) the requirements of this Ordinance regarding the form of the document (including a requirement contained in the form for the provision of any particulars) are not complied with;
 - (b) the requirements specified in relation to the document under section 2AC are not complied with; or

- (c) the requirements otherwise prescribed in relation to the document are not complied with.
- (2) The document is to be regarded as not having been sent to the Official Receiver in satisfaction of the provision of this Ordinance that requires or authorizes the document to be sent to the Official Receiver.
- (3) For the purposes of this section, a reference to sending a document includes any other expression that signifies conveying a document.
- (4) In subsection (1)—
prescribed (訂明) means prescribed by—
 - (a) this Ordinance;
 - (b) general rules;
 - (c) regulations made under section 168S(2); or
 - (d) regulations made under section 359A.”.

19. Section 203 amended (audit of liquidator’s accounts)

- (1) Section 203—

Repeal subsections (1) and (2)

Substitute

- “(1) The Official Receiver may at any time require a liquidator (other than the Official Receiver) of a company that is being wound up by the court to provide the Official Receiver, within the time limit specified by the Official Receiver, with an account of the liquidator’s receipts and payments as liquidator.
- (2) If a requirement is made under subsection (1), the liquidator must provide the account in the specified form within the time limit specified by the Official Receiver.”.

- (2) Section 203—

Repeal subsection (4)

Substitute

- “(4) When the account has been audited, the liquidator must deliver a copy of the account to each of the specified entities for filing.
- (4A) If the Official Receiver decides that the account need not be audited, the liquidator must, as soon as practicable after the decision, deliver a copy of the account to each of the specified entities for filing.
- (4B) If a copy of the account is delivered by the liquidator to a specified entity under subsection (4) or (4A), the entity—
 - (a) must keep the copy of the account so delivered to the entity in the manner that the entity thinks fit; and
 - (b) must cause the copy of the account so kept by the entity to be open on payment of the prescribed fee to the inspection of any creditor, or any person having an interest, in the manner that the entity thinks fit.”.

- (3) Section 203(6)—

Repeal paragraph (a)

Substitute

- “(a) the liquidator must deliver a copy of the audited account to each of the specified entities for filing;
- (ab) a specified entity must keep the copy of the audited account so delivered to the entity in the manner that the entity thinks fit;
- (ac) a specified entity must cause the copy of the audited account so kept by the entity to be open on payment of the prescribed fee to the inspection of any creditor, or any

person having an interest, in the manner that the entity thinks fit; and”.

- (4) After section 203(6)—

Add

“(7) In this section—

specified entity (指明單位) means—

- (a) the Official Receiver; or
- (b) the court.”.

Division 7—Amendment to Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C)

20. Schedule 3 amended

Schedule 3, Table A, item 1A—

Repeal

“section 203(4) or (6)”

Substitute

“section 203(4), (4A) or (6)”.

Division 8—Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)

21. Rule 80 amended (mode of proof)

Rule 80—

Repeal

“through the post”.

22. Rule 161 substituted

Rule 161—

Repeal the rule

Substitute

“161. Audit of Cash Book

- (1) The committee of inspection must audit the liquidator’s Cash Book not less than once every 3 months.
- (2) When the Cash Book has been audited, the committee of inspection must issue a certificate in the prescribed form certifying that the Cash Book has been audited by the committee. (*See Form 86*)”.

23. Rule 162 amended (Official Receiver’s audit of liquidator’s accounts)

- (1) Rule 162(1)—

Repeal

“in duplicate, together with the necessary vouchers”.

- (2) Rule 162(1), after “affairs and”—

Add

“a copy of”.

- (3) Rule 162(1)—

Repeal

“thereon in red ink”

Substitute

“on the summary”.

- (4) Rule 162(1), Chinese text—

Repeal

“書副本”

Substitute

“書的文本”.

- (5) Rule 162(3)—

Repeal

“in writing”.

24. Rule 164 amended (copy of accounts to be filed)

- (1) Rule 164, Chinese text, heading—

Repeal

“副本”

Substitute

“文本”.

- (2) Rule 164—

Repeal

everything after “has been”

Substitute

“audited—

- (a) the Official Receiver must issue a certificate certifying that the account has been audited by the Official Receiver; and
- (b) the liquidator must file with the Registrar a copy of the account together with a copy of the certificate.”.

25. Rule 165 amended (summary of accounts)

- (1) Rule 165—

Repeal paragraph (1)

Substitute

“(1) Subject to the proviso to section 203(5) and the proviso to section 203(6)(b) of the Ordinance, the liquidator—

- (a) must transmit to the Official Receiver with the liquidator’s accounts a summary of the accounts in the specified form for the Official Receiver’s confirmation as to whether the summary conforms with the accounts; and
- (b) must, if the Official Receiver confirms that the summary conforms with the accounts, send a printed copy of the summary to every creditor and every contributory as soon as practicable after the confirmation.”.

- (2) Rule 165(1A)—

Repeal

“said proviso the Official Receiver dispenses with compliance with section 203(5) of the Ordinance”

Substitute

“proviso to section 203(5) or the proviso to section 203(6)(b) of the Ordinance the Official Receiver dispenses with compliance with that section”.

