

LEGISLATIVE COUNCIL BRIEF

BANKRUPTCY (AMENDMENT) BILL 2004

INTRODUCTION

At the meeting of the Executive Council on 28 September 2004, the Council ADVISED and the Chief Executive ORDERED that the Bankruptcy (Amendment) Bill 2004, at **Annex A**, should be re-introduced into the Legislative Council (LegCo) to facilitate Official Receiver (OR) to outsource summary bankruptcy cases to private-sector insolvency practitioners (PIPs) and make other minor miscellaneous amendments.

JUSTIFICATIONS

2. The economic downturn in recent years, amongst other reasons, has resulted in a drastic increase in bankruptcy cases. The number of bankruptcy orders made by the court amounted to 24 922 in 2003, as opposed to 639 in 1997. The establishment of the OR's Office (ORO) is not geared to such an extent of increase.

3. The Bankruptcy Ordinance (BO) provides that OR shall become the receiver of the bankrupt's property on the making of a bankruptcy order by the court. For bankruptcy cases where the value of the bankrupt's property exceeds \$200,000 (i.e. non-summary cases), OR shall summon a meeting of creditors for the purpose of appointing a PIP as the trustee of the bankrupt's property. For cases where the value of the bankrupt's property does not exceed \$200,000 (i.e. summary cases), no meeting of creditors is called and, upon an order made by the court that the case be administered in a summary manner, OR shall automatically be the trustee. Unlike the Companies Ordinance (CO) which allows OR to outsource summary cases for liquidation of companies without the need to convene a meeting of creditors¹, the BO

¹ According to section 194(1A) of the Companies Ordinance, where OR as the provisional liquidator of the company is of the opinion that the company's property unlikely exceeds in value \$200,000, he may appoint one or more persons as provisional liquidator in his place. In such a case, the court may, under section 227F of the CO, further order that the company be wound up under a summary procedure. The provisional liquidator shall then become the liquidator. There shall be no meetings of creditors or contributories henceforth for the purpose of appointing a liquidator.

does not have similar provisions for summary cases of bankruptcy. Since summary cases accounted for over 90% of the total number of bankruptcy cases, ORO had taken up the trusteeship for over 23 000 cases in 2003.

4. In order to deal with the expanding caseload in a more cost-effective and rapid manner, we **propose** to amend the BO to provide OR with the authority to appoint directly a PIP to handle summary bankruptcy cases, without the need for convening a creditors' meeting which is time consuming and impracticable given the large number of cases. PIPs are mostly professionals in the accountancy and legal sectors. They will be subject to the control of the Court of First Instance and OR under various sections of the BO. The duties and obligations imposed under the BO aside, these PIPs will be expected to perform their duties in accordance with the guidelines and rules of their professional bodies.

5. The Bill also seeks to update a number of provisions in the Ordinance.

THE BILL

6. The main provisions of the Bill are –

(I) The appointment, powers and duties of a provisional trustee

(a) **Clause 2** introduces a new definition of “provisional trustee” to section 2. **Clause 3** amends sections 12 to provide that OR shall become the provisional trustee (instead of being called “receiver”) on the making of a bankruptcy order. Where he considers that the bankrupt's property is unlikely to exceed \$200,000 in value, OR as the provisional trustee may appoint another person as the provisional trustee in his place under the new section 12(1A). **Clause 42** amends section 112A so that, where the court has made an order for summary administration of a bankrupt's estate, the provisional trustee shall become the trustee thereafter.

(b) **Clause 15** amends section 58 to provide that the bankrupt's property shall, on the making of the bankruptcy order, vest in the provisional trustee who shall, subject to qualifications, be regarded as the trustee for the purposes of the BO.

- (c) **Clause 17** amends section 60 to empower a provisional trustee appointed by OR to take possession of the bankrupt's property and to sell or dispose of perishable goods or other specified property².
- (d) **Clause 25** adds a new section 81A to set up the arrangement during any vacancy in the office of a provisional trustee.
- (e) **Clause 27** adds a new section 85A to provide that the remuneration of provisional trustees and trustees in such outsourced cases be fixed and approved by OR.

(II) Respective duties of OR and trustees under the outsourcing regime

Under the present regime, OR is the only person who may act as the receiver in bankruptcy cases. In most cases, he is also the trustee appointed to administer the bankrupt's estate. Provisions in the BO thus do not delineate clearly whether the duties imposed on OR are those related to his official position (as OR) or his trusteeship as regards a bankrupt's property. To cater for the outsourcing scenario, **clauses 20** and **21** amend sections 77 and 78 so that the two sections would only deal with OR's official duties as regards the bankrupt's conduct and estate. Duties of OR and other persons as regards the trusteeship are covered under new sections 86A and 86B as proposed in **clause 28**.

(III) Miscellaneous, transitional and other consequential amendments

- (a) **Clause 11** amends section 37 to set out a revised order³ of priority of costs and charges before the distribution of dividends but after realization of the bankrupt's property.
- (b) **Clause 36** amends section 98(2) to extend the time limit, within which a person may appeal against an order made by the court or the Registrar, from 21 to 28 days⁴.

² This arrangement follows the same approach in liquidation cases as set out in section 199(4) of the CO.

³ The proposed order of priority would bring the BO in line with Rule 179 of the Companies (Winding-up) Rules (Chapter 32H) which sets out the order in this regard under liquidation cases.

⁴ The proposed amendment will bring the BO in line with Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4A).

(c) Arising from the above proposals, some consequential amendments, most of which concerning the references to “Official Receiver”, “trustee”, and “receiver” in the BO, are set out in the remaining clauses. These aside, **Clauses 12, 19 and 32** are amendments in relation to the adaptation of laws. **Clause 47** provides for consequential amendments to other ordinances. **Clause 48** specifies the transitional and savings arrangements.

7. Apart from some textual amendments of minor nature necessitated by the passage of time, the Bill is the same in substance as the previous one introduced into LegCo on 10 December 2003. A mark-up copy of the Bill showing these amendments is at **Annex B**.

LEGISLATIVE TIMETABLE

The Legislative timetable is as follows –

Publication in the Gazette	8 October 2004
First Reading and commencement of Second Reading debate	13 October 2004
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

8. The financial, civil service and economic implications of the proposals in the Bill are set out at **Annex C**. These proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendments will not affect the current binding effect of the BO. They have no environmental and sustainability implications.

PUBLIC CONSULTATION

9. Public consultation had been conducted before the introduction of the Bill into LegCo during its second term. Details of consultation are recapitulated in the paragraphs 10 and 11 below.

10. We conducted a public consultation exercise on the review of the role of the ORO in the provision of insolvency administration services in June 2002. Submissions received from responding parties (including professional bodies such as Hong Kong Association of Banks, Law Society of Hong Kong, Hong Kong Institute of Certified Public Accountants, and Hong Kong Institute of Company Secretaries) indicated general support for the proposal of outsourcing bankruptcy cases.

11. We briefed the LegCo Panel on Financial Affairs on the outcome of the consultation in May 2003, during which Members did not have adverse comment on the outsourcing proposal and noted that we would pursue it as soon as possible. We issued a further information paper to the Panel in October 2003, setting out more details of the legislative proposals.

