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Review of the Role of the Official Receiver's Office

破產管理署角色檢討

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Role and Functions of the Official Receiver's Office ("ORO")

破產管理署的角色及職能

- An ORO is the key to ensuring an effective insolvency service, which includes –
- 破產管理署是提供有效清盤／破產服務的關鍵，其服務包括：
- Administration of cases (the "last resort" function)
 - Liquidation
 - Bankruptcy
- 處理個案（「基本服務」）
 - 清盤
 - 破產
- Enquiry and enforcement
調查及執法
- Regulation and supervision
規管與監督

Role and Functions – Key Findings

角色及職能 - 主要檢討結果

- Hong Kong Official Receiver's Office (HKORO)'s current roles are consistent with commonly accepted practices for similar bodies in other jurisdictions.
- 香港破產管理署現時的角色與其他司法管轄區同類型機構慣常做法一致。
- However, there is a distinction between ensuring and providing these services.
- 然而，確保服務之提供與直接提供服務是有區別的。

Liquidation – Key Findings

清盤 - 主要檢討結果

Caseload has increased significantly over last 5 years.

個案數量在過去五年大幅上升。

Liquidation Statistics	1996/1997	1997/1998	1998/1999	1999/2000	2000/2001	2001/2002
清盤個案統計數字						
New cases	557	459	763	895	935	1,173
新個案						
Increase year on year	--	-18%	+66%	+17%	+4%	+25%
按年增幅						
Cases on hand at year end	1,655	1,665	1,983	2,267	2,036	2,403
年終未完成個案						
Increase year on year	--	0%	+19%	+14%	-10%	+18%
按年增幅						

Liquidation – Key Findings

清盤 - 主要檢討結果

- Outsourcing is an effective response by HKORO.
- 外判安排是香港破產管理署的有效對策。
- Measures should be introduced to reduce the cost to the public purse of handling summary cases.
- 有必要引進措施以減少處理簡易個案所需的公帑。

Liquidation – Recommendations

清盤 – 建議

- We recommend the continuation of the HKORO’s existing outsourcing schemes pending the results of the public consultation exercise to explore the feasibility of a “cab rank” system.
- 本顧問建議繼續外判個案計劃直至完成探討「順序」制度可行性的公眾諮詢為止。
- In the absence of a “cab rank” system, we recommend the HKORO retain a small number of cases for HKORO resolution.
- 在未實行「順序」制度之前，本顧問建議香港破產管理署應保留小部分個案自行處理。

Liquidation – Recommendations

清盤 – 建議

- We recommend the HKORO review its resource allocation to focus more on the supervision and monitoring of private sector insolvency practitioners (PIPs).
- 本顧問建議香港破產管理署檢討資源的分配，令資源集中用於監督及監察私營清盤從業員。
- We recommend the HKORO utilise the public consultation exercise to explore reductions in mandatory casework for summary cases where justified.
- 本顧問建議香港破產管理署應利用公眾諮詢探討在合理情況下減少簡易個案所需的工作的可行性。
- We recommend the HKORO explore, through the public consultation exercise, the feasibility of introducing a “cab rank” system.
- 本顧問建議香港破產管理署透過公眾諮詢，研究是否可以推行「順序」制度。

Bankruptcy – Key Findings

破產 - 主要檢討結果

There has been a significant increase in bankruptcy caseload.

破產個案數量大幅上升。

Bankruptcy Statistics 破產個案統計數字	1996/1997	1997/1998	1998/1999	1999/2000	2000/2001	2001/2002
New cases 新個案	562	643	1,179	3,726	4,928	11,764
Increase year on year 按年增幅	--	14%	83%	216%	32%	139%
New cases involving consumer credit 涉及消費者信貸的新個案	13%	15%	47%	68%	71%	79%
Consumer "fault" cases 消費者「過失」個案	15%	14%	41%	40%	33%	30%
Debtor Petitions 債務人申請的個案	4%	5%	55%	70%	71%	88%
Active cases at year end 年終未完成個案	1,286	1,346	2,034	4,648	6,401	13,169

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Bankruptcy – Key Findings

破產 - 主要檢討結果

- Fundamental changes to bankruptcy system are required.
- 破產制度需要進行徹底改革。
- Options available include
 - outsourcing
 - “fast track” procedures
- 可供選擇包括
 - 外判服務
 - 「快速處理」程序

Bankruptcy – Recommendations

破產 – 建議

- We recommend that legislative changes be introduced to allow HKORO to outsource bankruptcy cases.
- 本顧問建議修訂法例，讓香港破產管理署可將破產個案的工作外判。

- We recommend that a “fast track” bankruptcy procedure be created to deal with selected consumer bankruptcy cases.
- 本顧問建議設立「快速處理」破產程序以處理個別消費者破產個案。