26. Appendix amended (forms)

- (1) Appendix, Form 86—

Repeal

“Liquidator’s Accounts”

Substitute

“Cash Book”.

- (2) Appendix, Form 86—

Repeal

“foregoing account with the vouchers, and that to the best of our knowledge and belief the said account”

Substitute

“Cash Book kept by the liquidator for the period from the day of to the day of (both dates inclusive) with the vouchers, and that to the best of our knowledge and belief the Cash Book”.

- (3) Appendix, Form 86—

Repeal

“, 19”.

- (4) Appendix, Form 88—

Repeal

“under Section 203”.

- (5) Appendix, Form 88—

Repeal

“, 19”.

Part 3

Amendments relating to Publication Requirements for Various Notices

Division 1—Amendments to Bankruptcy Ordinance (Cap. 6)

27. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*specified means* (指明方式)—see section 2A;”.

28. Section 2A added

Part I, after section 2—

Add

“2A. Specified means

- (1) For the purposes of this Ordinance, a notice, an order or a matter is published or given by the specified means if it is published in a medium specified in Schedule 4.
- (2) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette—
 - (a) add a medium to Schedule 4;
 - (b) delete a medium from that Schedule; or
 - (c) otherwise amend that Schedule.
- (3) In exercising the power under subsection (2)(a), the Secretary for Financial Services and the Treasury may add more than one medium.”.

29. Section 16 amended (advertisement of bankruptcy order)

(1) Section 16, heading—

Repeal

“Advertisement”

Substitute

“Publication of notice”.

(2) Section 16—

Repeal

“shall be gazetted”

Substitute

“must be published by the specified means”.

30. Section 30A amended (discharge from bankruptcy)

Section 30A(5)—

Repeal paragraph (b)

Substitute

“(b) publish a notice in English and Chinese by the specified means,”.

31. Section 67 amended (declaration and distribution of dividends)

Section 67(4) and (5)—

Repeal

“gazetted”

Substitute

“published by the specified means”.

32. Section 131 amended (undischarged bankrupt obtaining credit)

Section 131(c)—

Repeal

“, once in the Gazette, and in 3 successive issues of 2 local newspapers one of which shall be Chinese,”

Substitute

“by the specified means”.

33. Schedule 4 added

After Schedule 3—

Add

“Schedule 4

[s. 2A]

Specified Means

1. Gazette”.

**Division 2—Amendments to Bankruptcy Rules (Cap. 6 sub.
leg. A)**

34. Rule 11 amended (Official Receiver or trustee to file copies of advertisements)

(1) After rule 11(2)—

Add

“(2A) In the case of an advertisement in a medium other than the Gazette or a local newspaper, the person specified in subrule (3) must file a memorandum referring to, and giving the date of, the advertisement with the court.”.

(2) Rule 11(3), English text—

Repeal

“inserted”

Substitute

“published”.

- (3) Rule 11(3)(a) and (b)—

Repeal

“and (2)”

Substitute

“, (2) and (2A)”.

- (4) Rule 11(4)—

Repeal

“such advertisement shall be prima facie evidence that it was duly inserted”

Substitute

“an advertisement mentioned in subrule (1) or (2) is prima facie evidence that it was duly published”.

- (5) After rule 11(4)—

Add

“(5) The filed copy of a memorandum referring to an advertisement mentioned in subrule (2A) is prima facie evidence that the advertisement was duly published in the medium mentioned in it.”

35. Rule 78 amended (advertisement)

- (1) Rule 78, heading—

Repeal

“Advertisement”

Substitute

“Publication of notice of bankruptcy order”.

- (2) Rule 78—

Repeal

“send notice thereof to the Gazette and to such local newspaper or newspapers as he may think fit”

Substitute

“publish a notice of the order by the specified means”.

36. Rule 85 amended (proceeding after adjournment sine die)

Rule 85—

Repeal

“gazetting, advertising”

Substitute

“publishing”.

37. Rule 86 amended (notice of public examination)

Rule 86(b)—

Repeal

“gazette such notice”

Substitute

“publish such notice by the specified means”.

38. Rule 92 amended (certificate of discharge)

Rule 92(2)—

Repeal

everything after “discharge”

Substitute

“by the specified means.”.

39. Rule 93 amended (deferment of issue of order pending appeal)

Rule 93—

Repeal

“and not be gazetted”

Substitute

“, and the notice mentioned in rule 92(2) need not be published,”.

40. Rule 99A amended (four clear days’ notice to be given of meeting)

Rule 99A—

Repeal

“in the Gazette and in a local newspaper”

Substitute

“by the specified means”.

41. Rule 101 amended (notice of meeting to appoint successive trustee)

Rule 101—

Repeal

“gazette and advertise the same in one local newspaper if he considers such advertisement desirable”

Substitute

“publish a notice of the meeting by the specified means”.

42. Rule 122M amended (summoning of creditors’ meeting)

(1) Rule 122M(4)—

Repeal

everything after “published”

Substitute

“in Chinese and English by the specified means.”.

(2) After rule 122M(4)—

Add

“(5) A notice published under subrule (4) constitutes constructive notice to all creditors of the debtor.”.

43. Rule 123 amended (notice of intended dividend)

(1) Rule 123(1)—

Repeal

“shall gazette”

Substitute

“must publish by the specified means”.

