

## **LEGISLATIVE COUNCIL BRIEF**

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

### **Bankruptcy and Companies Legislation (Miscellaneous Amendments) Bill 2023**

#### **INTRODUCTION**

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

#### **JUSTIFICATIONS**

##### **The Electronic Submission System (ESS) Operation**

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

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

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

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

### **Streamlining the publication requirements for insolvency and related notices**

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

### **Other amendments**

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

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

## **THE LEGISLATIVE PROPOSALS**

### **The ESS**

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

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

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

## **Streamlining the publication requirements for insolvency and related notices**

9. Currently there are ten types of insolvency and related notices required to be published in both the Government Gazette and newspapers. Four other types are required to be published only in newspapers<sup>1</sup>. Given that the Government Gazette has always been the official publication channel for giving important notifications to the general public and has become easily accessible electronically when compared to newspaper advertisement, we propose that publishing in the Government Gazette should be made the only mandatory requirement for all of the above notices with advertising in the newspapers or other media being discretionary, which will streamline the process and reduce unnecessary advertising costs.

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

## **Miscellaneous amendments**

### Electronic submission of proxy forms

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

---

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

## Adaptation of laws

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

- (a) “The Crown” in –
  - (i) Section 38(1) of the BO – *“In the distribution of the property of a bankrupt there shall be paid in priority to all other debts - ... (d) all statutory debts due from the bankrupt to the Crown at the date of the bankruptcy order and which became due and payable within 12 months next before that date”*;
  - (ii) Section 127 of the BO – *“Save as provided in this Ordinance, the provisions of this Ordinance relating to the remedies against the property of a bankrupt, the priorities of debts, the effect of a voluntary arrangement, and the effect of a discharge, shall bind the Crown”*; and
- (b) The references to “大法官” in the Chinese version of rule 5 of the BR and section 168E(3)(a) of the CWUMPO.

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

## New fee item

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

## Repealing redundant provisions in the CWUMP(A)O

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

## **OTHER OPTIONS**

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

## **THE BILL**

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

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

## **LEGISLATIVE TIMETABLE**

18. The legislative timetable will be –

Publication in the Gazette 25 May 2023

First Reading and commencement of Second Reading debate 7 June 2023

Resumption of Second Reading debate, to be notified committee stage and Third Reading

## **IMPLICATIONS OF THE PROPOSALS**

19. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the BO and the CWUMPO and their relevant subsidiary legislation. It has no economic, financial, civil service, productivity, environmental, sustainability, family or gender implications<sup>2</sup>.

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

---

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

## **PUBLIC CONSULTATION**

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

## **PUBLICITY**

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

## **ENQUIRIES**

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

**Financial Services and the Treasury Bureau**  
**24 May 2023**