PUBLICITY

12. A press release will be issued on 6 October 2004. A spokesperson will be available to handle enquiries.

BACKGROUND

13. The Bill was introduced into LegCo on 10 December 2003 but was not scrutinised due to limited time available in the last legislative session of its second term of office. Pursuant to section 9(4) of the Legislative Council Ordinance, the consideration of the Bill is to lapse at the end of the term, i.e. on 30 September 2004. We need to re-introduce the Bill into LegCo at the earliest possible juncture in the 2004-05 legislative session.

ENQUIRIES

14. Enquiries on this brief should be addressed to Mr Alan Lo, Principal Assistant Secretary for Financial Services and the Treasury (phone number: 2528 9016) or Ms May Lee, Assistant Official Receiver (Legal Services) (phone number: 2867 2468).

**Financial Services Branch
Financial Services and the Treasury Bureau
October 2004**

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A BILL

To

Amend the Bankruptcy Ordinance to empower the Official Receiver to outsource bankruptcy cases in specified circumstances, to provide for the respective roles of the Official Receiver, a provisional trustee and a trustee, to bring section 37 in line with rule 179(1) of the Companies (Winding-up) Rules, to adapt certain provisions to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China, to update certain outdated provisions, and to provide for related and consequential matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance 2004.

(2) Subject to subsections (3) and (4), this Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

(3) This section shall come into operation on the day on which this Ordinance is published in the Gazette.

(4) Sections 12, 19 and 32 shall be deemed to have come into operation on 1 July 1997.

(5) Subsection (4) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

2. Interpretation

Section 2 of the Bankruptcy Ordinance (Cap. 6) is amended -

- (a) in the definition of “**誓章**”, by repealing the full stop at the end and substituting a semicolon;
- (b) by adding -
 - ““provisional trustee” (**暫行受託人**), in relation to a bankrupt, means -
 - (a) where no person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the Official Receiver; or
 - (b) where any person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the person;”.

3. Effect of bankruptcy order

Section 12 is amended -

- (a) in subsection (1), by repealing “the Official Receiver shall be thereby constituted receiver” and substituting “, the Official Receiver shall thereby become the provisional trustee”;
- (b) by adding -
 - “(1A) Where the Official Receiver as the provisional trustee considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, he may at any time appoint any person as

provisional trustee of the property of the bankrupt in his place.

(1B) The power of the Official Receiver to appoint a person as provisional trustee includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

4. Power to appoint interim trustee

Section 13 is amended by repealing “receiver” and substituting “trustee”.

5. Power to appoint special manager

Section 15 is amended -

- (a) in subsection (1), by repealing “to act until a trustee is appointed, and with” and substituting “, who shall have”;
- (b) by adding -

“(4) The term of office of the special manager shall last until -

- (a) in a case where a person other than the Official Receiver is appointed as provisional trustee, the appointment; or

- (b) in any other case, there is a trustee in relation to the bankrupt's estate.”.

6. Summoning of meeting to appoint first trustee

Section 17A is amended -

- (a) in subsection (1), by adding “under section 17” after “trustee”;
- (b) in subsections (1), (3) and (4), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

7. Power of creditors to requisition meeting

Section 17B is amended -

- (a) in subsection (1), by repealing “the trustee” and substituting “a trustee under section 17”;
- (b) in subsections (1), (2) and (3), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

8. Statement of affairs

Section 18 is amended -

- (a) in subsections (1) and (3), by repealing “Official Receiver” wherever it appears and substituting “trustee”;
- (b) in subsection (5), by repealing “or Official Receiver”.

9. Public examination of bankrupt

Section 19 is amended -

- (a) in subsection (1), by adding “or the trustee” after “Receiver”;
- (b) in subsections (2) and (3), by repealing “Official Receiver” and substituting “trustee”;
- (c) by adding -

“(4A) The trustee may, before or at any time after making an application under subsection (1), in writing request the creditor at whose instance the application is made to deposit with him within the specified time such sum or further sum as he considers necessary to pay his costs and expenses in holding the public examination.

(4B) Notwithstanding anything in subsections (2) and (3), the trustee may refuse to make an application under subsection (1) or discontinue the public examination concerned if the creditor to whom a request is made under subsection (4A) fails to comply with the request.”;

- (d) in subsection (5)(b), by repealing “, if his appointment has taken effect”;
- (e) by repealing subsection (8).

10. Provisions where person other than Official Receiver is appointed trustee

Section 23(1)(b) is amended by repealing “that officer” and substituting “the Official Receiver”.

11. Priority of costs and charges

Section 37 is amended -

- (a) in subsection (1) -
 - (i) by repealing “actual expenses incurred in” and substituting “expenses properly incurred in preserving, getting in or”;
 - (ii) by repealing paragraphs (a), (b), (c) and (d) and substituting -
 - “(a) the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the Official Receiver, whether acting as trustee or otherwise, including the costs of any person properly employed by him;
 - (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
 - (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;

- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination under this Ordinance, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the Official Receiver, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the Official Receiver;
- (h) the remuneration of any trustee other than the Official Receiver; and
- (i) the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.”;

(b) by adding -

“(3) For the purposes of subsection (1)(e), if the shorthand writer is appointed or authorized by

the Official Receiver, the cost of the shorthand notes shall be regarded as an expense properly incurred in getting in or realizing the assets of the bankrupt.”.

12. Priority of debts

Section 38(10) is amended, in the definition of “statutory debt”, by repealing “or imperial enactment”.

13. Restriction of rights of creditor under execution or attachment

Section 45(1) is amended by repealing “in bankruptcy”.

14. Duties of bailiff as to goods taken in execution

Section 46 is amended -

- (a) in subsection (1) -
 - (i) by repealing “Official Receiver,” and substituting “trustee,”;
 - (ii) by repealing “Official Receiver or”;
- (b) in subsection (3), by repealing “Official Receiver or”.

15. Vesting and transfer of property

Section 58(1) is repealed and the following substituted -

“(1) On the making of a bankruptcy order, the property of the bankrupt shall vest in the Official Receiver.

(1A) On the appointment of a person other than the Official Receiver as provisional trustee, the property shall forthwith pass to and vest in the provisional trustee appointed.

(1B) Save in sections 15(4), 17, 17A, 17B, 42(3), 43A, 43B, 43C, 58(2), 60(1), 79, 80, 81, 85, 85A, 96(1) and 112A, the provisional trustee shall, unless the context otherwise requires, be regarded as the trustee for the purposes of this Ordinance.”.

16. Disclaimer of onerous property

Section 59(7) is amended by repealing “in bankruptcy”.

17. Powers of provisional trustee and trustee to deal with property of the bankrupt

Section 60 is amended -

- (a) by renumbering it as section 60(1);
- (b) in subsection (1) -
 - (i) by repealing “, the trustee” and substituting “, a trustee or the Official Receiver when acting as provisional trustee”;
 - (ii) in paragraph (a), by repealing “Official Receiver or” and substituting “trustee or the Official Receiver when acting as provisional”;
- (c) by adding -
 - “(2) Notwithstanding any other provisions of this Ordinance but subject to subsections (3) and (4), a provisional trustee other than the Official Receiver may do all or any of the following things -
 - (a) take into his custody or under his control all the property to

which the bankrupt is or appears to be entitled;

- (b) sell or dispose of perishable goods, or any property (other than derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if such property is not immediately sold or disposed of;
- (c) subject to section 61, do all such other things as may be necessary for protecting or preserving the bankrupt's property.

