

**Written Submission**  
**on**  
**Bankruptcy (Amendment) Bill 2004**

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**Prepared by**  
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To: Clerk to Bills Committee  
(Attn: Ms May Leung)  
Legislative Council Secretariat

**A. Introduction**

Bankruptcy has become quite a phenomenal social issue in Hong Kong in recent years. In 2003, the number of bankruptcy petitions exceeded 20,000, as contrasted with just 1,362 petitions in 1998.<sup>1</sup>

To ease the unprecedented caseload of the Official Receiver (“**OR**”), the Bankruptcy (Amendment) Ordinance 2004 (the “**Bill**”) proposes to empower the OR to outsource bankruptcy cases where the value of the bankrupt’s property is unlikely to exceed HK\$200,000 to private-sector insolvency practitioners (“**PIPs**”).

**B. Our Stand**

Not only do we support the outsourcing arrangement as proposed, we suggest to expand its ambit in 2 directions:

1. include bankruptcy cases where the value of the bankrupt’s property is unlikely to exceed HK\$500,000 (and not necessarily limited to summary bankruptcy cases); and
2. permit contingency fee arrangement (or conditional fee arrangement<sup>2</sup> as it is sometimes called)<sup>3</sup> to be the basis of PIPs’ remuneration.

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<sup>1</sup> See Statistic on Bankruptcy published by the Hong Kong Official Receiver's Office: 1,362 bankruptcy petitions were presented in 1998; 22,092 bankruptcy petitions were presented in 2003.  
[\[http://www.info.gov.hk/oro/statistics/statistics.htm\]](http://www.info.gov.hk/oro/statistics/statistics.htm)

<sup>2</sup> "Consultation Paper on Legal Service" by the Attorney General's Chambers in 1995: "A conditional fee is one that is payable to the lawyer only if the case is won. Otherwise, the lawyer receives no payment. Conditional fees are usually subject to a maximum (e.g. 100% increase in the normal fee, or 25% of the damages recovered, whichever is the lower)." [\[http://www.hknet.com/Inform/legal.html\]](http://www.hknet.com/Inform/legal.html)

<sup>3</sup> Strictly speaking, "contingency fee" and "conditional fee" have different meanings but the terms have been used inter-changeably. See "Contingency Fee: the Position in Hong Kong, the Arguments, and the Comparison with England" by Andrew Jeffries : "A "contingency fee", permitted in the US, where the lawyer takes a share of the compensation, although this may have no relationship to the risk taken or work done. A "conditional fee",

## **C. Analysis**

### **Raising the Asset Value Ceiling to HK\$500,000**

The objective of outsourcing the administration of bankruptcy cases to the PIPs is to reduce the overwhelming caseload of the OR. Where more small money (below HK\$500,000) bankruptcy cases can be outsourced to the PIPs, the OR can then devote its limited resources to the better administration of big money bankruptcy cases. At the same time, it will have more time to focus on its supervisory and regulatory roles in the insolvency regime.

We do not see any risk or problem in outsourcing small money (below HK\$500,000) bankruptcy cases to PIPs as proposed by us. The administration of bankruptcy cases where the value of the bankrupt's estate is around HK\$200,000 cannot be that much complicated than cases where the value is around HK\$500,000.

Secondly, limiting outsourcing to cases where the bankrupt's asset value is less than HK\$200,000 is not commercially viable. The PIPs may not be able to get a decent reward from the recovery of assets where the whole of the bankrupt's estate is unlikely to exceed HK\$200,000. As administration of a sizable volume of bankruptcy cases is more cost-effective, the PIPs will be more agreeable to take up the job if a mixture of both small money and medium sized (below HK\$500,000) bankruptcy cases are assigned to them in a lot.

### **Permitting Contingency Fee Arrangement**

Contingency fee arrangement is basically "no win, no fee" or "no gain, no pay".

Applying it to the present case, the remuneration of the PIPs will depend on how much assets can eventually be salvaged through their effort. If more assets are salvaged, the handling PIPs will be rewarded by additional payment, which may be fixed or calculated as a percentage of the value of the assets salvaged or otherwise. Where nothing is salvaged, the PIPs do not charge or receives only a minimum fee. The OR should be empowered to structure remuneration payable to the PIPs on contingency fee basis.

We consider the introduction of contingency fee arrangement brings more benefit than harm to the administration of bankruptcy cases by the PIPs. The spirit of "no gain, no pay" can

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*permitted in England and Australia, where the solicitor is paid an uplift or additional amount if the case is successful, usually as a percentage of normal fees, but sometimes a percentage of the compensation won."*  
[\[http://www.hklawsoc.org.hk/pub\\_e/news/societyupdates/20021009a2.pdf\]](http://www.hklawsoc.org.hk/pub_e/news/societyupdates/20021009a2.pdf)

motivate the PIPs to adopt a more proactive attitude in the recovery of the assets of the bankrupt's estate and, more often, from the debtor(s) of the bankrupt.

Secondly, knowing that the PIPs will seriously chase after the debtor(s) who may be the relatives or close friends of the bankrupt may deter people from petitioning oneself bankrupt in the first place. The contingency fee arrangement may deter people from abusing the bankruptcy procedures, leading to further reduction of the caseload of the OR.

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