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財經事務及庫務局
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FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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來函檔號 YOUR REF.:

19 April 2005

Hon. Chan Kam-lam, JP
Legislative Council
Room 523F, West Wing
Central Government Offices
11 Ice House Street
Central
Hong Kong

(Fax No. : 2509 9955)

Dear Hon. Chan,

Bankruptcy (Amendment) Bill 2004

Thank you for your letter dated 9 March 2005. After consulting the Official Receiver's Office (ORO), we set out our responses to your questions in the ensuing paragraphs.

Provisional Trustee

2. As pointed out by us at previous meetings of the Bills Committee, there will be a range of measures, statutory and non-statutory, to ensure the quality of services provided by private-sector insolvency practitioners (PIPs). For statutory measures, section 82(2) of the Bankruptcy Ordinance (BO) states that one-fourth in value of the creditors may request the trustee to summon a meeting of creditors, and section 84 provides for the control of the court over the trustee. As for non-statutory measures, apart from the duties and obligations specified in the contract of appointment, the PIPs are also required to comply with the codes of conduct of their respective professional bodies. We would like to point out that the regulation of members' conduct by

professional bodies only forms part of the measures.

3. It is our understanding that the Hong Kong Institute of Company Secretaries (HKICS), though not a statutory body, has put in place a code of conduct for its members and a related disciplinary mechanism. In the review of liquidation provisions under the Companies Ordinance in 1999, the Law Reform Commission also accepted that members of the Institute are qualified to carry out various kinds of insolvency work.

4. Regarding the pre-qualification criteria, the ORO has, in outsourcing summary liquidation (of company) cases, required that only members of the Law Society of Hong Kong, the Hong Kong Institute of Certified Public Accountants, or HKICS who have a certain number of years of post qualification experience¹ are eligible to submit tender. Such arrangement has been in place for years. In outsourcing summary bankruptcy cases, the ORO intends to take into account the existing criteria, and may, as necessary in future, consider the feasibility of allowing members of other professional bodies to participate in the tender exercise.

5. As compared with company liquidation cases, summary bankruptcy cases are in general more straightforward and there is thus limited room for categorization. Moreover, the complexity of a case may come up at any stage of processing. Therefore, the categorization of summary bankruptcy cases prior to outsourcing is difficult in practice and may not be cost-effective.

Remuneration for Trustees

6. The order of priority of the remuneration for and expenses of trustees has been dealt with in Appendix 1 of our paper titled "Bills Committee on Bankruptcy (Amendment) Bill 2004 - Third meeting on 11 January 2005 - Responses to List of Follow-up Actions" (re-attached herewith for easy reference). In short, for summary bankruptcy cases, in general there would unlikely/not be any expenses or charges which are ranked second to fifth in the order of priority as set out in the proposed section 37(1) (such as the expenses incurred in the calling of creditors' meetings) or that are required to be paid by trustees. In case the ORO finds that the balance of deposit made by the bankruptcy petitioner after deducting various related charges and expenses incurred by the ORO is less than the likely amount of disbursement plus the remuneration specified in the tender by the PIP, the ORO will not outsource the case. If there is money left after making payment of the charges and

¹ The current minimum requirements are: (i) 3 years of post qualification experience; (ii) 300 chargeable hours of relevant insolvency work over last 3 years, of which at least 150 hours related to insolvent liquidation/receiverships, and remaining hours may be on solvent liquidation (in which case the hours would be reduced by 50%); and (iii) having performed a minimum of 4 winding-up cases.

remuneration to trustees, the remaining amount of money will, in accordance with the BO, be transferred and disposed of as the bankrupt's estate.

7. At present, the ORO has the preliminary idea of making payment of the related remuneration and expenses by two installments, with the first installment to be made to the trustee at the time when the summary procedure order for administration of the bankrupt's estate is issued by the court, with the remaining amount to be paid at the time of the bankrupt's discharge from bankruptcy.

Supervision of trustees

8. As mentioned in paragraph 2 above, there will be a series of statutory and non-statutory measures to ensure the quality of services provided by bankruptcy trustees. As regards the tender procedures and documents as well as the list of appointed trustees, they will be uploaded to the web page of the ORO for public access. Meanwhile, the ORO will from time to time review the outsourcing arrangement after putting it into practice. In this regard, the ORO Services Advisory Committee (which is a customers liaison group comprising representatives of the Consumer Council, various professional organizations and related associations such as the Hong Kong Association of Banks, etc.) will be involved by, inter alia, giving comments on the quality of services of PIPs.