(2) Rule 123(3)—

Repeal

everything after “the trustee,”

Substitute

“the trustee—

(a) must proceed to declare a dividend and publish a notice of dividend by the specified means; and

(b) must send a notice of dividend to each creditor whose proof has been admitted.”.

(3) Rule 123(4)—

Repeal

“shall gazette”

Substitute

“must publish by the specified means”.

44. Rule 146 substituted

Rule 146—

Repeal the rule

Substitute

“146. Publication of administration order

When an administration order under section 112 of the Ordinance is made, the Official Receiver must, as soon as practicable after the order is made, publish a notice of the order by the specified means.”.

45. Rule 149A amended (administration of small bankruptcies)

Rule 149A(2)—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

46. Part 4 heading amended (Official Receiver, trustees, special managers, security by trustee or special manager, gazetting, accounts and audit, unclaimed funds)

Part 4, heading—

Repeal

“Gazetting”

Substitute

“Publication of Notices”.

47. Rule 162 amended (notice of appointment)

(1) Rule 162(1)—

Repeal

everything after “appointment to be”

Substitute

“published by the specified means.”.

(2) Rule 162(2)—

Repeal

“such gazetting and publication shall”

Substitute

“such publication is to”.

48. Rule 165 amended (removal by court)

Rule 165—

Repeal

“gazetted”

Substitute

“published by the specified means”.

49. Part 4, Division 4 heading amended (gazetting)

Part 4, Division 4, heading—

Repeal

“Gazetting”

Substitute

“Publication of Notices”.

50. Rule 184 amended (gazetting notices)

(1) Rule 184, heading—

Repeal

“Gazetting”

Substitute

“Publishing”.

- (2) Rule 184(1)—

Repeal

“All notices requiring publication in the Gazette shall be gazetted”

Substitute

“Except as otherwise provided in this Ordinance, all notices required to be published by the specified means must be published”.

51. Rules 185 and 186 substituted

Rules 185 and 186—

Repeal the rules

Substitute

“185. Republication of order or matter

- (1) This rule applies if—

- (a) a bankruptcy order is amended;
- (b) a matter gazetted by a responsible person before the appointed date has been amended or altered, or a matter has been wrongly or inaccurately gazetted by a responsible person before the appointed date; or
- (c) a matter published by the specified means by a responsible person after the appointed date has been amended or altered, or a matter has been wrongly or inaccurately published by the specified means by a responsible person after the appointed date.

- (2) The responsible person must republish by the specified means such order or matter with the necessary amendments and alterations in the prescribed form.
- (3) Subject to any order made by the court, the fee for republishing such order or matter must be paid at the expense of the estate.
- (4) In subrule (1)—

appointed date (指定日期) means the date on which Part 3 of the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (of 2023) comes into operation;

responsible person (負責人) means the Official Receiver or the trustee.

186. Publishing notice of annulment of order already gazetted or published by specified means

- (1) This rule applies if —
 - (a) a notice for an order has been gazetted before the appointed date and the order is annulled; or
 - (b) a notice for an order has been published by the specified means after the appointed date and the order is annulled.
- (2) Subject to any order made by the court, notice of the order of annulment must be published by the specified means.
- (3) The fee for publishing the notice mentioned in subrule (2) must be paid—
 - (a) if the order is annulled on the application of the Official Receiver or the trustee—out of the estate; or
 - (b) if the order is annulled on the application of any other person—subject to any order made by the court, by the person who makes the application.

(4) In subrule (1)—

appointed date (指定日期) means the date on which Part 3 of the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (of 2023) comes into operation.”.

52. Rule 195 amended (joint and separate estates accounts)

Rule 195—

Repeal

“gazetted”

Substitute

“published by the specified means”.

**Division 3—Amendments to Bankruptcy (Forms) Rules
 (Cap. 6 sub. leg. B)**

53. Schedule amended (forms)

(1) The Schedule, Index of Forms, under heading “**Accounts:**”, after the following—

“Statement of accounts under section 88 150”

Add

“Transfer from separate estate to joint estate 154”.

(2) The Schedule, Index of Forms, under heading “**Advertisement:**”, before the following—

“Of day for proceeding with public examination 54”

Add

“Memorandum of advertisement 170”.

(3) The Schedule, Chinese text, Index of Forms, under heading “**Advertisement:**”—

Repeal

“日期的公告”

Substitute

“日期的通知”.

(4) The Schedule, Index of Forms, under heading “**Bankruptcy Order:**”—

Repeal

“(for local newspaper)”.

(5) The Schedule, Index of Forms, heading “**Gazetting and publication in newspaper:**”—

Repeal

“**Gazetting and publication**”

Substitute

“**Publication**”.

(6) The Schedule, Index of Forms, under heading “**Publication in newspaper:**”—

Repeal

“Transfer from separate estate to joint estate 154”.

(7) The Schedule, Index of Forms, under heading “**Public examination:**”—

Repeal

“(local newspaper)”.

(8) The Schedule, Form 27—

Repeal

“(for local newspaper)”.

(9) The Schedule, Form 54—

Repeal

“(FOR LOCAL NEWSPAPER OR *Gazette*)”.

