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Our Ref. KT/MN/ew/G240291

Your Ref.: CB1/BC/2/04

3rd December, 2004

BY FAX (2869-6794) AND BY POST

Bills Committee
on Bankruptcy (Amendment) Bill,
3/F., Citibank Tower,
3 Garden Road,
Central, Hong Kong.

Attn: Ms. Connie Szeto/Ms. May Leung

Dear Sirs,

Re : Bankruptcy (Amendment) Bill 2004

We refer to your letter dated 4th November, 2004 in relation to the proposed Bankruptcy (Amendment) Bill 2004 ("Bill").

We support the view that the Official Receiver's Office ("ORO") should be allowed to outsource the management of bankruptcy cases to private-sector insolvency practitioners ("PIPs"), and also support the general framework of the proposed Bill.

However, in order to ensure a smooth operation of the future outsourcing system, we believe that the Bankruptcy Ordinance ("BO") and/or its subsidiary legislation should be further amended the address the following three areas:

1. Priority of costs and charges

We note the proposed amendment to Section 37 of the BO. We believe that the current proposed priority will affect the operation of the future outsourcing system as it will create a disincentive to the PIPs to maximize realization for the benefit of the general body of creditors.

The existing Section 37 of the BO gives the fees of the Official Receiver ("OR") acting as trustee a higher priority than the petitioner's costs. However, in the proposed amendment, the fees of the PIPs acting as trustee is given a lower priority to the petitioner's costs for similar duties previously performed by OR. Such discrepancy would also create a situation that the PIPs may reluctant to incur costs to realize assets unless it is certain that the amount of such realization is large enough to cover the petitioner's costs (which is normally in the range of tens of thousand dollars) and the trustee's costs. Such reluctance may reduce the potential recovery at the expenses of the general body of creditors.

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We understand that petitioner's costs may not be an issue in the self-petitioned cases (except for those situations that legal costs are allowed pursuant to Section 37(2) of the BO).

However, it is possible that the OR may farm out creditor petitioned cases in future so that such discrepancy should be addressed for once and for all.

We therefore propose that the priority of outside trustee's disbursements and fees (i.e. proposed Sections 37(1)(f), (g) and (h) of the BO) should be given a higher ranking before the petitioner's costs (i.e. proposed Section 37(1)(b) of the BO) so that the PIPs are treated equally when acting as trustees similar to OR.

We also note that the proposed order of priority is in line with Rule 179 of the Companies (Winding-up) Rules ("CWUR") and are well aware of the adverse impact of Rule 179 of the CWUR based on our past experiences and the feedback from firms which have taken up the ORO's tender for liquidation. We believe that the priority as set out in Rule 179 of the CWUR should also be amended as above in due course.

2. Allowance and taxation of costs

In contrary to Rule 176 of CWUR, all bills and charges of the persons employed by the trustee are required to be taxed pursuant to Section 86 of the BO where as taxation is not required for the said expenses under HK\$3,000 pursuant to Rule 176 of CWUR.

Although Rule 149A of the Bankruptcy Rule ("BR") sets out that the fees and charges within the prescribed scale can be paid without taxation in the case of small bankruptcies under Section 112A of the BO, details of the prescribed scale is not clear.

In order to reduce the administrative costs and in light of the current costs of living, we propose to include a similar provision as to Rule 176 of the CWUR and increase the limit to HK\$5,000.

3. Trustee's account

Rule 191 of the BR requires the trustee to submit an account to the ORO every six months. The accounts are to be certified and verified pursuant to Form 146 of the Bankruptcy (Forms) Rules.

Trustee is required to verifying the account by way of Affidavit (or Affirmation as the case may be) before a solicitor or other qualified person. Such requirement will no doubt increase the administrative cost with no apparent benefit.

We propose to amend such requirement in line with the similar provision in the Companies Ordinance, (i.e. Rule 162 of the CWUR) that the account sent in by the trustee shall be certified to be correct by him in writing.

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We believe that the above amendments will make the operation of the BO more effective and efficient, and hope that you could take a favorable consideration to our suggestions.

We do not plan to make an oral presentation to the Bills Committee on 15th December, 2004. Should you have any queries, please contact Mr. Kenny Tam of this office.

Yours faithfully,



c.c. Hon Tam Heung-man (Chairman) (By fax and by post)
The Official Receiver (By fax and by post)
Financial Services and the Treasury Bureau (By fax and by post)