Enquires

9. If you have other enquiries on the Bill or require additional information, please contact me at 2527 8170.

Yours sincerely,

(Emma Lau)
for Secretary for Financial Services and the
Treasury

c.c. Official Receiver
(Attn: Mr E T O'Connell, Ms May Lee)
Department for Justice
(Attn: Ms Vicki Lee)
Members of Bills Committee on Bankruptcy (Amendment) Bill 2004

**Payments from the Deposit/Estate of the Bankrupt
In Outsourced Cases**

It is proposed that only debtor-petition cases where the assets held by the bankrupt are not likely to exceed \$200,000 (summary cases) may be outsourced by the Official Receiver's Office (ORO).

Deposit made by the Petitioner

(A) Statutory Provisions

2. Under rule 52(1) of the Bankruptcy Rules, upon the presentation of a bankruptcy petition, the petitioner (must be a debtor in outsourced cases) shall deposit with the ORO a sum of \$8,650¹. Such sum will first cover the fees and expenses incurred by the OR, whether the OR is acting in his official capacity or as a trustee-in-bankruptcy.

(B) Actual Operation

3. The amount to be deducted by the ORO depends on the actual fees and expenses incurred in the particular case. As a rough estimate, it would be in the range of \$2,000–\$3,000 in a typical case, detailed as follows –

¹ A sum further to \$8,650 shall be deposited as the debtor and ORO may agree or as the court may from time to time direct.

<u>Item</u>	<u>Amount (\$)</u>
<i>(i) Fees (i.e. statutory Fees Payable under the Bankruptcy (Fees and Percentages) Order)</i>	
(a) Insertion in the Gazette of a notice relating to bankruptcy	355
(b) For all official stationery, printing, postage, etc	670 ²
<i>(ii) Expenses</i>	
(a) Land registration ³	210
(b) Photocopying	90*
(c) Printing expense payable to Government Logistics Department for publication of the bankruptcy order in the Gazette ⁴	350*
(d) Printing expense payable for publication of the bankruptcy order in newspapers ⁵	350*
Total:	2,025 =====

*: These are approximate figures. The actual expenses may be affected by factors such as the actual volume of photocopying required, the feasibility to arrange consolidated gazetting/advertisements, as well as the prevailing rates applicable.

The total amount of fees and expenses incurred by the ORO would be in the range of \$2,000 to \$3,000. Assuming that it is equal to \$A, the balance of the deposit would then be \$8,650 - \$A, say = \$B.

Payment under Section 37

(A) Statutory Provisions

4. After the petition made by the debtor is accepted and a bankruptcy order is granted by the court, the ORO would then account the balance of the deposit to the debtor's estate, pursuant to rule 52(2) of the Bankruptcy Rules. The estate, which may be augmented by any further asset realized from the

² A fee of \$670 is charged for a bankruptcy case where the number of creditors and bankrupts does not exceed 10, and an additional fee of \$670 is charged thereafter for every 10 additional creditors and bankrupts or part thereof.

³ Rule 53 of the Bankruptcy Rules provides that where a bankruptcy petition is filed, OR may register a memorial of the petition in the Land Registry registered in the name of the debtor.

⁴ Rule 78 of the Bankruptcy Rules provides that where a bankruptcy order is made, the OR shall forthwith send notice thereof to the Gazette and to such local newspaper or newspapers as he may think fit.

⁵ See footnote (4).

bankrupt and any contribution made by him during the bankruptcy period, would then be used to cover the costs and charges set out in section 37 of the BO. Under this section, expenses properly incurred in preserving, getting in or realizing any of the assets of the bankrupt would first be paid off. Thereafter, the remaining balance would be used to cover payments according to the order of priority in the same section (proposed to be amended by Clause 11 of the Amendment Bill), namely -

- (a) the remuneration of, fees, commissions, percentages and charges payable to, and costs, charges and expenses incurred or authorized by, the OR, whether acting as trustee or otherwise, including the costs of any person properly employed by him;
- (b) the taxed costs of the petition, including the taxed costs of any person appearing at the hearing of the petition whose costs are allowed by the court but excluding the interest on such costs;
- (c) the remuneration of, and fees, disbursements and expenses properly incurred by the special manager, if any;
- (d) the costs and expenses of any person who makes the bankrupt's statement of affairs;
- (e) the taxed charges of any shorthand writer appointed to take any examination, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (f) the necessary disbursements of any trustee other than the OR⁶, except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt;
- (g) the costs of any person properly employed by any trustee other than the OR;
- (h) the remuneration of any trustee other than the OR; and
- (i) the actual out-of-pocket expenses necessarily incurred by the creditors' committee subject to the approval of the trustee.