(3) A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised under an order of the court or with the prior approval of the Official Receiver.

(4) A provisional trustee other than the Official Receiver shall not sell or dispose of anything under subsection (2)(b) to a person who is an associate of the bankrupt, unless the sale or disposal

is under an order of the court or with the prior approval of the Official Receiver.

(5) For the purposes of subsection (4), any question whether a person is an associate of another person shall be determined in accordance with section 51B as if -

- (a) that section were applicable also for the purposes of such determination; and
- (b) references to the “debtor” in that section were references to the “bankrupt” in subsection (4).

(6) The Official Receiver shall not be personally liable for any costs and charges incurred by any person as a result of any refusal to grant approval under subsection (3) or (4).”.

18. Right of trustee to inspect goods pawned, etc.

Section 64 is amended by repealing “Official Receiver or”.

19. Appointment of Official Receiver and other officers

Section 75(1), (6) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.

20. Duties of Official Receiver as regards the bankrupt’s conduct

Section 77 is amended -

- (a) by repealing “the bankrupt,” and substituting “the conduct of a bankrupt,”;
- (b) by repealing paragraph (a) and substituting -
 - “(a) to consider any report submitted to him under section 86A and take such action on the report as he considers appropriate;”;
- (c) by repealing paragraph (b);
- (d) in paragraph (c), by repealing “fraudulent”.

21. Duties of Official Receiver as to bankrupt’s estate

Section 78 is amended -

- (a) in subsection (1) -
 - (i) by repealing paragraph (a) and substituting -
 - “(a) to act as interim trustee if so appointed by the court;”;
 - (ii) by repealing paragraphs (b), (c), (d) and (e);
 - (iii) in paragraph (f), by repealing everything after “order” and substituting a semicolon;
 - (iv) in paragraph (g), by repealing the semicolon and substituting a full stop;
 - (v) by repealing paragraph (h);
- (b) in subsection (2) -
 - (i) by repealing “receiver or manager” and substituting “trustee;”;
 - (ii) by repealing “and manager”;
- (c) by repealing subsection (3).

22. Part V heading substituted

The heading of Part V is repealed and the following substituted -
“TRUSTEES AND PROVISIONAL TRUSTEES”.

23. Section substituted

Section 79 is repealed and the following substituted -

**“79. Official name of trustee and
provisional trustee**

(1) The official name of a provisional trustee shall be “the provisional trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(2) The official name of a trustee shall be “the trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(3) By his official name, a provisional trustee or trustee may do all acts that are required or authorized to be done by him in the execution of his office.”.

**24. Power to appoint joint or successive trustees
and provisional trustees**

Section 80(1) is repealed and the following substituted -

“(1) When 2 or more persons are appointed as provisional trustees, the appointment shall state whether any act required or authorized to be done by a provisional trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a provisional trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.

(1A) When 2 or more persons are appointed as trustees, the appointment shall state whether any act required or authorized to be done by a trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.”.

25. Section added

The following is added immediately after section 81 -

“81A. Vacancy in office of provisional trustee

(1) If a vacancy occurs in the office of a provisional trustee, the Official Receiver shall -

- (a) in a case where the Official Receiver considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, either appoint another person to fill the vacancy or act as the provisional trustee; or
- (b) in any other case, act as the provisional trustee.

(2) The power of the Official Receiver to appoint another person to fill a vacancy may be exercised without a creditors’ meeting, and it includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

26. Discretionary powers of trustee and control thereof

Section 82(2) is amended -

- (a) by repealing “or Official Receiver” where it twice appears;

- (b) by repealing “or the Official Receiver, as the case may be,”.

27. Section added

The following is added -

“85A. Remuneration of provisional trustee and the first trustee constituted under section 112A

(1) The remuneration of the following persons shall be fixed by the Official Receiver in accordance with a scale of fees or on such other basis as the Official Receiver may from time to time approve in writing -

- (a) a provisional trustee other than the Official Receiver;
- (b) in a case where section 112A applies and the first trustee constituted under subsection (1)(i) of that section is not the Official Receiver, that first trustee.

(2) If one-fourth in number or value of the creditors apply to the Official Receiver or the Official Receiver is of the opinion that the remuneration of the provisional trustee or first trustee referred to in subsection (1) should be reviewed, the Official Receiver may apply to the court and thereupon the court may confirm, increase or reduce such remuneration.

(3) Where the provisional trustee or first trustee referred to in subsection (1) acts without remuneration, he shall be allowed out of the bankrupt’s estate such expenses properly incurred by him in or about the proceedings of the bankruptcy as the court may approve.

(4) The provisional trustee or first trustee referred to in subsection (1) shall not under any circumstances whatever make any arrangement for, or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever to be made or payable to him beyond his said remuneration payable out of the estate, and he shall not make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy.”.

28. Sections added

The following are added immediately after section 86 -

“Duties of trustee as regards the bankrupt’s conduct and estate

86A. Duties of trustee as regards the bankrupt’s conduct

- (1) As regards the conduct of a bankrupt, it shall be the duty of the trustee -
- (a) to investigate the conduct of the bankrupt and to submit a report in accordance with subsection (2) or (3), as the case may be, stating whether there is reason to believe that the bankrupt has committed any act that constitutes an indictable offence under this Ordinance;
 - (b) to report to the court on any conduct of the bankrupt that justifies the court in refusing,

suspending or qualifying an order for the bankrupt's discharge;

- (c) to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice or the Official Receiver may direct.

(2) Where the trustee is a person other than the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the Official Receiver.

(3) Where the trustee is the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the court.

86B. Duties of trustee as regards the bankrupt's estate

(1) As regards the estate of a bankrupt, it shall be the duty of the trustee -

- (a) to raise money in any case where in the interests of the creditors it appears necessary so to do;
- (b) to preside at the first meeting of creditors if it is summoned;
- (c) to issue forms of proxy for use at the meetings of creditors;
- (d) to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs;
- (e) to advertise the date of the first meeting of creditors and of the bankrupt's public examination,

and such other matters as it may be necessary to advertise;

- (f) to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose to employ at the expense of the estate any person or persons to assist in its preparation.

(2) The trustee shall account to the court and pay over all moneys and deal with all securities in such manner as the court from time to time directs.”.

29. Trustee to provide list of creditors

Section 87 is amended -

- (a) by repealing “or Official Receiver”;
- (b) by repealing “furnish and transmit to him by post” and substituting “provide the creditor with”.

30. Trustee to provide statement of accounts

Section 88 is amended -

- (a) by repealing “or Official Receiver to furnish and transmit to the creditors” and substituting “to provide the creditors with”;
- (b) by repealing “furnish and transmit such” and substituting “provide the”;
- (c) by repealing “furnished” and substituting “provided”;
- (d) by repealing “or Official Receiver, as the case may be,”;

- (e) by repealing “furnishing and transmitting” and substituting “providing”.

