

**Information Note on the Proposed Amendments to
Bankruptcy Ordinance (Chapter 6)**

**Outsourcing of Bankruptcy Cases by Official Receiver's Office
to Private Sector Insolvency Practitioners**

INTRODUCTION

This note sets out the proposal to amend the Bankruptcy Ordinance (BO) with a view to facilitating the Official Receiver's Office (ORO) to outsource the management of bankruptcy cases to private sector insolvency practitioners (PIPs).

BACKGROUND

2. In 2001, the Administration conducted a review of the existing role of the ORO in the provision of insolvency administration services (the review). One of the recommendations of the review is the introduction of legislative amendments to allow the ORO to outsource bankruptcy cases to PIPs.

3. The underlying reason of the review's recommendation in this regard relates to the significant increase in the number of bankruptcy cases in recent years. Unlike summary liquidation cases¹ which can be outsourced to PIPs under the Companies Ordinance (Chapter 32) (CO) by way of appointment, the BO does not allow the ORO to do so in respect of summary bankruptcy cases, which are now handled in-house by the ORO². Outsourcing offers potential for dealing with the expanding caseload in a more cost-effective and rapid manner. The proposal was supported when we consulted the public on the review's recommendations in June 2002.

4. 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

¹ According to section 227F of the CO, where the property of the company is not likely to exceed in value \$200 000, the court can order that the company be wound up under a summary procedure. In such cases, the OR or the provisional liquidator, shall become the liquidator. There shall be no meetings of creditors or contributories henceforth for the purpose of appointing a liquidator.

² Under the present arrangement, in non-summary bankruptcy cases (i.e. where the assets of the bankrupt are likely to exceed \$200 000), the OR as the receiver holds a meeting of creditors, the purpose of which is to appoint a trustee in bankruptcy. In such cases, a PIP may be appointed to be the trustee in bankruptcy.

balance of the deposits given by the applicants of bankruptcy petitions to the trustees' accounts. This balance will form the assets of the bankrupts' estates and, in self-petition cases, can be used for payment of the remuneration of participating PIPs who will act as provisional trustees and/or trustees in place of the Official Receiver (OR). If necessary, participating PIPs can also be paid from the assets remaining after realization of the bankrupts' property.

5. Where the ORO outsources bankruptcy cases, the PIPs in question will be subject to the control pursuant to the relevant sections of the BO. For instance, subject to similar control in relation to any trustees in bankruptcy under section 84 of the BO, PIPs acting as a provisional trustee and trustee thereafter shall act in a fiduciary capacity and need to deal with property under their control honestly and in good faith. They need to submit an annual statement of the proceedings in the bankruptcy to the OR as required by section 89 of the BO. Same as company liquidation cases, bankruptcy cases will be outsourced to PIPs who are professionals and well aware of their statutory duties and obligations in administration of the estates of bankrupts. The legal liabilities under the BO³ aside, these PIPs will be expected to perform their duties in accordance with the guidelines and rules of the professional bodies to which they belong.

THE LEGISLATIVE PROPOSALS

6. We are in the course of preparing the legislative amendments to the BO to allow the ORO to outsource bankruptcy cases. The major legislative proposals are set out in the ensuing paragraphs.

7. We propose to amend section 12 of the BO which now inhibits the ORO from pursuing the option of outsourcing bankruptcy cases. Under the present arrangement, on the making of a bankruptcy order by the court, the OR shall be constituted the receiver of the bankrupt's property. We propose amendments to provide that the OR shall become the provisional trustee (instead of being called "receiver") when a bankruptcy order is made. The OR as provisional trustee will then be allowed to appoint another person as the provisional trustee in his place where he considers that the value of the total assets of the bankrupt is not likely to exceed \$200 000. The ORO can thereby outsource bankruptcy cases to PIPs after the court's hearing.

³ Pursuant to section 84 of the BO, in the event that any trustee not faithfully performing his duties, the court shall inquire into the matter and take expedient action, including the making of an order of compensation for the misfeasance or breach of fiduciary duty, as the court thinks just.

8. We propose to amend section 60 of the BO to empower a provisional trustee appointed by the OR to (a) take possession of the bankrupt's property; and (b) sell or dispose of the specified perishable assets the value of which is less than \$100 000 and likely to significantly diminish if not immediately realized. This arrangement follows the same approach in company liquidation cases, as set out in section 199(4) of the CO.

9. Given that the OR will be empowered to outsource bankruptcy cases to PIPs, consequential amendments to section 37 of the BO are needed to set out the new order of priority of costs and charges before the distribution of dividends after realization of the bankrupt's property. We propose to bring such order of priority of payment of the costs and charges in bankruptcy cases under the BO in line with Rule 179 of the Companies (Winding-up) Rules (Chapter 32H) which sets out the order in this regard under company liquidation cases.

10. Arising from the changes set out in paragraphs 7 to 9 above, a number of technical and consequential amendments concerning the references to "Official Receiver", "trustee" and "receiver" in the BO are required. We propose making amendments to such references so that the BO can effectively cover the management of these outsourced cases by PIPs where the OR will no longer be the provisional trustee or the trustee in bankruptcy.

WAY FORWARD

11. The Administration is in the course of preparing a draft Bill on the above basis and intends to introduce the Bill into the Legislative Council within the 2003/04 session.

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