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10 November, 2004

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

Attn : Ms. Connie SZETO

Dear Ms. Szeto,

Bankruptcy (Amendment) Bill 2004

I refer to your letter dated 4 November 2004 and write to express our views on the Bankruptcy (Amendment) Bill 2004.

This Council appreciates the need to enhance the efficiency of case administration and thus alleviate the caseload of the Official Receiver's Office (ORO). We are delighted to pledge our support, in principle, for the Bill which purpose is to empower the ORO to outsource bankruptcy cases to private-sector insolvency practitioners (PIP) in specified circumstances.

Costs of insolvency have always been a public concern. When we responded to the consultation on the Role of the Official Receiver's Office, we have expressed concern over the high fees and disbursements charged by the PIP, as pointed out by the Audit Commission's Report 34, March 2000 – the higher the level of such fees and disbursements, the smaller amount of dividends would be payable to creditors, who may also include consumers. As the court in *Re Peregrine Investments Holdings Ltd. & Others* ([1999] 3 HKC 291 at 301) remarked, the ORO is expected to assume an active role in ensuring that any bills or charges rendered by liquidators and their professional advisers are subjected to satisfactory scrutiny. We have called for substantive measures in supervising the level of fees charged by the private insolvency practitioners.

/P.2 We are pleased

We are pleased that this issue has been positively addressed by the proposed provisions in the newly added s.85A of the Bill. Under this provision the remuneration of the PIP acting as trustee of bankruptcy shall be scrutinized by the ORO. Creditors can apply to the ORO for a review of the PIP's remuneration. Recovery of expenses incurred by the PIP acting without remuneration in or about the proceedings shall be subject to the approval of the court.

As regards professional integrity and service quality of the PIP, it is noted that subsection 4 of the said provision prohibits PIP from making any arrangement for, or accepting from the bankrupt or any solicitor, auctioneer or any other person who may be employed in relation to the bankruptcy any benefit beyond his remuneration payable out of the estate; and from making any arrangement for giving up, or giving up any part of his remuneration to any of such persons. Under the amended s.96, creditors or the ORO may apply to the court for removing the PIP from his office of trustee of bankruptcy on the grounds that he is guilty of misconduct, needlessly protracting the trusteeship, or the interests of the creditors require it. Hopefully, these provisions will ensure a high standard of professionalism amongst PIP serving as a trustee of bankruptcy.

Yours sincerely,

Mrs. CHAN WONG-Shui
Chief Executive

CWS/SC/fl