31. Annual statement of proceedings

Section 89 is amended -

- (a) in subsection (1), by repealing “transmit to the Official Receiver” and substituting “provide the Official Receiver with”;
- (b) in subsection (2), by repealing “transmitted” and substituting “provided”.

32. Payment of moneys into bank

Section 91(1) is amended by repealing “Governor” and substituting “Chief Executive”.

33. Record and account to be kept by trustee

Section 92(1) is amended by repealing “if in Chinese shall be supplemented by a correct English translation thereof and”.

34. Audit of trustee’s accounts

Section 93 is amended -

- (a) by repealing subsection (1) and substituting -

“(1) A trustee other than the Official Receiver shall keep an account of his receipts and payments as such trustee.

(1A) The Official Receiver may at any time require the trustee to provide him with the account,

and the trustee shall comply with the requirement within the specified time.”;

- (b) in subsection (3), by repealing “furnish” and substituting “provide”.

35. Removal of trustee

Section 96(2)(a) is amended by repealing “appointed by the creditors” and substituting “, other than the Official Receiver,”.

36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing “21” and substituting “28”.

37. General rules of procedure

Section 99(3) is amended -

- (a) in paragraph (b), by repealing “annual adjudications” and substituting “annul bankruptcy orders”;
- (b) in paragraph (d), by repealing “orders of discharge” and substituting “discharge from bankruptcy”.

38. Court may make a regulating order

Section 100A(1) is amended -

- (a) by repealing “or by” and substituting “, the trustee or”;
- (b) by repealing “whether presented before or after the commencement of the Bankruptcy (Amendment) Ordinance 1965 (21 of 1965),”.

39. Appointment and removal of trustee after the making of regulating order

Section 100D(1) is repealed and the following substituted -

“(1) The court may, on application being made by the Official Receiver or the trustee appointed or acting before the making of the regulating order under section 100A, by order appoint the person who makes the application or any other person recommended by him as trustee of the property of the bankrupt under the regulating order.

(1A) The court may, on application being made by the Official Receiver, by order remove any trustee appointed under subsection (1) and fill any vacancy.

(1B) On the making of an order under subsection (1) or (1A), section 81(1), (2) and (3) or 96(1) shall cease to apply to the bankruptcy and any action taken under such provisions before the making of the regulating order in respect of the appointment or removal of a trustee or filling of any vacancy shall cease to have effect.”.

40. Creditors to give notice of intention to take part in public examination

Section 100G is amended -

- (a) in subsection (1), by repealing everything after “intention to” and substituting -

“-

- (a) in a case where the Official Receiver is the applicant for the public examination, the Official Receiver; or

(b) in a case where the trustee is the applicant for the public examination, the trustee.”;

(b) by adding -

“(1A) The court may also direct that no creditor may exercise his right to question the bankrupt on his public examination under section 19(5) unless the notice under subsection (1) is received by the Official Receiver or the trustee, as the case may be, within such time as may be specified by the court.”.

41. Proof of debts in the case of banks

Section 100H(1) is amended by adding “or trustee” after “Receiver”.

42. Application of Ordinance to small bankruptcies

Section 112A is amended -

- (a) in subsection (1) -
 - (i) in paragraphs (b) and (i), by repealing “Official Receiver” and substituting “provisional trustee”;
 - (ii) in paragraph (ii), by repealing “Official Receiver” and substituting “trustee”;
- (b) in subsection (2), by repealing “Official Receiver” and substituting “trustee”.

43. Disposal of Official Receiver’s fees

Section 115 is amended by repealing “receiver” and substituting “trustee”.

44. Formal defect not to invalidate proceedings

Section 124(2) is amended by repealing “receiver,”.

45. Fraudulent debtors

Section 129(6) is amended by adding “a provisional trustee and” after “includes”.

46. Criminal Bankruptcy Orders

Schedule 1 is amended -

- (a) in paragraph 11(2), by repealing “in bankruptcy”;
- (b) in paragraph 14(3) -
 - (i) in sub-sub-paragraph (c), by repealing “, (8)”;
 - (ii) in sub-sub-paragraph (g), by repealing “78(1)(e)” and substituting “86B(1)(d)”.

47. Consequential amendments

The enactments specified in column 2 of the Schedule are amended in the manner set out in column 3 of the Schedule.

48. Transitional and savings provisions

(1) Notwithstanding anything contained in this Ordinance, the amendments effected under this Ordinance (except sections 12, 19 and 32) shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if this Ordinance had not been enacted.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, “commencement date” (生效日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(2) of this Ordinance.

SCHEDULE

[s. 47]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Amendment
1.	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	<p>(a) In section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
2.	Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg. A)	<p>(a) In Schedule 2, in section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In Schedule 2, in section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
3.	Organized and Serious	<p>(a) In section 2(1), in the definition of</p>

- | | |
|---|--|
| Crimes Ordinance (Cap. 455) | “insolvency officer”, in paragraph (b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”. |
| | (b) In section 21(5), repeal “receiver” where it twice appears and substitute “trustee”. |
| 4. Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) | (a) In Schedule 2, in section 12(5), repeal “receiver” where it twice appears and substitute “trustee”. |
| | (b) In Schedule 2, in section 14(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”. |
| 5. Securities and Futures (Licensing and Registration) Rules (Cap. 571 sub. leg. S) | In Schedule 1, in Part 2, in section 1(k), repeal “receiver” and substitute “provisional trustee”. |

Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) (“BO”) for the following main purposes -

- (a) to empower the Official Receiver to outsource bankruptcy cases to private sector insolvency practitioners in specified circumstances;
- (b) to provide for the powers and duties of a provisional trustee;
- (c) following the introduction of the outsourcing regime, to adjust or further provide for the respective powers and duties of the Official Receiver and a trustee;
- (d) to amend the priority of payment of costs and charges out of a bankrupt's estate as set out in section 37 of the BO to bring the section in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H);
- (e) to adapt sections 38, 75 and 91 of the BO to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China; and
- (f) to update certain outdated provisions and make other amendments that are related to or consequent upon the matters set out in paragraphs (a), (b) and (c).

2. Clause 1 sets out the short title of the Bill and provides for the commencement of the Bill.

3. Clause 2 amends section 2 of the BO by adding a new definition of "provisional trustee".

4. Clause 3 adds 2 new subsections to section 12 of the BO, which set out the circumstances under which the Official Receiver may appoint a person as provisional trustee in his place and empower the Official Receiver to appoint joint provisional trustees.

5. Clause 5 amends section 15 of the BO to provide for the term of office of a special manager appointed under this section.