(10) The Schedule, Form 88—

Repeal

“advertisement of this order in a local newspaper and/or the *Gazette*”

Substitute

“the trustee to publish a notice under rule 92(2) of the Bankruptcy Rules (Cap. 6 sub. leg. A)”.

(11) The Schedule, Form 137—

Repeal

“Gazetting and advertising charges”

Substitute

“Charges for publication of notices”.

(12) The Schedule, Form 154—

Repeal

“FOR GAZETTE”.

(13) The Schedule, Form 154—

Repeal

“in the *Gazette*, to”

Substitute

“in , to”.

(14) The Schedule, Chinese text, Form 154—

Repeal

“的通知書”

Substitute

“的公告”.

(15) The Schedule, after Form 169—

Add

“Form 170

[rule 11]

Memorandum of Advertisement

(*Title*)

Name of medium and (if applicable) issue number	Date of publication of advertisement	Date of filing this memorandum	Nature of order etc.

(Signed)”.

Division 4—Amendments to Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C)

54. Schedule amended

(1) The Schedule, Table A, item 6(a)—

Repeal

“gazetting”

Substitute

“publication”.

- (2) The Schedule, Table A, item 18—

Repeal

“insertion in the Gazette”

Substitute

“the publication”.

**Division 5—Amendments to Companies (Winding Up and
Miscellaneous Provisions) Ordinance (Cap. 32)**

55. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*specified means* (指明方式)—see section 2C;”.

56. Section 2C added

After section 2B—

Add

“2C. Specified means

- (1) For the purposes of this Ordinance, a notice, an order or a matter is published or given by the specified means if it is published in a medium specified in Schedule 27.
- (2) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette—
 - (a) add a medium to Schedule 27;
 - (b) delete a medium from that Schedule; or

(c) otherwise amend that Schedule.

- (3) In exercising the power under subsection (2)(a), the Secretary for Financial Services and the Treasury may add more than one medium.”.

57. Section 228A amended (special procedure for voluntary winding up of company in case of inability to continue its business)

- (1) Section 228A(9) and (11)(a)—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

- (2) Section 228A(17)(a)(ii)—

Repeal

“advertisement of the meeting of creditors required by subsection (2) of that section must occur”

Substitute

“notice of the meeting of the creditors required to be published by subsection (2) of that section must be published”.

58. Section 229 amended (notice of resolution to wind up voluntarily)

Section 229(1)—

Repeal

“advertisement in the Gazette”

Substitute

“the specified means”.

59. Section 237A amended (duty of liquidator to summon creditors' meeting, etc. in case of insolvency)

Section 237A(1A)(c)—

Repeal

everything after “meeting to be”

Substitute

“published by the specified means in Chinese and English.”.

60. Section 239 amended (final meeting and dissolution)

Section 239—

Repeal subsection (2)

Substitute

“(2) The meeting must be called by publishing a notice specifying the time, place and object of the meeting by the specified means at least 1 month before the meeting.”.

61. Section 241 amended (meeting of creditors)

Section 241(2)—

Repeal

everything after “creditors to be”

Substitute

“published by the specified means in Chinese and English.”.

62. Section 248 amended (final meeting and dissolution)

Section 248—

Repeal subsection (2)

Substitute

“(2) Each such meeting must be called by publishing a notice specifying the time, place and object of the meeting by the specified means at least 1 month before the meeting.”.

63. Section 253 amended (notice by liquidator of his appointment or ceasing to act)

Section 253(1)(a) and (2)(a)—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

64. Section 296B amended (application of Division 6)

Section 296B(3)—

Repeal

“give any notice by advertisement in the Gazette or a newspaper”

Substitute

“publish or give any notice, order or matter by the specified means”.

65. Twelfth Schedule amended (punishment of offences under this Ordinance)

(1) Twelfth Schedule, entry relating to section 228A(9A), under heading “General nature of offence”—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

- (2) Twelfth Schedule, entry relating to section 228A(13) (relating to subsection (11)(a)), under heading “General nature of offence”——

Repeal

“in the Gazette”

Substitute

“by the specified means”.

- (3) Twelfth Schedule, entry relating to section 229(2), under heading “General nature of offence”——

Repeal

“advertise in the Gazette notice of resolution to wind up voluntarily”

Substitute

“give notice of resolution to wind up voluntarily by the specified means”.

- (4) Twelfth Schedule, entry relating to section 237A(3) (relating to subsection (1A)), under heading “General nature of offence”——

Repeal

“advertised”

Substitute

“published by the specified means”.

- (5) Twelfth Schedule, entry relating to section 253(4) (relating to subsection (1)(a)), under heading “General nature of offence”——

Repeal

“in the Gazette”

Substitute

“by the specified means”.

- (6) Twelfth Schedule, entry relating to section 253(4) (relating to subsection (2)(a)), under heading “General nature of offence”——

Repeal

“in the Gazette”

Substitute

“by the specified means”.

66. Schedule 27 added

After Schedule 26——

Add

“Schedule 27

[s. 2C]

Specified Means

1. Gazette”.

Division 6—Amendment to Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C)

67. Schedule 3 amended

Schedule 3, Table A, item 7——

Repeal

“insertion in the Gazette”

Substitute

“the publication”.

