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By Post &
By Fax 2865 6603

7 September 2021

Dear Sirs,

Security Requirements for appointment of liquidators or trustees in bankruptcy

The Official Receiver is currently reviewing the security requirements for appointment of liquidators in compulsory winding-up proceedings and appointment of trustees in bankruptcy in bankruptcy proceedings, with a view to refining the existing procedure and practice. The Official Receiver wishes to seek views from insolvency practitioners on the proposals as set out below.

Legislative requirements and current practice

2. Where in the winding-up of a company by the court a person other than the Official Receiver is appointed provisional liquidator or liquidator, that person should give security in the prescribed manner to the satisfaction of the Official Receiver as set out in s.195 of the Companies (Winding-up and Miscellaneous Provisions) Ordinance, Cap. 32 ("Cap. 32") and r.47 and 48 of the Companies (Winding-up) Rules, Cap. 32H ("Cap. 32H"). Similarly, where in a bankruptcy a person other than the Official Receiver is appointed trustee in bankruptcy, that person should give security as provided in s.23(1)(a) of Bankruptcy Ordinance, Cap. 6 ("Cap. 6") and r.183 of the Bankruptcy Rules, Cap. 6A ("Cap. 6A").

3. The Official Receiver may accept security given either specially for a particular winding up/bankruptcy case, or generally to be available for any winding up or bankruptcy case in which the person giving security may be appointed as liquidator or trustee (see r.47(b) of Cap. 32H and r.183(b) of Cap. 6A). Currently, the Official Receiver accepts security in form of a bond, bank guarantee or Professional Indemnity Insurance ("PII").

Holistic approach to fix required security

4. Upon review, the Official Receiver **proposes** to adopt a holistic approach to fix the nature and amount of the required security for an individual compulsory winding-up or bankruptcy case as follow:

Estimated Realizable Assets	Amount and Nature of the Required Security
Over HK\$200,000 in value	Security in form of a bond or bank guarantee (“ Bond ”) for an amount to be determined with reference to 50% of the estimated realizable assets.
HK\$200,000 or below in value	PII or Bond (please refer to paragraphs 6-8 below)

Note:

- (1) *For determining value of the estimated realizable assets, the Official Receiver will apply a realistic analysis and will have regard to the information available such as the Statement of Affairs and/or information from other appropriate source.*
- (2) *The Official Receiver has set a ceiling for a Bond at HK\$5 million for an individual bankruptcy/winding-up case and HK\$10 million for a group of related winding-up cases. The Official Receiver is currently reviewing and considering whether the ceiling is still applicable; and*
- (3) *Legal fees and liquidators' or trustees' remuneration duly approved and payable out of the assets of the winding up / bankruptcy estate may be excluded from the estimated realizable assets for fixing the bond amount where appropriate.*

5. Subject to the views received from this consultation, the Official Receiver will determine the percentage of the estimated realizable assets with reference to which the amount of a Bond is to be fixed. The percentage, once decided, will apply to all applicable cases. However, the Official Receiver retains the discretion to vary the percentage for any individual case.

Cases with estimated realizable assets of HK\$200,000 or below in value

6. It is the current practice of the Official Receiver to accept PII without requiring a Bond for a particular case with estimated realizable assets of HK\$200,000 or below in value.

7. The Official Receiver has recently reviewed the relevant legislation and the terms and conditions of some PII for accountants and solicitors. Upon review, the Official Receiver has concerns as to whether a PII provided by an accountants' firm would cover the professional business undertaken by the firm in connection with its staff members acting as liquidators or trustees in bankruptcy. For solicitors' firm, it is also uncertain as to whether an indemnity provided under the Solicitors (Professional Indemnity) Rules (Cap.159M) would cover the professional business of practising or acting as liquidators or trustees in bankruptcy.

8. In view of the above, the Official Receiver **proposes** that before a PII will be accepted as security, insolvency practitioners should provide necessary information/documents to show to the satisfaction of the Official Receiver that their firms'

PII will cover the professional business of practising or acting as liquidators and trustees in bankruptcy. In the event that such information cannot be provided to the satisfaction of the Official Receiver, a Bond may be required for any winding up/bankruptcy case even where the estimated realizable assets are below HK\$200,000. A similar approach may apply to tender cases contracted out under s.194(1A) of Cap. 32 and s.12(1A) of Cap. 6 and outsourcing scheme of Preliminary Examination Questionnaire in bankruptcy cases, where appropriate.

9. Insolvency practitioners are invited to provide their comments and views on the above proposals. I would be grateful if you would consult your members who are insolvency practitioners, and revert to me with their views, concerns and impact **on or before 7 October 2021**. Thereafter, the Official Receiver will consider and finalise the proposed arrangements and will keep you informed.

10. Should there be any query on this letter, please feel free to contact the undersigned on 2867 2485.

Yours faithfully,



(Ms Cecilia Chiu)
for Official Receiver