6. Clause 9 amends section 19 of the BO so that the trustee, instead of the Official Receiver, is the person who is obliged to apply for public examination of a bankrupt under subsections (2) and (3) of that section. Clause 9 also adds 2 new subsections to section 19 of the BO, so that the trustee is empowered to make a request for deposit of such sum of money as he considers necessary for holding the public examination.
7. Clause 11 amends section 37 of the BO to bring the order of priority of payment of costs and charges out of a bankrupt's estate in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).
8. Clause 15 amends section 58 of the BO. The vesting of a bankrupt's property in the Official Receiver on the making of a bankruptcy order, and subsequently in the provisional trustee if appointed under section 12(1A), are provided for in the new subsections (1) and (1A). The new subsection (1B) provides that a provisional trustee shall, subject to specified circumstances, be regarded as a trustee for the purposes of the BO.
9. Clause 17 amends section 60 of the BO. 5 new subsections are added to provide for the powers of a provisional trustee in dealing with the bankrupt's property, and to exempt the Official Receiver from personal liability for costs and charges in a case where he refuses to grant approval under the new subsection (3) or (4).
10. Clause 20 amends section 77 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's conduct.
11. Clause 21 amends section 78 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's estate.
12. Clause 23 replaces the existing section 79 of the BO. It provides for the respective official names of a provisional trustee and a trustee, and empowers them to act by their official names.
13. Clause 24 amends section 80 of the BO and makes provisions for the appointment of joint provisional trustees and joint trustees.

14. Clause 25 adds a new section 81A to the BO. It states how a vacancy in the office of a provisional trustee shall be filled.
15. Clause 27 adds a new section 85A to the BO. It deals with the remuneration of a provisional trustee and the first trustee constituted under section 112A(1)(i).
16. Clause 28 adds 2 new sections to the BO. Sections 86A and 86B provide for the duties of a trustee as regards the conduct and estate of a bankrupt. Some of these duties are transposed from the existing sections 77 and 78 of the BO.
17. Clause 35 amends section 96 of the BO so that the Court of First Instance is empowered to remove a trustee or provisional trustee other than the Official Receiver, regardless of whether he was appointed by the bankrupt's creditors or not.
18. Clause 36 amends section 98 of the BO to extend the time limit within which a person may appeal against an order mentioned in subsection (1) of that section. This will bring the section in line with Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A).
19. Clauses 37 and 38 amend sections 99 and 100A respectively of the BO mainly to update certain outdated expressions in these sections.
20. Clause 39 amends section 100D of the BO. In particular, the existing subsection (1) is amended and divided into 3 subsections to facilitate reading.
21. Clause 40 amends section 100G of the BO. Subsection (1) is amended to specify the person to whom a notice of intention to take part in the public examination of a bankrupt shall be given. The new subsection (1A) originally forms part of the existing subsection (1). It is now separated from it to facilitate reading.
22. Clauses 47 and 48 contain consequential amendments and transitional provisions.

A BILL

To

Amend the Bankruptcy Ordinance to empower the Official Receiver to outsource bankruptcy cases in specified circumstances, to provide for the respective roles of the Official Receiver, a provisional trustee and a trustee, to bring section 37 in line with rule 179(1) of the Companies (Winding-up) Rules, to adapt certain provisions to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China, to update certain outdated provisions, and to provide for related and consequential matters.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance ~~2003~~2004.

(2) Subject to subsections (3) and (4), this Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

(3) This section shall come into operation on the day on which this Ordinance is published in the Gazette.

(4) Sections 12, 19 and 32 shall be deemed to have come into operation on 1 July 1997.

(5) Subsection (4) shall be subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383).

2. Interpretation

Section 2 of the Bankruptcy Ordinance (Cap. 6) is amended -

- (a) in the definition of “**誓章**”, by repealing the full stop at the end and substituting a semicolon;
- (b) by adding -
 - ““provisional trustee” (**暫行受託人**), in relation to a bankrupt, means -
 - (a) where no person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the Official Receiver; or
 - (b) where any person is appointed as provisional trustee of the property of the bankrupt under section 12(1A), the person;”.

3. Effect of bankruptcy order

Section 12 is amended -

- (a) in subsection (1), by repealing “the Official Receiver shall be thereby constituted receiver” and substituting “, the Official Receiver shall thereby become the provisional trustee”;
- (b) by adding -
 - “(1A) Where the Official Receiver as the provisional trustee considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, he may at any time appoint any person as

provisional trustee of the property of the bankrupt in his place.

(1B) The power of the Official Receiver to appoint a person as provisional trustee includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

4. Power to appoint interim trustee

Section 13 is amended by repealing “receiver” and substituting “trustee”.

5. Power to appoint special manager

Section 15 is amended -

- (a) in subsection (1), by repealing “to act until a trustee is appointed, and with” and substituting “, who shall have”;
- (b) by adding -

“(4) The term of office of the special manager shall last until -

- (a) in a case where a person other than the Official Receiver is appointed as provisional trustee, the appointment; or

- (b) in any other case, there is a trustee in relation to the bankrupt's estate.”.

6. Summoning of meeting to appoint first trustee

Section 17A is amended -

- (a) in subsection (1), by adding “under section 17” after “trustee”;
- (b) in subsections (1), (3) and (4), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

7. Power of creditors to requisition meeting

Section 17B is amended -

- (a) in subsection (1), by repealing “the trustee” and substituting “a trustee under section 17”;
- (b) in subsections (1), (2) and (3), by repealing “Official Receiver” wherever it appears and substituting “provisional trustee”.

8. Statement of affairs

Section 18 is amended -

- (a) in subsections (1) and (3), by repealing “Official Receiver” wherever it appears and substituting “trustee”;
- (b) in subsection (5), by repealing “or Official Receiver”.

9. Public examination of bankrupt

Section 19 is amended -

- (a) in subsection (1), by adding “or the trustee” after “Receiver”;
- (b) in subsections (2) and (3), by repealing “Official Receiver” and substituting “trustee”;
- (c) by adding -

“(4A) The trustee may, before or at any time after making an application under subsection (1), in writing request the creditor at whose instance the application is made to deposit with him within the specified time such sum or further sum as he considers necessary to pay his costs and expenses in holding the public examination.

(4B) Notwithstanding anything in subsections (2) and (3), the trustee may refuse to make an application under subsection (1) or discontinue the public examination concerned if the creditor to whom a request is made under subsection (4A) fails to comply with the request.”;

- (d) in subsection (5)(b), by repealing “, if his appointment has taken effect”;
- (e) by repealing subsection (8).

10. Provisions where person other than Official Receiver is appointed trustee

Section 23(1)(b) is amended by repealing “that officer” and substituting “the Official Receiver”.

11. Priority of costs and charges

Section 37 is amended -

- (a) in subsection (1) -
 - (i) by repealing “actual expenses incurred in” and substituting “expenses properly incurred in preserving, getting in or”;
 - (ii) by repealing paragraphs (a), (b), (c) and (d) and substituting -
 - “(a) the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the Official Receiver, whether acting as trustee or otherwise, including the costs of any person properly employed by him;
 - (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
 - (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;

- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination under this Ordinance, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the Official Receiver, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the Official Receiver;
- (h) the remuneration of any trustee other than the Official Receiver; and
- (i) the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.”;

(b) by adding -

“(3) For the purposes of subsection (1)(e), if the shorthand writer is appointed or authorized by

the Official Receiver, the cost of the shorthand notes shall be regarded as an expense properly incurred in getting in or realizing the assets of the bankrupt.”.

12. Priority of debts

Section 38(10) is amended, in the definition of “statutory debt”, by repealing “or imperial enactment”.

13. Restriction of rights of creditor under execution or attachment

Section 45(1) is amended by repealing “in bankruptcy”.