**Division 7—Amendments to Companies (Winding-up) Rules
(Cap. 32 sub. leg. H)**

68. Rule 27A amended (administration of small liquidations)

Rule 27A(2)—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

69. Rule 36 amended (transmission and advertisement of winding-up order)

(1) Rule 36(1)(b), after “prescribed;”—

Add

“and”.

(2) Rule 36(1)(c)—

Repeal

“gazetted;”

Substitute

“published by the specified means.”.

(3) Rule 36(1)—

Repeal subparagraph (d).

70. Rule 45 amended (appointment of liquidator and committee of inspection on report of meetings of creditors and contributories)

(1) Rule 45(5)—

Repeal

“gazetted”

Substitute

“published by the specified means”.

(2) Rule 45(5)—

Repeal

“gazetting”

Substitute

“publishing”.

71. Rule 55 amended (notice of public examination to creditors and contributories)

(1) Rule 55(1)—

Repeal

everything after “contributories”

Substitute

“by the specified means. (*See Form 103(3)*)”.

(2) Rule 55—

Repeal paragraph (2).

72. Rule 74 amended (calls by liquidator)

Rule 74(b)—

Repeal

“advertised once at least in a Hong Kong daily newspaper. The advertisement”

Substitute

“published by the specified means. The notice”.

73. Rule 93 amended (notice to creditors to prove)

Rule 93(1)—

Repeal

“advertisement in such newspaper as he shall consider convenient”

Substitute

“the specified means”.

74. Rule 107 amended (notice of first meetings)

- (1) Rule 107—

Repeal

“advertisement in the Gazette”

Substitute

“the specified means”.

- (2) Rule 107, Chinese text—

Repeal

“藉在憲報刊登公告，”.

75. Rule 114 amended (summoning of meetings)

Rule 114(1)—

Repeal

“in the Gazette and in one or more local papers”

Substitute

“by the specified means”.

76. Rule 142 amended (dividends to creditors)

- (1) Rule 142(1), (3) and (4)—

Repeal

“publication in the Gazette”

Substitute

“the specified means”.

- (2) Rule 142(8)—

Repeal

“gazetted”

Substitute

“published by the specified means”.

77. Rule 143 amended (return of capital to contributories)

Rule 143, after “each contributory”—

Add

“and publish the notice by the specified means”.

78. Rule 189 amended (proceedings for release of liquidator)

- (1) Rule 189(2)—

Repeal

“gazetted”

Substitute

“published by the specified means”.

- (2) Rule 189(2)—

Repeal

“the Gazette”

Substitute

“publishing the notice”.

- (3) Rule 189(3)—

Repeal

“in the Gazette”

Substitute

“by the specified means”.

79. Cross-heading before rule 202 amended (gazetting in a winding up by the court)

Cross-heading before rule 202—

Repeal

“Gazetting”

Substitute

“Publication of Notices”.

80. Rule 202 amended (gazetting notices)

(1) Rule 202, heading—

Repeal

“Gazetting”

Substitute

“Publishing”.

(2) Rule 202(1)—

Repeal

“in the Gazette shall be gazetted”

Substitute

“by the specified means must be published or given”.

(3) Rule 202—

Repeal paragraph (2)

Substitute

“(2) Paragraph (3) applies if—

- (a) a winding-up order is amended;
- (b) a matter gazetted by a responsible person before the appointed date has been amended or altered, or a

matter has been wrongly or inaccurately gazetted by a responsible person before the appointed date; or

- (c) a matter published by the specified means by a responsible person after the appointed date has been amended or altered, or a matter has been wrongly or inaccurately published by the specified means by a responsible person after the appointed date.

(3) The responsible person must republish by the specified means such order or matter with the necessary amendments and alterations in the prescribed form.

(4) Subject to any order made by the court, the fee for republishing such order or matter must be paid at the expense of the company’s assets.

(5) In paragraph (2)—

appointed date (指定日期) means the date on which Part 3 of the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (of 2023) comes into operation;

responsible person (負責人) means the Official Receiver or the liquidator.”.

81. Rule 203 amended (filing memorandum of Gazette notices)

(1) Rule 203, heading—

Repeal

“Gazette notices”

Substitute

“advertisements”.

(2) Rule 203(3), English text—

Repeal

“inserted”

Substitute

“published”.

- (3) Rule 203(3), English text—

Repeal

“inserts”

Substitute

“publishes”.

- (4) After rule 203(3)—

Add

“(3A) In the case of an advertisement relating to any winding-up proceeding in a medium other than the Gazette or a local paper, the Official Receiver or liquidator as the case may be must file with the proceeding a memorandum referring to, and giving the date of, the advertisement.”.

- (5) Rule 203(4)—

Repeal

“inserted in the issue of the Gazette or newspaper”

Substitute

“published in the issue of the Gazette or newspaper, or in the medium,”.

82. Appendix amended (forms)

- (1) Appendix—

Repeal Form 16.

- (2) Appendix, Form 25—

Repeal

“gazetted and advertised”

Substitute

“published”.

- (3) Appendix, Form 25—

Repeal

“name of newspaper (if any)”

Substitute

“the medium”.

- (4) Appendix, Form 51—

Repeal

“Advertisement”

Substitute

“Notice”.

