

## **LEGISLATIVE COUNCIL BRIEF**

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

### **BANKRUPTCY (AMENDMENT) BILL 1998**

#### **INTRODUCTION**

At the meeting of the Executive Council on 8 September 1998, the Council ADVISED and the Chief Executive ORDERED that the Bankruptcy (Amendment) Bill 1998, at Annex, should be introduced into the Legislative Council to amend the obsolete references to “acts of bankruptcy”, “receiving order” and “composition or scheme of arrangement” in certain provisions of the Bankruptcy Ordinance and ten other ordinances.

#### **BACKGROUND AND ARGUMENT**

2. The Bankruptcy (Amendment) Ordinance 1996 (“the Amendment Ordinance”), which was enacted on 24 December 1996, has updated and streamlined the laws and procedures relating to personal bankruptcy. The Amendment Ordinance implemented the recommendations contained in the Law Reform Commission’s “Report on Bankruptcy” published in May 1995, which included the following -

- (a) abolished the obsolete provisions relating to “acts of bankruptcy” and “bankruptcy notices” and replaced them by simpler and more straight-forward grounds for presenting a “bankruptcy petition”;
- (b) repealed the two-stage system of a “receiving order” followed by an “adjudication order” and replaced by a single “bankruptcy order”; and

- (c) repealed the provisions relating to “compositions and schemes of arrangement” and replaced by a more flexible individual “voluntary arrangement” procedure.

3. Following the approval of the related subsidiary legislation, the Amendment Ordinance was brought into operation on 1 April 1998. However, a recent review has revealed that references to “acts of bankruptcy”, “receiving order” and “compositions or schemes of arrangement” still exist in a number of sections in the Bankruptcy Ordinance and ten other ordinances. Consequential amendments to rectify the situation are therefore necessary.

## THE BILL

4. **Clause 2** amends two sections in the Bankruptcy Ordinance and the proposed amendments are set out in **Schedule 1**. Item 1 in the Schedule amends section 99(3) of the Bankruptcy Ordinance by repealing references to “receiving orders” and “compositions or schemes of arrangement” and substituting “bankruptcy orders” and “voluntary arrangement” respectively. Item 2 in the Schedule inserts a new paragraph 2 in Schedule 1 to the Bankruptcy Ordinance specifying that where a criminal bankruptcy order is made against any person, he shall be treated as a debtor against whom grounds exist for a creditor to present a bankruptcy petition. The original paragraph 2, which made reference to the out-moded concept of “acts of bankruptcy”, was repealed by the Amendment Ordinance.

5. **Clauses 3 to 12**, similarly, make 11 consequential amendments to repeal references to “acts of bankruptcy”, “receiving orders” and “compositions or schemes of arrangement” and substitute “grounds exist for presenting a bankruptcy petition”, “bankruptcy orders” and “voluntary arrangement” as appropriate in ten other ordinances, namely, the Landlord and Tenant (Consolidation) Ordinance, the Sale of Goods Ordinance, the Commodities Trading Ordinance, the Road Traffic Ordinance, the Protection of Wages on Insolvency Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance, the Securities and Futures (Clearing Houses) Ordinance, the Leveraged Foreign Exchange Trading Ordinance, the Organised and Serious Crimes Ordinance, and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance. The detailed amendments are set out in **Schedules 2 to 11**.

6. The proposed amendments in the Bill are in line with the provisions in the Amendment Ordinance.

## **PUBLIC CONSULTATION**

7. As the proposed amendments in the Bill are technical and consequential in nature, no separate consultation is considered necessary.

## **HUMAN RIGHTS IMPLICATIONS**

8. The Department of Justice advises that the proposed legislation has no human rights implications.

## **BINDING EFFECT OF THE BILL**

9. The binding effect of the Bill is governed by section 127 of the Bankruptcy Ordinance which stipulates that “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”. The reference to the “Crown” in this section shall be construed to read as a reference to the “State” in accordance with paragraph 7 of Schedule 9 to the Interpretation and General Clauses Ordinance and such reference will be textually amended by the Adaptation of Laws (No. 20) Bill which is scheduled to be introduced within this legislative session.