Bankruptcy – Recommendations 破產 – 建議

- We recommend consideration be given to making bankruptcy an extra judicial process.
- 本顧問建議考慮採用司法以外程序處理破產個案。
- We recommend that public and lender access to bankruptcy data be enhanced.
- 本顧問建議應更方便公眾及放款人查閱破產個案的資料。

Regulation and Supervision - Key Findings 規管與監督 – 主要檢討結果

- No formal regulatory system for PIPs, but practical constraints on introducing systems similar to those in other jurisdictions.
- 現時，香港沒有正式的私營清盤從業員規管制度。然而，引入類似其他司法管轄區所採用的私營清盤從業員正式發牌制度存在實在困難。
- HKORO's responsibility for fee supervision should be limited.
- 香港破產管理署在收費監管上應承擔有限度的責任。

Regulation and Supervision - Recommendations 規管與監督 – 建議

- We recommend HKORO's fee authorisation be limited to cases where it has a direct and appropriate involvement.
- 本顧問建議香港破產管理署對私營清盤從業員收費的監管應只局限於那些適合由該署直接處理的個案。
- We recommend that the public consultation exercise be used to assess the degree of support / desire for a formal licensing system, and whether such a system should involve HKORO.
- 本顧問建議透過公眾諮詢了解公眾是否支持／希望設立正式的發牌制度，而香港破產管理署又是否應該介入有關制度。

Regulation and Supervision – Recommendations 規管與監督 – 建議

- If consultation shows strong support for a HKORO administered licensing and supervisory system, we recommend a simple system based on authorisation.
- 假如諮詢結果顯示公眾強烈支持設立由香港破產管理署管理的發牌及監管制度，則本顧問建議設立一套簡單的認可制度。

Enquiry and Enforcement - Key Findings 調查及執法 - 主要檢討結果

- Adequate enforcement function is key to effective insolvency, but
- 適當的執法為有效清盤／破產服務的關鍵，但是
 - a general perception that insufficient resources and concentration are paid by HKORO and PIPs to this aspect.
 - 公眾似乎普遍認為香港破產管理署和私營清盤從業員在這方面均未有投入足夠資源或予以密切關注。
 - the level of fines imposed and severity of disqualification orders made are unlikely to prove an effective deterrent to rogue directors and bankrupts.
 - 法庭罰款額及發出有關取消出任董事資格的命令均未能有效阻嚇那些缺乏責任感的董事及破產人。

Enquiry and Enforcement - Recommendations 調查及執法 – 建議

- We recommend that HKORO establish a specialist investigations unit.
- 本顧問建議香港破產管理署設立專家調查小組。

- We recommend that the minimum level of enquiry be increased in summary cases.
- 本顧問建議簡易個案的最低調查標準應予以提高。

Enquiry and Enforcement - Recommendations 調查及執法 – 建議

- We recommend that the prosecution and disqualification policy should be modified.
- 本顧問建議修訂有關檢控及取消出任董事資格的政策。
- We recommend that HKORO improve communication with the public on enforcement matters.
- 本顧問建議香港破產管理署加強向公眾宣傳其採取的執法行動。

Finance – Key Findings

財政 – 主要檢討結果

- Basis for funding of HKORO is a policy choice - there is no agreed conceptual basis for allocating costs between insolvency users and the public.
- 香港破產管理署的撥款基準是政策事宜 – 現時沒有一個有關使用者及納稅人兩者中分擔成本的公認基準。
- HKORO's target of recovering 60% of its costs is not an appropriate financial performance measurement.
- 香港破產管理署以收回 60% 成本為目標的做法，作為衡量財政表現的指標並不適當。

Finance – Recommendations

財政 - 建議

- We recommend that HKORO's fees be reviewed and revised where appropriate.
- 本顧問建議檢討香港破產管理署的收費並按需要作出修訂。
- We recommend that the public consultation exercise be used to explore interested parties' reactions to financing alternatives
 - business registration fees
 - interest charges
 - fees and petition costs
 - government subsidy.
- 本顧問建議通過公眾諮詢聽取有關人士對融資方案的意見
 - 商業登記費
 - 利息收費
 - 費用及申請費
 - 政府補貼。

Finance – Recommendations

財政 - 建議

- We recommend that the current basis of financial performance evaluation (60% recovery) be changed.
- 本顧問建議更改現時的財務表現衡量準則 (即收回成本60%)。

- We recommend that HKORO should explore the possibility of raising additional revenue.
- 本顧問建議香港破產管理署應研究增加其他收入來源的可行性。

Administration – Key Findings and Recommendations 管理 – 主要檢討結果及建議

- The HKORO management information system needs investment to enable it to deal with the caseload increase and to enhance its function to provide information to the public.
- 需要投資香港破產管理署的管理資訊系統，以應付個案數量上升及改善其提供資訊給公眾人士的功能。
- We recommend that the planned investment in management information systems be treated as a priority.
- 本顧問建議優先處理投資管理資訊系統的計劃。

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