- (5) Appendix, Form 51—

Repeal

“19” (wherever appearing).

- (6) Appendix, Form 68—

Repeal

“19” (wherever appearing).

- (7) Appendix, Form 68—

Repeal

“insertion in the *Gazette*, on”

Substitute

“publication in , on”.

- (8) Appendix, Form 100—

Repeal

“Costs of notices in *Gazette* and local papers”

Substitute

- “Costs of publishing notices”.
- (9) Appendix, Form 103—
Repeal
“Notices for Gazette”.
- (10) Appendix, Chinese text, Form 103—
Repeal
“第一次會議公告”
Substitute
“第一次會議通知書”.
- (11) Appendix, Chinese text, Form 103—
Repeal
“公開訊問公告”
Substitute
“公開訊問通知書”.
- (12) Appendix, Chinese text, Form 103—
Repeal
“擬派發攤還債款公告”
Substitute
“擬派發攤還債款通知書”.
- (13) Appendix, Chinese text, Form 103—
Repeal
“(5) 派發攤還債款公告”
Substitute
“(5) 攤還債款通知書”.
- (14) Appendix, Form 104—
Repeal

- “or Gazetting”.
- (15) Appendix, Form 104—
Repeal
“paper”
Substitute
“medium and (if applicable) issue number”.
- (16) Appendix, Form 104—
Repeal
“Date of issue”
Substitute
“Date of publication of advertisement”.
- (17) Appendix, Form 104—
Repeal
“filing”
Substitute
“filing this memorandum”.
-

Part 4

Amendments relating to Sending of Proxy by Electronic Means

Division 1—Amendments to Bankruptcy Rules (Cap. 6 sub. leg. A)

83. Rule 99R amended (time for lodging proxy)

(1) Rule 99R(2)—

Repeal

“received by facsimile transmission by”

Substitute

“sent by facsimile transmission or electronic means to, and received by,”.

(2) Rule 99R(2), Chinese text, before “按”—

Add

“如”.

(3) Rule 99R(2), Chinese text—

Repeal

“如在”

Substitute

“在”.

(4) After rule 99R(2)—

Add

“(3) For the purposes of subrule (2), a proxy is sent by electronic means if it is sent in the form of an electronic record to an information system.

(4) In this rule—

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

information (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;

information system (資訊系統) means a system that—

- (a) processes information;
- (b) records information;
- (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and
- (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated).”.

Division 2—Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H)

84. Rule 139 amended (lodgment of proxies)

(1) Rule 139(2A)—

Repeal

“to and received by”

Substitute

“or electronic means to, and received by,”.

- (2) Rule 139(2A), Chinese text, before “按”—

Add

“如”.

- (3) Rule 139(2A), Chinese text—

Repeal

“如在”

Substitute

“在”.

- (4) Rule 139(2A), Chinese text, before “接獲”—

Add

“在該時間內”.

- (5) After rule 139(3)—

Add

“(4) For the purposes of the paragraph (2A), a proxy is sent by electronic means if it is sent in the form of an electronic record to an information system.

- (5) In this rule—

electronic record (電子紀錄) means a record generated in digital form by an information system, which can be—

- (a) transmitted within an information system or from one information system to another; and
- (b) stored in an information system or other medium;

information (資訊、資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination of them;

information system (資訊系統) means a system that—

- (a) processes information;

- (b) records information;

- (c) can be used to cause information to be recorded, stored or otherwise processed in other information systems (wherever situated); and

- (d) can be used to retrieve information, whether the information is recorded or stored in the system itself or in other information systems (wherever situated).”.

Part 5

Miscellaneous Amendments

Division 1—Amendments to Bankruptcy Ordinance (Cap. 6)

85. Section 38 amended (priority of debts)

Section 38(1)(d)—

Repeal

“Crown”

Substitute

“Government”.

86. Section 127 amended (certain provisions to bind Crown)

(1) Section 127, heading—

Repeal

“Crown”

Substitute

“Government”.

(2) Section 127—

Repeal

“Crown”

Substitute

“Government”.

Division 2—Amendment to Bankruptcy Rules (Cap. 6 sub. leg. A)

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

Rule 5, Chinese text—

Repeal

“大法官” (wherever appearing)

Substitute

“法官”.

Division 3—Amendment to Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C)

88. Schedule amended

The Schedule, Table A, after item 7—

Add

“7A. On an inspection of a copy of the trustee’s accounts filed under section 93(4) or (4A) 11.00”.

Division 4—Amendment to Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

89. Section 168E amended (disqualification on conviction of indictable offence)

Section 168E(3)(a), Chinese text—

Repeal

“大法官”

Substitute

“法官”。

**Division 5—Amendment to Companies (Winding Up and
Miscellaneous Provisions) (Amendment) Ordinance 2016
(14 of 2016)**

**90. Part 8, Division 7 repealed (amendments to Companies (Winding
Up and Miscellaneous Provisions) (Amendment) Ordinance
2016 (14 of 2016))**

Part 8—

Repeal Division 7.