14. Duties of bailiff as to goods taken in execution

Section 46 is amended -

- (a) in subsection (1) -
 - (i) by repealing “Official Receiver,” and substituting “trustee,”;
 - (ii) by repealing “Official Receiver or”;
- (b) in subsection (3), by repealing “Official Receiver or”.

15. Vesting and transfer of property

Section 58(1) is repealed and the following substituted -

“(1) On the making of a bankruptcy order, the property of the bankrupt shall vest in the Official Receiver.

(1A) On the appointment of a person other than the Official Receiver as provisional trustee, the property shall forthwith pass to and vest in the provisional trustee appointed.

(1B) Save in sections 15(4), 17, 17A, 17B, 42(3), 43A, 43B, 43C, 58(2), 60(1), 79, 80, 81, 85, 85A, 96(1) and 112A, the provisional trustee shall, unless the context otherwise requires, be regarded as the trustee for the purposes of this Ordinance.”.

16. Disclaimer of onerous property

Section 59(7) is amended by repealing “in bankruptcy”.

17. Powers of provisional trustee and trustee to deal with property of the bankrupt

Section 60 is amended -

- (a) by renumbering it as section 60(1);
- (b) in subsection (1) -
 - (i) by repealing “, the trustee” and substituting “, a trustee or the Official Receiver when acting as provisional trustee”;
 - (ii) in paragraph (a), by repealing “Official Receiver or” and substituting “trustee or the Official Receiver when acting as provisional”;
- (c) by adding -
 - “(2) Notwithstanding any other provisions of this Ordinance but subject to subsections (3) and (4), a provisional trustee other than the Official Receiver may do all or any of the following things -
 - (a) take into his custody or under his control all the property to

which the bankrupt is or appears to be entitled;

- (b) sell or dispose of perishable goods, or any property (other than derivatives, warrants, options, shares or choses in action) the estimated value of which is less than \$100,000 and is likely to significantly diminish if such property is not immediately sold or disposed of;
- (c) subject to section 61, do all such other things as may be necessary for protecting or preserving the bankrupt's property.

(3) A provisional trustee other than the Official Receiver may also exercise a power under subsection (1) if the power is exercised under an order of the court or with the prior approval of the Official Receiver.

(4) A provisional trustee other than the Official Receiver shall not sell or dispose of anything under subsection (2)(b) to a person who is an associate of the bankrupt, unless the sale or disposal

is under an order of the court or with the prior approval of the Official Receiver.

(5) For the purposes of subsection (4), any question whether a person is an associate of another person shall be determined in accordance with section 51B as if -

- (a) that section were applicable also for the purposes of such determination; and
- (b) references to the “debtor” in that section were references to the “bankrupt” in subsection (4).

(6) The Official Receiver shall not be personally liable for any costs and charges incurred by any person as a result of any refusal to grant approval under subsection (3) or (4).”.

18. Right of trustee to inspect goods pawned, etc.

Section 64 is amended by repealing “Official Receiver or”.

19. Appointment of Official Receiver and other officers

Section 75(1), (6) and (7) is amended by repealing “Governor” and substituting “Chief Executive”.

20. Duties of Official Receiver as regards the bankrupt’s conduct

Section 77 is amended -

- (a) by repealing “the bankrupt,” and substituting “the conduct of a bankrupt,”;
- (b) by repealing paragraph (a) and substituting -
 - “(a) to consider any report submitted to him under section 86A and take such action on the report as he considers appropriate;”;
- (c) by repealing paragraph (b);
- (d) in paragraph (c), by repealing “fraudulent”.

21. Duties of Official Receiver as to bankrupt’s estate

Section 78 is amended -

- (a) in subsection (1) -
 - (i) by repealing paragraph (a) and substituting -
 - “(a) to act as interim trustee if so appointed by the court;”;
 - (ii) by repealing paragraphs (b), (c), (d) and (e);
 - (iii) in paragraph (f), by repealing everything after “order” and substituting a semicolon;
 - (iv) in paragraph (g), by repealing the semicolon and substituting a full stop;
 - (v) by repealing paragraph (h);
- (b) in subsection (2) -
 - (i) by repealing “receiver or manager” and substituting “trustee;”;
 - (ii) by repealing “and manager”;
- (c) by repealing subsection (3).

22. Part V heading substituted

The heading of Part V is repealed and the following substituted -
“TRUSTEES AND PROVISIONAL TRUSTEES”.

23. Section substituted

Section 79 is repealed and the following substituted -

**“79. Official name of trustee and
provisional trustee**

(1) The official name of a provisional trustee shall be “the provisional trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(2) The official name of a trustee shall be “the trustee of the property of _____ a bankrupt” (inserting the name of the bankrupt).

(3) By his official name, a provisional trustee or trustee may do all acts that are required or authorized to be done by him in the execution of his office.”.

**24. Power to appoint joint or successive trustees
and provisional trustees**

Section 80(1) is repealed and the following substituted -

“(1) When 2 or more persons are appointed as provisional trustees, the appointment shall state whether any act required or authorized to be done by a provisional trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a provisional trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.

(1A) When 2 or more persons are appointed as trustees, the appointment shall state whether any act required or authorized to be done by a trustee is to be done by all or any one or more of such persons, but all such persons shall each be regarded as a trustee for the purposes of this Ordinance, and shall be joint tenants of the property of the bankrupt.”.

25. Section added

The following is added immediately after section 81 -

“81A. Vacancy in office of provisional trustee

(1) If a vacancy occurs in the office of a provisional trustee, the Official Receiver shall -

- (a) in a case where the Official Receiver considers that the value of the property of the bankrupt is unlikely to exceed \$200,000, either appoint another person to fill the vacancy or act as the provisional trustee; or
- (b) in any other case, act as the provisional trustee.

(2) The power of the Official Receiver to appoint another person to fill a vacancy may be exercised without a creditors’ meeting, and it includes power to appoint 2 or more persons as joint provisional trustees; but such an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.”.

26. Discretionary powers of trustee and control thereof

Section 82(2) is amended -

- (a) by repealing “or Official Receiver” where it twice appears;

- (b) by repealing “or the Official Receiver, as the case may be,”.

27. Section added

The following is added -

“85A. Remuneration of provisional trustee and the first trustee constituted under section 112A

(1) The remuneration of the following persons shall be fixed by the Official Receiver in accordance with a scale of fees or on such other basis as the Official Receiver may from time to time approve in writing -

- (a) a provisional trustee other than the Official Receiver;
- (b) in a case where section 112A applies and the first trustee constituted under subsection (1)(i) of that section is not the Official Receiver, that first trustee.

(2) If one-fourth in number or value of the creditors apply to the Official Receiver or the Official Receiver is of the opinion that the remuneration of the provisional trustee or first trustee referred to in subsection (1) should be reviewed, the Official Receiver may apply to the court and thereupon the court may confirm, increase or reduce such remuneration.

(3) Where the provisional trustee or first trustee referred to in subsection (1) acts without remuneration, he shall be allowed out of the bankrupt’s estate such expenses properly incurred by him in or about the proceedings of the bankruptcy as the court may approve.