## **FINANCIAL AND STAFFING IMPLICATIONS**

10. There are no financial and staffing implications.

## **ECONOMIC IMPLICATIONS**

11. There are no economic implications.

## **LEGISLATIVE TIMETABLE**

12. The legislative timetable is as follows -

Publication in the Gazette	18 September 1998
First Reading and commencement	

of Second Reading debate

30 September 1998

Resumption of Second Reading  
debate, committee stage and  
Third Reading

To be notified

## **PUBLICITY**

13. A spokesperson will be available to handle press enquiry.

## **ENQUIRIES**

14. For enquiries, please call Miss Julina CHAN, Principal Assistant Secretary for Financial Services at 2527 3909.

Financial Services Bureau  
16 September 1998

A BILL

To

Amend the Bankruptcy Ordinance and to make consequential amendments to the Landlord and Tenant (Consolidation) Ordinance, the Sale of Goods Ordinance, the Commodities Trading Ordinance, the Road Traffic Ordinance, the Protection of Wages on Insolvency Ordinance, the Drug Trafficking (Recovery of Proceeds) Ordinance, the Securities and Futures (Clearing Houses) Ordinance, the Leveraged Foreign Exchange Trading Ordinance, the Organized and Serious Crimes Ordinance and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance 1998.

**2. Amendment of Bankruptcy Ordinance - (Schedule 1)**

The Bankruptcy Ordinance (Cap. 6) is amended as indicated in Schedule 1.

**3. Amendment of Landlord and Tenant (Consolidation) Ordinance - (Schedule 2)**

The Landlord and Tenant (Consolidation) Ordinance (Cap. 7) is amended as indicated in Schedule 2.

**4. Amendment of Sale of Goods Ordinance - (Schedule 3)**

The Sale of Goods Ordinance (Cap. 26) is amended as indicated in Schedule 3.

**5. Amendment of Commodities Trading Ordinance - (Schedule 4)**

The Commodities Trading Ordinance (Cap. 250) is amended as indicated in Schedule 4.

**6. Amendment of Road Traffic Ordinance - (Schedule 5)**

The Road Traffic Ordinance (Cap. 374) is amended as indicated in Schedule 5.

**7. Amendment of Protection of Wages on Insolvency Ordinance - (Schedule 6)**

The Protection of Wages on Insolvency Ordinance (Cap. 380) is amended as indicated in Schedule 6.

**8. Amendment of Drug Trafficking (Recovery of Proceeds) Ordinance - (Schedule 7)**

The Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) is amended as indicated in Schedule 7.

**9. Amendment of Securities and Futures (Clearing Houses) Ordinance - (Schedule 8)**

The Securities and Futures (Clearing Houses) Ordinance (Cap. 420) is amended as indicated in Schedule 8.

**10. Amendment of Leveraged Foreign Exchange Trading Ordinance - (Schedule 9)**

The Leveraged Foreign Exchange Trading Ordinance (Cap. 451) is amended as indicated in Schedule 9.

**11. Amendment of Organized and Serious Crimes Ordinance - (Schedule 10)**

The Organized and Serious Crimes Ordinance (Cap. 455) is amended as indicated in Schedule 10.

**12. Amendment of Tai Lam Tunnel and Yuen Long Approach Road Ordinance - (Schedule 11)**

The Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474) is amended as indicated in Schedule 11.

## SCHEDULE 1

[s. 2]

## AMENDMENT OF BANKRUPTCY ORDINANCE

Item	Provision affected	Amendment
1.	Section 99(3)	<p>(a) In paragraph (a), repeal “receiving orders” and substitute “bankruptcy orders”.</p> <p>(b) In paragraph (b), repeal “rescind receiving orders or to annul an adjudication” and substitute “annul adjudications”.</p> <p>(c) Repeal paragraph (c) and substitute -</p> <p>“(c) applications for an</p>

interim order in respect of a  
voluntary arrangement; and”.

