Grant Thornton
均富會計師行

Certified Public Accountants

Our Ref : ACWT/mm/ofc

2 December 2004

**Private & Confidential**

**By Fax: 2869 6794**

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

Attention: Ms May Leung

Dear Sirs

**Bills Committee on Bankruptcy (Amendment) Bill 2004**

I refer to the above and enclose our submission.

Yours faithfully

Alan C W Tang

Encl.

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55 years

**Bankruptcy (Amendment) Bill 2004**
**Submission by Grant Thornton**

| *Section No. per Amendment Bill* | *Section No. per B.O.* | *Comments* |
|---|---|---|
| | | |
| 3 | 12(1B) | Appointments are usually on "joint and several" basis; hence it is not sure why "*an appointment must make provision as to the circumstances in which the provisional trustees must act together and the circumstances in which one or more of them may act for the others.*" Who will be in that position (and based on what) to spell out any such circumstances, for a case with assets of less than HK$200,000? |
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| 11 | 37 | The ranking and priority of the costs and charges gives little incentive to a Private-sector Insolvency Practitioner ("PIP") to take up bankruptcy work. It is unclear as to why the ORO is entitled to charge fees and commissions on a percentage of realisation basis where little, if any, work, is done by the ORO in the realisation of the same. The arrangement of paying everybody else in full first before paying the PIP when the PIP is often wholly and exclusively responsible for the realisation cannot be seen to be fair.<br><br>The wording in (1)(ii)(e) does not read well as the charges of any shorthand writer can hardly be related to (and "excepted" from) "expenses properly incurred in preserving, getting in or realizing the assets of the bankrupt".<br><br>Under (3), why should the shorthand writer appointed or authorised by the Official Receiver have any preference over others? |
| | | |
| 15 | 58(1A) | What happens if the provisional trustee does not eventually become the trustee, how then would the property become vested from the provisional trustee to the trustee? Even if the provisional trustee becomes the trustee, what is the mechanics of property becoming vested from the provisional trustee to the trustee? |
| | | |
| 23 | 79 | Why is the name restricted to "(provisional) trustee of the property of ...a bankrupt"? This may give the impression that the trustee does not (have powers to) deal with liabilities, creditors or general affairs of the bankrupt. Suggest to use "trustee of the estate" instead. |

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| 24 | 80(1) and (1A) | See comments on section 3 above. |
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| 25 | 81A | In 81A(2), the appointment by the OR of any other person will be with reference to the office of provisional trustee (see 81A(1)), which appointment is before the calling of the first meeting of creditors. Hence it is unclear why there is a reference to the exercising of the OR's power during this interim period "without a creditors' meeting".<br><br>See comments on section 3 above re the second part of 81A(2). |
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| 27 | 85A | In (1), it should be made clear as to whether the "scale / basis of fees" as fixed by the OR will be fixed on a case by case basis, or fixed and then applied "across the board" for all cases at the relevant time.<br><br>It appears that the (provisional) trustee himself does not have any capacity to apply to the court to have his fee basis and / or remuneration reviewed; this would not appear to be fair. |
| | | |
| 28 | 86B | In (1) (a), this is more a power than a "duty".<br><br>In (1) (f), this "duty" to assist the bankrupt in preparing his statement of affairs ("SoA") will very likely be abused by the bankrupt as a basis of taking a laid-back position and instead requiring the trustee to prepare the SoA from no or little information or incomplete books and records. This "duty" should be abolished. Instead, this may be included as a "power" of the trustee if circumstance really requires it to be exercised. |

***Others:***

1. The ORO / Government provide no subsidy to bankruptcy administrations. With only minimum or even no assets, the PIPs will not have commercial reasons to perform any in-depth investigation of the affairs of any bankrupt; and most cases will be treated as "summary cases" and will "die a natural death" as such. This set-up can easily be abused by shrewd businessmen. Anyone having cleared all bank accounts, dumped all assets, burned all books and records and keeps forgetting everything when being interviewed might easily skip the rigour of any serious investigation by a trustee because of a lack of funds and / or lack of books and records.

For example, we are involved in a live bankruptcy case (from 2002) of a major shareholder and CEO of a former listed conglomerate with assets of over HK$ 4 billion at one stage. The corporate empire was put into liquidation in 2000 and the individual was then made bankrupt. In his SoA, he stated he only had assets in the form of cash at bank of less than HK$300 but liabilities of over HK$300 million (mostly guarantees for the corporate debts). He passed on no books and records to the ORO. The ORO found no assets initially and this case was originally treated as a "summary case". Apparently the creditors were not aware of the position. It subsequently took the major creditor much effort to have the "summary order" uplifted and us appointed as replacement trustee. Major investigations have since been conducted.

It may therefore be necessary to set procedures and / or criteria to:-

- allow the ORO the flexibility not to have to treat all cases with assets of less than HK$200,000 summary cases;
- ascertain how the ORO forms a view that the assets are unlikely to have a value of more than HK$200,000; and
- enable the government / ORO to provide funding for PIPs to be appointed trustee (or agents of the OR as trustee) to carry out detailed investigations for public interest and / or other reasons.

2. A PIP should be able to be appointed as an interim trustee (Section 13). Besides, as long as a creditor is prepared to provide the funding for this appointment, the ORO should not insist on seeing "evidence" from the applicant / creditor that there are definitely assets worth more than HK$200,000 (and hence should not be dealt with as a "summary" case). Further, "protection of the estate" should be extended to include protection of books and records of the potential bankrupt.

2 December 2004