(4) The provisional trustee or first trustee referred to in subsection (1) shall not under any circumstances whatever make any arrangement for, or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever to be made or payable to him beyond his said remuneration payable out of the estate, and he shall not make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy.”.

28. Sections added

The following are added immediately after section 86 -

“Duties of trustee as regards the bankrupt’s conduct and estate

86A. Duties of trustee as regards the bankrupt’s conduct

- (1) As regards the conduct of a bankrupt, it shall be the duty of the trustee -
- (a) to investigate the conduct of the bankrupt and to submit a report in accordance with subsection (2) or (3), as the case may be, stating whether there is reason to believe that the bankrupt has committed any act that constitutes an indictable offence under this Ordinance;
 - (b) to report to the court on any conduct of the bankrupt that justifies the court in refusing,

suspending or qualifying an order for the bankrupt's discharge;

- (c) to take such part and give such assistance in relation to the prosecution of any bankrupt as the Secretary for Justice or the Official Receiver may direct.

(2) Where the trustee is a person other than the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the Official Receiver.

(3) Where the trustee is the Official Receiver, the report referred to in subsection (1)(a) shall be submitted to the court.

86B. Duties of trustee as regards the bankrupt's estate

(1) As regards the estate of a bankrupt, it shall be the duty of the trustee -

- (a) to raise money in any case where in the interests of the creditors it appears necessary so to do;
- (b) to preside at the first meeting of creditors if it is summoned;
- (c) to issue forms of proxy for use at the meetings of creditors;
- (d) to report to the creditors as to any proposal which the bankrupt may have made with respect to the mode of liquidating his affairs;
- (e) to advertise the date of the first meeting of creditors and of the bankrupt's public examination,

and such other matters as it may be necessary to advertise;

- (f) to assist the bankrupt in preparing his statement of affairs in case the bankrupt has no solicitor acting for him and is unable properly to prepare it himself, and for this purpose to employ at the expense of the estate any person or persons to assist in its preparation.

(2) The trustee shall account to the court and pay over all moneys and deal with all securities in such manner as the court from time to time directs.”.

29. Trustee to provide list of creditors

Section 87 is amended -

- (a) by repealing “or Official Receiver”;
- (b) by repealing “furnish and transmit to him by post” and substituting “provide the creditor with”.

30. Trustee to provide statement of accounts

Section 88 is amended -

- (a) by repealing “or Official Receiver to furnish and transmit to the creditors” and substituting “to provide the creditors with”;
- (b) by repealing “furnish and transmit such” and substituting “provide the”;
- (c) by repealing “furnished” and substituting “provided”;
- (d) by repealing “or Official Receiver, as the case may be,”;

- (e) by repealing “furnishing and transmitting” and substituting “providing”.

31. Annual statement of proceedings

Section 89 is amended -

- (a) in subsection (1), by repealing “transmit to the Official Receiver” and substituting “provide the Official Receiver with”;
- (b) in subsection (2), by repealing “transmitted” and substituting “provided”.

32. Payment of moneys into bank

Section 91(1) is amended by repealing “Governor” and substituting “Chief Executive”.

33. Record and account to be kept by trustee

Section 92(1) is amended by repealing “if in Chinese shall be supplemented by a correct English translation thereof and”.

34. Audit of trustee’s accounts

Section 93 is amended -

- (a) by repealing subsection (1) and substituting -

“(1) A trustee other than the Official Receiver shall keep an account of his receipts and payments as such trustee.

(1A) The Official Receiver may at any time require the trustee to provide him with the account,

and the trustee shall comply with the requirement within the specified time.”;

- (b) in subsection (3), by repealing “furnish” and substituting “provide”.

35. Removal of trustee

Section 96(2)(a) is amended by repealing “appointed by the creditors” and substituting “, other than the Official Receiver,”.

36. Review and appeals in bankruptcy

Section 98(2) is amended by repealing “21” and substituting “28”.

37. General rules of procedure

Section 99(3) is amended -

- (a) in paragraph (b), by repealing “annual adjudications” and substituting “annul bankruptcy orders”;
- (b) in paragraph (d), by repealing “orders of discharge” and substituting “discharge from bankruptcy”.

38. Court may make a regulating order

Section 100A(1) is amended -

- (a) by repealing “or by” and substituting “, the trustee or”;
- (b) by repealing “whether presented before or after the commencement of the Bankruptcy (Amendment) Ordinance 1965 (21 of 1965),”.

39. Appointment and removal of trustee after the making of regulating order

Section 100D(1) is repealed and the following substituted -

“(1) The court may, on application being made by the Official Receiver or the trustee appointed or acting before the making of the regulating order under section 100A, by order appoint the person who makes the application or any other person recommended by him as trustee of the property of the bankrupt under the regulating order.

(1A) The court may, on application being made by the Official Receiver, by order remove any trustee appointed under subsection (1) and fill any vacancy.

(1B) On the making of an order under subsection (1) or (1A), section 81(1), (2) and (3) or 96(1) shall cease to apply to the bankruptcy and any action taken under such provisions before the making of the regulating order in respect of the appointment or removal of a trustee or filling of any vacancy shall cease to have effect.”.

40. Creditors to give notice of intention to take part in public examination

Section 100G is amended -

- (a) in subsection (1), by repealing everything after “intention to” and substituting -

“-

- (a) in a case where the Official Receiver is the applicant for the public examination, the Official Receiver; or

(b) in a case where the trustee is the applicant for the public examination, the trustee.”;

(b) by adding -

“(1A) The court may also direct that no creditor may exercise his right to question the bankrupt on his public examination under section 19(5) unless the notice under subsection (1) is received by the Official Receiver or the trustee, as the case may be, within such time as may be specified by the court.”.

41. Proof of debts in the case of banks

Section 100H(1) is amended by adding “or trustee” after “Receiver”.

42. Application of Ordinance to small bankruptcies

Section 112A is amended -

- (a) in subsection (1) -
 - (i) in paragraphs (b) and (i), by repealing “Official Receiver” and substituting “provisional trustee”;
 - (ii) in paragraph (ii), by repealing “Official Receiver” and substituting “trustee”;
- (b) in subsection (2), by repealing “Official Receiver” and substituting “trustee”.

43. Disposal of Official Receiver’s fees

Section 115 is amended by repealing “receiver” and substituting “trustee”.

44. Formal defect not to invalidate proceedings

Section 124(2) is amended by repealing “receiver,”.

45. Fraudulent debtors

Section 129(6) is amended by adding “a provisional trustee and” after “includes”.

46. Criminal Bankruptcy Orders

Schedule 1 is amended -

- (a) in paragraph 11(2), by repealing “in bankruptcy”;
- (b) in paragraph 14(3) -
 - (i) in sub-sub-paragraph (c), by repealing “, (8)”;
 - (ii) in sub-sub-paragraph (g), by repealing “78(1)(e)” and substituting “86B(1)(d)”.

47. Consequential amendments

The enactments specified in column 2 of the Schedule are amended in the manner set out in column 3 of the Schedule.

48. Transitional and savings provisions

(1) Notwithstanding anything contained in this Ordinance, the amendments effected under this Ordinance (except sections 12, 19 and 32) shall not apply to any case in which the bankruptcy petition was presented before the commencement date, and such case shall continue and be disposed of as if this Ordinance had not been enacted.