2. Schedule 1 In Part I, by adding -

**“2. Entitlement to present bankruptcy  
petition**

Subject to the provisions of this  
Schedule, where a criminal bankruptcy order is  
made against any person he shall be treated as  
a debtor against whom grounds exist for a  
creditor to present a bankruptcy petition.”.

SCHEDULE 2

[s. 3]

AMENDMENT OF LANDLORD AND TENANT (CONSOLIDATION) ORDINANCE

Item	Provision affected	Amendment
1.	Section 127	Repeal “receiving order in bankruptcy” and substitute “bankruptcy order”.

SCHEDULE 3

[s. 4]

AMENDMENT OF SALE OF GOODS ORDINANCE

Item	Provision affected	Amendment
1.	Section 2(3)	Repeal “whether he has committed an act of bankruptcy or not and”.

## SCHEDULE 4

[s. 5]

## AMENDMENT OF COMMODITIES TRADING ORDINANCE

Item	Provision affected	Amendment
1.	Section 32(1)(c)(iii)	Repeal “composition or scheme of arrangement” and substitute “voluntary arrangement”.

## SCHEDULE 5

[s. 6]

## AMENDMENT OF ROAD TRAFFIC ORDINANCE

Item	Provision affected	Amendment
1.	Sections 77D(1)(d), 88D(1)(d) and 88L(1)(d)	Repeal “has committed an act of bankruptcy” and substitute “grounds exist for a creditor to present a bankruptcy petition against him”.
2.	Schedule 9	In paragraph 2(c) - (a) repeal “the proprietor has committed an act of bankruptcy or” and substitute “grounds exist for a creditor to present a bankruptcy petition against the proprietor or he”; (b) repeal “composition” and substitute “voluntary arrangement”.

## SCHEDULE 6

[s. 7]

## AMENDMENT OF PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

Item	Provision affected	Amendment
1.	Section 18(1)(b)  (ii) and (2)(b)	Repeal “has committed an act of bankruptcy” and substitute “is liable to have a bankruptcy petition presented against him”.

## SCHEDULE 7

[s. 8]

## AMENDMENT OF DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE

Item	Provision affected	Amendment
1.	Section 7(8)(a)	Repeal “receiving order” and substitute “bankruptcy order”.

## SCHEDULE 8

[s. 9]

## AMENDMENT OF SECURITIES AND FUTURES (CLEARING HOUSES) ORDINANCE

Item	Provision affected	Amendment
1.	Section 11(2),  definition of  “prescribed event”	In paragraph (a), repeal “an act of bankruptcy committed by” and substitute “grounds exist for a creditor to present a bankruptcy petition against”.

## SCHEDULE 9

[s. 10]

## AMENDMENT OF LEVERAGED FOREIGN EXCHANGE TRADING ORDINANCE

Item	Provision affected	Amendment
1.	Section 11(2)(c)	Repeal “compromise or scheme of arrangement with creditors, commits an act of bankruptcy” and substitute “voluntary arrangement with creditors, is liable to have a bankruptcy petition presented against him”.

## SCHEDULE 10

[s. 11]

## AMENDMENT OF ORGANIZED AND SERIOUS CRIMES ORDINANCE

Item	Provision affected	Amendment
1.	Section 12(8)(a)	Repeal “receiving order” and substitute “bankruptcy order”.

## SCHEDULE 11

[s. 12]

## AMENDMENT OF TAILAM TUNNEL AND YUEN LONG APPROACH ROAD ORDINANCE

Item	Provision affected	Amendment
1.	Section 50	<p>(a) In paragraph (e), add “and” at the end.</p> <p>(b) Repeal paragraph (f).</p>

### Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) and makes consequential amendments to the Landlord and Tenant (Consolidation) Ordinance (Cap. 7), the Sale of Goods Ordinance (Cap. 26), the Commodities Trading Ordinance (Cap. 250), the Road Traffic Ordinance (Cap. 374), the Protection of Wages on Insolvency Ordinance (Cap. 380), the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Securities and Futures (Clearing Houses) Ordinance (Cap. 420), the Leveraged Foreign Exchange Trading Ordinance (Cap. 451), the Organized and Serious Crimes Ordinance (Cap. 455) and the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474).