



OFFICIAL RECEIVER'S OFFICE

破產管理署

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來函檔號 YOUR REF.:

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- (i) The Hong Kong Institute of Certified Public Accountants
- (ii) The Law Society of Hong Kong
- (iii) The Hong Kong Chartered Governance Institute

30 August 2024

Dear Sirs,

Charging of Ad Valorem Fees **in Compulsory Winding-up and Bankruptcy Cases**

Section 296 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and section 114 of the Bankruptcy Ordinance (Cap. 6) provide the statutory basis for charging ad valorem fees ("AV fees") in winding-up and bankruptcy proceedings respectively. Pursuant to the Companies (Fees and Percentages) Order (Cap. 32C) and the Bankruptcy (Fees and Percentages) Order (Cap. 6C), AV fees shall be paid by a liquidator or trustee upon submission of his accounts to the Official Receiver under section 203 of Cap. 32 or section 93 of Cap. 6 and be taken in the office of the Official Receiver.

In a recent case (*Re GW Electronics Co Ltd* [2022] HKCA 1590), the Court of Appeal confirmed the mandatory and automatic nature of AV fees and held that the Official Receiver has a statutory duty to collect them.

At present, for cases where there are funds of the company in winding-up or bankruptcy estate kept by the Official Receiver in the Companies Liquidation Account or Bankruptcy Account sufficient to discharge the AV fees, the Official Receiver will seek authorization from the liquidator or trustee for settlement of the AV fees from the funds. Given the clear statutory provisions and legal authority above-mentioned, and to streamline the procedures, the Official Receiver will cease such practice with immediate effect.

From now on, after receiving section 203 or section 93 accounts from the liquidator or trustee, and verifying the calculation of the amount of AV fees payable thereupon, the Official Receiver will proceed to charge and collect the AV fees from the funds of the relevant company in winding-up or bankruptcy estate kept in the Companies Liquidation Account or Bankruptcy Account immediately, without seeking authorization from the liquidator or trustee.

The charging of AV fees will be recorded and shown in detailed ledger of the cases, which can be readily accessed by the liquidator or trustee online via the Electronic Submission System of the Official Receiver's Office after having registered as a user.

For winding-up and bankruptcy cases where the Official Receiver does not retain funds, the existing payment and charging arrangement for AV fees will remain unchanged.

Please circulate this letter to your members who are insolvency practitioners for their attention. Should there be any query on this letter, please contact the undersigned.

Yours faithfully,

Signed

(Patrick Chan)

for Official Receiver