(2) This section is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).

(3) For the purpose of this section, “commencement date” (生效日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(2) of this Ordinance.

SCHEDULE

[s. 47]

CONSEQUENTIAL AMENDMENTS

Item	Enactment	Amendment
1.	Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)	<p>(a) In section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
2.	Drug Trafficking (Recovery of Proceeds) (Designated Countries and Territories) Order (Cap. 405 sub. leg. A)	<p>(a) In Schedule 2, in section 16(5), repeal “receiver” where it twice appears and substitute “trustee”.</p> <p>(b) In Schedule 2, in section 18(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.</p>
3.	Organized and Serious	<p>(a) In section 2(1), in the definition of</p>

- Crimes Ordinance (Cap. 455) “insolvency officer”, in paragraph (b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.
- (b) In section 21(5), repeal “receiver” where it twice appears and substitute “trustee”.
4. Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525)
- (a) In Schedule 2, in section 12(5), repeal “receiver” where it twice appears and substitute “trustee”.
- (b) In Schedule 2, in section 14(3)(b)(i), repeal “receiver, interim receiver, special manager or trustee” and substitute “trustee (including provisional trustee), interim trustee or special manager”.
5. Securities and Futures (Licensing and Registration) Rules (Cap. 571 sub. leg. S)
- In Schedule 1, in Part 2, in section 1(k), repeal “receiver” and substitute “provisional trustee”.

Explanatory Memorandum

This Bill amends the Bankruptcy Ordinance (Cap. 6) (“BO”) for the following main purposes -

- (a) to empower the Official Receiver to outsource bankruptcy cases to private sector insolvency practitioners in specified circumstances;
- (b) to provide for the powers and duties of a provisional trustee;
- (c) following the introduction of the outsourcing regime, to adjust or further provide for the respective powers and duties of the Official Receiver and a trustee;
- (d) to amend the priority of payment of costs and charges out of a bankrupt's estate as set out in section 37 of the BO to bring the section in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H);
- (e) to adapt sections 38, 75 and 91 of the BO to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China; and
- (f) to update certain outdated provisions and make other amendments that are related to or consequent upon the matters set out in paragraphs (a), (b) and (c).

2. Clause 1 sets out the short title of the Bill and provides for the commencement of the Bill.

3. Clause 2 amends section 2 of the BO by adding a new definition of "provisional trustee".

4. Clause 3 adds 2 new subsections to section 12 of the BO, which set out the circumstances under which the Official Receiver may appoint a person as provisional trustee in his place and empower the Official Receiver to appoint joint provisional trustees.

5. Clause 5 amends section 15 of the BO to provide for the term of office of a special manager appointed under this section.

6. Clause 9 amends section 19 of the BO so that the trustee, instead of the Official Receiver, is the person who is obliged to apply for public examination of a bankrupt under subsections (2) and (3) of that section. Clause 9 also adds 2 new subsections to section 19 of the BO, so that the trustee is empowered to make a request for deposit of such sum of money as he considers necessary for holding the public examination.
7. Clause 11 amends section 37 of the BO to bring the order of priority of payment of costs and charges out of a bankrupt's estate in line with rule 179(1) of the Companies (Winding-up) Rules (Cap. 32 sub. leg. H).
8. Clause 15 amends section 58 of the BO. The vesting of a bankrupt's property in the Official Receiver on the making of a bankruptcy order, and subsequently in the provisional trustee if appointed under section 12(1A), are provided for in the new subsections (1) and (1A). The new subsection (1B) provides that a provisional trustee shall, subject to specified circumstances, be regarded as a trustee for the purposes of the BO.
9. Clause 17 amends section 60 of the BO. 5 new subsections are added to provide for the powers of a provisional trustee in dealing with the bankrupt's property, and to exempt the Official Receiver from personal liability for costs and charges in a case where he refuses to grant approval under the new subsection (3) or (4).
10. Clause 20 amends section 77 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's conduct.
11. Clause 21 amends section 78 of the BO, which sets out the duties of the Official Receiver as regards a bankrupt's estate.
12. Clause 23 replaces the existing section 79 of the BO. It provides for the respective official names of a provisional trustee and a trustee, and empowers them to act by their official names.
13. Clause 24 amends section 80 of the BO and makes provisions for the appointment of joint provisional trustees and joint trustees.

14. Clause 25 adds a new section 81A to the BO. It states how a vacancy in the office of a provisional trustee shall be filled.
15. Clause 27 adds a new section 85A to the BO. It deals with the remuneration of a provisional trustee and the first trustee constituted under section 112A(1)(i).
16. Clause 28 adds 2 new sections to the BO. Sections 86A and 86B provide for the duties of a trustee as regards the conduct and estate of a bankrupt. Some of these duties are transposed from the existing sections 77 and 78 of the BO.
17. Clause 35 amends section 96 of the BO so that the Court of First Instance is empowered to remove a trustee or provisional trustee other than the Official Receiver, regardless of whether he was appointed by the bankrupt's creditors or not.
18. Clause 36 amends section 98 of the BO to extend the time limit within which a person may appeal against an order mentioned in subsection (1) of that section. This will bring the section in line with Order 59, rule 4(1)(b) of the Rules of the High Court (Cap. 4 sub. leg. A).
19. Clauses 37 and 38 amend sections 99 and 100A respectively of the BO mainly to update certain outdated expressions in these sections.
20. Clause 39 amends section 100D of the BO. In particular, the existing subsection (1) is amended and divided into 3 subsections to facilitate reading.
21. Clause 40 amends section 100G of the BO. Subsection (1) is amended to specify the person to whom a notice of intention to take part in the public examination of a bankrupt shall be given. The new subsection (1A) originally forms part of the existing subsection (1). It is now separated from it to facilitate reading.
22. Clauses 47 and 48 contain consequential amendments and transitional provisions.

Financial and Civil Service Implications

PIPs appointed by the ORO to deal with the outsourced cases will be paid from the assets of the bankrupts' estates. The ORO will, after deducting the costs and disbursements incurred by the Department, transfer the balance of the deposits given by the bankruptcy petitioners to the accounts of provisional trustees and trustees. This balance will form the assets of the bankrupts' estates, and the PIPs in question can receive the remuneration according to the order of priority in section 37(1) (which would be consequentially amended under clause 11). No additional resources are required to meet the remuneration for the PIPs.

2. With bankruptcy cases being outsourced to PIPs, the ORO can redeploy more resources to enhance its role as a regulator in the insolvency regime. The private-public partnership henceforth eases otherwise the ever-mounting administrative burden of the Department and reduces the demand for additional staff to cope with the increasing caseload. The staffing level of the Department will remain broadly at the current level after the outsourcing exercise.

Economic Implications

3. The Bill when enacted will enable PIPs to provide trusteeship service in summary bankruptcy cases. This represents new business opportunities to the professions. It will also raise efficiency and reduce protraction in dealing with such cases. The Bill when enacted will make our bankruptcy law more business-friendly, and ensure that Hong Kong continues to be provided with the commercial legal infrastructure commensurate with its status as a major international commercial centre.