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Clerk to Bills Committee
Legislative Council Secretariat
3rd Floor
Citibank Tower
3 Garden Road
Central
Hong Kong

For the attention of Ms May Leung

25 November 2004

Dear Madam

Bankruptcy (Amendment) Bill 2004 (“the Bill”)

We refer to your letter dated 5 November 2004 inviting us for comments on the captioned matter. On behalf of ACCA (The Association of Chartered Certified Accountants) Hong Kong, we are writing to submit our comments for your consideration.

Section 37 Priority of costs and charges

In the proposed section, it appears that the remuneration of a provisional trustee can be included under either subsection (a) or (h). To ensure clarity, we suggest that a provisional trustee’s remuneration should be explicitly shown in the proposed list of priority.

Section 85A Remuneration of provisional trustee and the first trustee constituted under section 112A

We note that the term “first trustee” does not appear under section 112A. We consider that further clarification is required for the wording of the proposed section.

We also propose the Bills Committee to tidy up the order of sequence of the sub sections under section 112A.

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Section 86B Duties of trustee as regards the bankrupt's estate

The proposed subsection (2) stipulates that “the trustee shall account to the court” and “deal with all securities in such manner as the court from time to time directs”. We note that the duty of a trustee in respect of security has been dealt with under section 23 of the Ordinance. We would like to clarify whether “securities” referred to in the proposed section has the same meaning as that under section 23. Should this be the case, we consider that the trustee’s duty regarding security should be referred to in the same provision in order to ensure clarity.

Apart from the above comments on the Bill, we would like to point out the following for the Bills Committee’s consideration.

Section 23

It can be understood that where the trustee is not the Official Receiver, security should be given to the Official Receiver. We consider that this requirement should also be applicable to the provisional trustee. Accordingly, provisional trustee should be included under section 23.

Section 91(2)

It is stipulated in the section that “if a trustee at any time retains for more than 10 days a sum exceeding \$2,000, or such other amount as the Official Receiver in any particular case may authorize him to retain, then unless he explains the retention to the satisfaction of the Official Receiver, he shall pay interest on the amount so retained in excess at the rate of 20 per cent per annum”.

Although flexibility is allowed for the amount to the extent that the Official Receiver satisfies, we consider that the provision is practically too difficult to comply with. In order to minimize the administrative burden where satisfaction of the Official Receiver is required on a frequent basis, the limit should be raised and the provision should be amended accordingly.

Qualification of the provisional trustee

We note that there is no provision in the Ordinance governing the qualification of either the provisional trustee or the trustee. We consider that criteria for a provisional trustee and / or trustee should be considered. These can include domicile and independence of the individual, whether the individual has conflict of interest with

the bankrupt, and whether the individual has expertise in handling a bankrupt's assets.

Should you like to clarify any of the above issues, please do not hesitate to contact myself or Ms Sonia Khao at 2524 4988.

Yours faithfully



Victor Ng
President