Explanatory Memorandum

The purpose of this Bill is—

- (a) to amend the Bankruptcy Ordinance (Cap. 6) (*Cap. 6*) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (*Cap. 32*) and their subsidiary legislation—
 - (i) to facilitate the submission of certain documents to the Official Receiver by electronic means;
 - (ii) to change the publication requirements for various notices; and
 - (iii) to facilitate the sending of proxies by electronic means; and
 - (b) to make other miscellaneous amendments to those enactments and the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance 2016 (14 of 2016) (*2016 Ordinance*).
2. The Bill contains 5 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

**Part 2—Amendments relating to Submission of Documents by
Electronic Means**

4. Part 2 deals with amendments relating to the submission of certain documents to the Official Receiver by electronic means. That Part is divided into 8 Divisions.

Division 1—Amendments to Cap. 6

5. Division 1 (clauses 3 to 8) contains amendments to Cap. 6.

6. Clause 3 amends section 2 of Cap. 6 to add a new definition of *specified form*.
7. Clause 8 adds new sections 122A, 122B and 122C to Cap. 6. The new section 122A empowers the Official Receiver to specify forms for use in relation to a purpose of Cap. 6 and its subsidiary legislation. The new section 122B empowers the Official Receiver to specify requirements relating to documents required or authorized to be sent to the Official Receiver under Cap. 6 and its subsidiary legislation. The new section 122C sets out the circumstances in which documents sent to the Official Receiver are to be regarded as not having been sent.
8. Clauses 4 and 5 amend sections 43A and 86A of Cap. 6 respectively to require certain documents under those sections to be in the specified form.
9. Clause 6 amends section 89 of Cap. 6 to empower the Official Receiver to require a trustee in a bankruptcy to provide a statement of proceedings, and to require a statement provided under that section to be in the specified form.
10. Clause 7 amends section 93 of Cap. 6 to require a trustee's account to be in the specified form and to amend the manner in which the account is to be kept and open for inspection.

Division 2—Amendments to Bankruptcy Rules (Cap. 6 sub. leg. A) (Cap. 6A)

11. Division 2 (clauses 9 to 12) contains amendments to Cap. 6A.
12. Clause 9 amends rule 109(1) of Cap. 6A to repeal the requirement for a form to be delivered or sent through the post so as to facilitate the electronic submission of the form.
13. Clause 10 amends rule 188 of Cap. 6A to require a cash book to be in the specified form.

14. Clause 11 amends rule 190 of Cap. 6A. After the amendment, the creditors' committee must certify that a cash book has been audited by issuing a certificate in the prescribed form instead of certifying that fact in the cash book.
15. Clause 12 amends rule 191 of Cap. 6A to change the authentication requirement for the trustee's accounts from verification and certification to certification only.

Division 3—Amendments to Bankruptcy (Forms) Rules (Cap. 6 sub. leg. B) (Cap. 6B)

16. Division 3 (clause 13) contains amendments to Cap. 6B. Clause 13 amends Form 145 in the Schedule to Cap. 6B to reflect the fact that the creditors' committee is required to certify the cash book by issuing a certificate. That clause also repeals Form 146 in the Schedule to Cap. 6B as the requirement to verify the trustee's accounts by an affidavit is repealed.

Division 4—Amendment to Bankruptcy (Fees and Percentages) Order (Cap. 6 sub. leg. C) (Cap. 6C)

17. Division 4 (clause 14) contains an amendment to a fee item in Cap. 6C to reflect the amendments made to section 93 of Cap. 6.

Division 5—Amendment to Proof of Debts Rules (Cap. 6 sub. leg. E) (Cap. 6E)

18. Division 5 (clause 15) contains an amendment to Cap. 6E. Clause 15 amends rule 2 of Cap. 6E to repeal the requirement for a form to be delivered or sent through the post so as to facilitate the electronic submission of the form.

Division 6—Amendments to Cap. 32

19. Division 6 (clauses 16 to 19) contains amendments to Cap. 32.

20. Clause 16 amends section 2(1) of Cap. 32 to amend the definition of *specified form*.
21. Clause 18 adds new sections 2AB, 2AC and 2AD to Cap. 32. The new section 2AB empowers the Official Receiver to specify forms for use in relation to a purpose of Cap. 32 and its subsidiary legislation. The new section 2AC empowers the Official Receiver to specify requirements relating to documents required or authorized to be sent to the Official Receiver under Cap. 32 and its subsidiary legislation. The new section 2AD sets out the circumstances in which documents sent to the Official Receiver are to be regarded as not having been sent.
22. Clause 19 amends section 203 of Cap. 32 to—
 - (a) empower the Official Receiver to require a liquidator to provide the liquidator's accounts to the Official Receiver within the time limit specified by the Official Receiver;
 - (b) require the account to be in the specified form; and
 - (c) amend the manner in which the account is to be kept and open for inspection.

Division 7—Amendment to Companies (Fees and Percentages) Order (Cap. 32 sub. leg. C) (Cap. 32C)

23. Division 7 (clause 20) contains an amendment to a fee item in Cap. 32C to reflect the amendments made to section 203 of Cap. 32.

Division 8—Amendments to Companies (Winding-up) Rules (Cap. 32 sub. leg. H) (Cap. 32H)

24. Division 8 (clauses 21 to 26) contains amendments to Cap. 32H.
25. Clause 21 amends rule 80 of Cap. 32H to repeal the requirement for a form to be delivered or sent through the post so as to facilitate the electronic submission of the form.