⁶ "Trustee other than the OR" would include the PIP appointed to administer the outsourced bankruptcy case.

(B) Actual Operation

5. Assuming that -

- (a) the ORO would account the balance of the deposit, namely \$B, to the debtor's estate; and
- (b) the further assets realized from the bankrupt and the contribution made by him during the bankruptcy period total \$C; and
- (c) \$D was the expenses properly incurred in preserving, getting in or realizing any of the assets of the bankrupt;

then it would mean $\$B + \$C - \$D = \E would be available to cover the relevant costs and charges as set out in paragraphs 4(a) to (i) above. In a real-life situation regarding a debtor-petition summary case, we would however like to point out that some of the costs and charges would unlikely arise, as explained below -

Para.	Cost/charge item	Reasons as to why the item would unlikely arise
4(a)	The remuneration of, fees and expenses etc incurred or authorized by the OR, whether acting as trustee or otherwise	They are rarely applicable or should have been covered under Rule 52 of the Bankruptcy Rules.
4(b)	Taxed costs of the petition	The costs are expected to be paid by the bankrupt himself in a debtor-petition case.
4(c)	Remuneration of, and fees, disbursements and expenses properly incurred by the special manager	It is very unlikely that a special manager would be appointed in summary bankruptcy cases.
4(d)	Costs and expenses of any person who makes the bankrupt's statement of affairs	The statement of affairs is expected to be prepared by the bankrupt himself.
4(e)	Taxed charges of any shorthand writer appointed to take any examination	It is very unlikely that a shorthand writer would be appointed in summary bankruptcy case.
4(i)	Expenses necessarily incurred by the creditors' committee	There would be no creditors' committee for summary cases.

As such, in practice only the costs and charges under paragraphs 4(f), (g) and (h). They are: (i) the disbursements of the PIP (except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt); (ii) the costs of any persons employed by PIPs; and (iii) the remuneration of PIPs, are relevant.

Paragraph 4(f): Disbursements of PIP (except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt)

6. The amount of disbursements incurred by the PIP (except expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt) will depend on the actual amount incurred in a particular case. Assuming a typical case with no more than 10 creditors and where no assets were recovered, the likely disbursements of the PIP are –

	(\$)
(a) Gazette costs for notice of appointment (assuming in batches of 50 cases per notice) ⁷	250
(b) Various searches ⁸	95
(c) Postage (for letters to all banks and report to creditors, OR, notice of objection/no objection to discharge and notice of release to creditors) ⁹	250
(d) Bank charges/photocopying charges ¹⁰	250
(e) Travelling expenses	50
	—————
	895
	(rounded up to 900)

7. Even if the PIP would need to apply for objection to discharge (and

⁷ Notice of appointment of trustee shall be gazetted pursuant to Rule 162 of Bankruptcy Rules. The PIP should be able to arrange consolidated gazetting to minimize costs as the cases will be outsourced in batches.

⁸ Land search for one address at \$30. Business Registration search for one business at \$45. Company search for one year for one company at \$20.

⁹ PIP may send notice of objection/no objection to discharge to creditors by post under section 30A(5)(a) of Bankruptcy Ordinance.

¹⁰ Bank charges and photocopying charges are payable to the bank for obtaining bank records of the bankrupt.

therefore have to pay an extra court fee of \$528 for filing the application)¹¹, his disbursements would unlikely exceed \$1,450. We therefore consider that on average the total disbursement of the PIPs would be between, say, \$900 and \$1,500.

Paragraphs 4(g) and (h): Costs of persons employed by PIPs and the Remuneration of PIPs

8. As illustrated in the calculation set out in paragraphs 3 to 7 above, there would be *between \$4,150* (\$8,650 - \$3,000 - \$1,500) *and \$5,750* (\$8,650 - \$2,000 - \$900) *for payment of the costs of person properly employed by the PIP and the PIP's remuneration, even without additional asset realized and without income contribution made by the bankrupt.*

¹¹ Pursuant to Item 6(a) Table A, Schedule, Bankruptcy (Fees and Percentages) Order. Based on the ORO's experience, application for objection to discharge may be needed in 5% to 6% of summary bankruptcy cases.