26. Clause 22 amends rule 161 of Cap. 32H. After the amendment, a committee of inspection must certify that a Cash Book has been audited by issuing a certificate in the prescribed form instead of certifying that fact in the Cash Book.
27. Clause 23 amends rule 162 of Cap. 32H to revise the requirement relating to the sending of the liquidator's accounts.
28. Clause 24 amends rule 164 of Cap. 32H. After the amendment, the Official Receiver must certify that the liquidator's account has been audited by issuing a certificate instead of certifying that fact on the account.
29. Clause 25 amends rule 165 of Cap. 32H to revise the requirement relating to the sending of a summary of liquidator's accounts.
30. Clause 26 amends Forms 86 and 88 in the Appendix to Cap. 32H to reflect the revisions made to the relevant provisions in Cap. 32 and Cap. 32H.

Part 3—Amendments relating to Publication Requirements for Various Notices

31. Part 3 deals with amendments relating to the publication requirements for various notices. That Part is divided into 7 Divisions.

Division 1—Amendments to Cap. 6

32. Division 1 (clauses 27 to 33) contains amendments to Cap. 6.
33. Clause 28 adds a new section 2A to Cap. 6 to introduce the concept of *specified means*. Under that section, a notice, an order or a matter is published or given by the specified means if it is published in a medium specified in a new Schedule 4 to Cap. 6. The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, add to or delete from that Schedule a medium. Clause 33

adds that new Schedule 4 to Cap. 6. The medium specified in that Schedule is the Gazette.

34. Clauses 27 and 29 to 32 amend various provisions of Cap. 6 to require various notices under those provisions to be published or given by the specified means, and make other textual amendments to Cap. 6 to reflect the requirement.

Division 2—Amendments to Cap. 6A

35. Division 2 (clauses 34 to 52) contains amendments to Cap. 6A.
36. Clauses 34 to 52 amend various provisions of Cap. 6A to require various notices, orders or matters under those provisions to be published or given by the specified means, and make other textual amendments to Cap. 6A to reflect the requirement.

Division 3—Amendments to Cap. 6B

37. Division 3 (clause 53) contains amendments to the forms set out in Cap. 6B to reflect the amendments made to Cap. 6 and Cap. 6A.

Division 4—Amendments to Cap. 6C

38. Division 4 (clause 54) contains textual amendments to Cap. 6C to reflect the amendments made to Cap. 6 and Cap. 6A.

Division 5—Amendments to Cap. 32

39. Division 5 (clauses 55 to 66) contains amendments to Cap. 32.
40. Clause 56 adds a new section 2C to Cap. 32 to introduce the concept of *specified means*. Under that section, a notice, an order or a matter is published or given by the specified means if it is published in a medium specified in a new Schedule 27 to Cap. 32. The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, add to or delete from that Schedule a medium. Clause

66 adds that new Schedule 27 to Cap. 32. The medium specified in that Schedule is the Gazette.

41. Clauses 55 and 57 to 65 amend various provisions of Cap. 32 to require various notices under those provisions to be published or given by the specified means, and make other textual amendments to Cap. 32 to reflect the requirement.

Division 6—Amendment to Cap. 32C

42. Division 6 (clause 67) contains a textual amendment to Cap. 32C to reflect the amendments made to section 203 of Cap. 32.

Division 7—Amendments to Cap. 32H

43. Division 7 (clauses 68 to 82) contains amendments to Cap. 32H.
44. Clauses 68 to 82 amend various provisions of Cap. 32H to require various notices under those provisions to be published or given by the specified means, and make other textual amendments to Cap. 32H to reflect the requirement.

Part 4—Amendments relating to Sending of Proxy by Electronic Means

45. Part 4 deals with amendments relating to the sending of proxy by electronic means. That Part is divided into 2 Divisions.

Division 1—Amendments to Cap. 6A

46. Division 1 (clause 83) amends rule 99R of Cap. 6A so that a proxy sent by electronic means to, and received by, the trustee within the relevant time limit is to be regarded as having been deposited in accordance with Cap. 6A.

Division 2—Amendments to Cap. 32H

47. Division 2 (clause 84) amends rule 139 of Cap. 32H so that a proxy sent by electronic means to, and received by, the relevant person

within the relevant time limit is to be regarded as having been lodged in accordance with rule 139(1) or (2) of Cap. 32H.

Part 5—Miscellaneous Amendments

48. Part 5 contains miscellaneous amendments to Cap. 6, Cap. 6A, Cap. 6C, Cap. 32 and the 2016 Ordinance. The amendments are as follows—
- (a) clauses 85 and 86 amend references to “Crown” in sections 38 and 127 of Cap. 6 respectively to “Government”;
 - (b) clauses 87 and 89 amend references to “大法官” in rule 5 of Cap. 6A and section 168E of Cap. 32 respectively to “法官”;
 - (c) clause 88 adds a fee item to Cap. 6C; and
 - (d) clause 90 repeals obsolete provisions in the 2016 Ordinance.
49. The Bill also makes minor textual amendments to the Chinese text of Cap. 6 and Cap. 32 and their subsidiary legislation.